

**Fifth Annual Report
of the
Securities and Exchange Commission**

Fiscal Year Ended June 30, 1939

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Washington, DC.

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Jerome N. Frank, Chairman
George C. Mathews
Robert E. Healy
Edward C. Eicher
Leon Henderson

Francis P. Brassor, Secretary

Address All Communications Securities and Exchange Commission Washington, DC.

LETTER OF TRANSMITTAL

Securities and Exchange Commission
Washington, January 3, 1940

SIR: I have the honor to transmit to you the Fifth 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,
Jerome N. Frank, Chairman

THE PRESIDENT OF THE SENATE,
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, DC.

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

INTRODUCTION

At the close of the fifth fiscal year since its creation, the Securities and Exchange Commission was administering three statutes, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and had certain duties under Chapter X of the amended Bankruptcy Act. [Footnote: A fifth statute, the Trust Indenture Act of 1939, was enacted just after the close of the fiscal year. This act adds a new title (Title III) to the Act of May 27, 1933, as amended, Title I of which is the Securities Act of 1933. Briefly, the Trust Indenture Act of 1939 requires that bonds, notes, debentures, and similar securities publicly offered for sale, sold, or delivered after sale through the mails or in interstate commerce, except as specifically exempted by the Act, be issued under an indenture which meets the requirements of the Act and has been duly qualified with the Commission. The provisions of these two Acts are so integrated that registration pursuant to the Securities Act of such securities to be issued under a trust indenture shall not be permitted to become effective unless the indenture conforms to the specific statutory requirements expressed in the Trust Indenture Act. The indenture is automatically "qualified" when registration becomes effective as to the securities themselves]

The full administration of the Public Utility Holding Company Act was delayed in many respects by the failure of a substantial portion of the industry to register until after the decision of the Supreme Court, on March 28, 1938, upholding the constitutionality of the registration provisions. Thus, the Commission at the close of the fiscal year had had only a year and three months of full administration of the Act. The amended Bankruptcy Act was adopted by Congress on June 22, 1938, so that the Commission had exercised its duties with respect to corporate reorganizations under Chapter X of the Act for only slightly more than one year.

Proposed new issues of securities registered under the Securities Act of 1933, thus making full data available to prospective investors, had reached a 5-year total of over \$14,500,000,000 by the end of the fiscal year. Twenty securities exchanges were subject to the jurisdiction of the Commission and data was available to investors on more than 4,000 securities listed on these exchanges. Nearly 7,000 brokers and dealers doing a business in the over-the-counter security markets were registered with the Commission. Fifty-one public utility holding company systems, comprising 142 registered holding companies and including 1,542 separate holding, sub-holding, and operating companies, were subject to the Commission's regulation. During the year the Commission filed notices of appearance in reorganization proceedings under Chapter X of the Bankruptcy Act in cases involving 87 principal debtors and 18 subsidiary debtors.

In the enforcement of its laws during the past five years the Commission has stopped the issuance of 119 proposed security issues and 14 security issues have been delisted from stock exchanges as a result of inability or unwillingness to make the required disclosure. Six persons have been suspended from membership in national securities exchanges for violations of the Securities Exchange Act of 1934, and two members have been ordered expelled. The registration of 60 brokers and dealers in over-the-counter security markets has been suspended. or revoked.

The Commission has intensified its prosecution of fraudulent promoters, stock swindlers, bucket shop operators, and others who abuse the confidence of the investing public and, during the past five fiscal years, has brought 312 suits in the United States courts to prevent violation of its laws. Of these, 288 had been concluded at the end of the fiscal year and as a result 657 firms and individuals had been permanently enjoined from further violation of the law. In addition, the Commission has referred 158 cases to the Department of Justice. As a result, 403 defendants had been convicted at the end of the year.

The Commission's activities in the regulation of securities exchanges during the past year have been directed principally towards securing protection against avoidable financial risks for the customer of stock exchange brokerage firms. The Commission's report on its investigation of the failure of Richard Whitney & Company revealed lax standards and recommended a broad program of measures designed to protect customers funds and securities. Continuing its policy of encouraging self-policing by securities exchanges -- as an alternative to direct and detailed regulation by the Government -- the Commission sought to have the exchanges effectuate, under their own rules, a program for customer protection. Although various plans and proposals had been discussed, at the end of the fiscal year adequate measures for customer protection had not yet been put into effect by the exchanges.

During the year the Commission continued its work with investment bankers, dealers, and brokers to effectuate the system of cooperative regulation of the over-the-counter security markets envisioned by the Maloney Amendment to the Securities Exchange Act (adopted June 25, 1938). At the close of the fiscal year plans for the organization and registration under the Act of a national association of securities dealers were nearing maturity.

[Footnote: Shortly after the close of the fiscal year the National Association of securities Dealers, Inc., registered with the Commission under the Act]

Perhaps the most important single effect of the Public Utility Holding Company Act has, been on the security issues of the utility companies. From December 1, 1935, when the Act became effective, until the close of the fiscal year, utility companies had issued over \$2,500,000,000 of securities, all of them sufficiently in harmony with the aims and spirit of the law to permit their issuance. Of this amount, \$1,449,810,000 were issued during the past fiscal year.

In addition the Commission has passed on nearly every variety of financial transaction covered by the statute.

With respect to the integration and simplification provisions of the Act, six companies have had plans of simplification approved by the Commission and eight companies had plans pending before the Commission at June 30, 1939.

On August 3, 1938, William O. Douglas, former Chairman of the Commission, addressed a letter to the chief executives of all registered holding companies requesting them to inform the Commission of their tentative ideas as to how Section 11 (h) could be complied with. The purpose of this request was to focus the attention of the industry upon the steps needed to comply with the statutes, and to assist the Commission in determining the best means of securing such compliance, as well as to obtain both data and ideas that might prove helpful to the Commission. With few exceptions the registered holding companies submitted more or less elaborate statements in response to this request. These have been carefully studied and analyzed and have aided considerably in the formulation of working plans for securing compliance with the statute. The next step is the specific and separate determination of each company's problem, a matter which in each case must be based on the evidence produced, both by the Commission and the company, at a public hearing.

During the past fiscal year the Commission adopted 27 new rules under its statutes and repealed 14 rules.

The courts have almost invariably sustained the orders, of the Commission in cases where review has been sought. During the past five years the Circuit Courts of Appeal have been asked to review orders of the Commission in 49 cases. Thirty-nine of these petitions were dismissed or withdrawn, in two cases the order of the Commission was affirmed and in only one case was the Commission's order vacated. Seven cases were pending at the end of the year.

During the year a new chairman was elected when, on May 18, 1939, Commissioner Jerome N. Frank succeeded Chairman William O. Douglas, who resigned April 16, 1939 as Chairman and Commissioner to accept an appointment as Justice of the United States Supreme Court. On June 30, 1939, Commissioner Frank was reelected Chairman of the Commission, for the period ending June 30, 1940.

Edward C Eicher of Iowa was appointed Commissioner on December 1, 1939, for the term ending June 5, 1940, vice John W. Hanes, who resigned to accept an appointment as Assistant Secretary of the Treasury.

Leon Henderson was appointed Commissioner on May 17, 1939, for the term ended June 5, 1939, vice William O. Douglas. Commissioner Henderson was reappointed Commissioner on May 29, 1939, for the term ending June 5, 1944,

During the past fiscal year, the Commission established a new division, known as the Reorganization Division. On June 9, 1939, the Commission abolished the Forms and Regulations Division and transferred its functions and personnel to a new Forms and Regulations Unit, created in the Registration Division. On November 21, 1938, the Commission announced the establishment of a new regional office in Cleveland, Ohio. The Commissioners, staff officers, and regional administrators, as of the close of the past fiscal year, were as follows:

Commissioners:

Frank, Jerome N, Chairman
Mathews, George C.
Healy, Robert E.
Eicher, Edward C.
Henderson, Leon.

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 resigned June 29, 1939]

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 resigned July 27, 1939 and Edmund Burke was appointed Director of the Reorganization Division on September 6, 1939]

Davis, Sherlock, Technical Adviser to the Commission.

Lane, Chester T, General Counsel.

Neff, Harold H, Foreign Expert.

Purcell, Ganson, Director of the Trading and Exchange Division.

Schenker, David, Chief of the Investment Trust Study.

Sheridan, Edwin A, Executive Assistant to the Chairman

Smith, C. Roy, Director of the Public Utilities Division. [Footnote: Mr. Smith resigned September 5, 1939 and Joseph L. Weiner was appointed Director of the Public Utilities Division on September 6, 1939]

Werntz, William W, Chief Accountant.

Regional Administrators:

Allred, Oran H, Fort Worth Regional Office.

Caifrey, 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.

Moore, Dan Tyler, Cleveland Regional Office.

Rooney, Joseph P, Boston Regional Office.

Part I

NEW DUTIES OF THE COMMISSION WITH RESPECT TO CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT, AS AMENDED

During the past fiscal year, the Commission inaugurated its functions under Chapter X of the Bankruptcy Act, as amended in 1938 (Public No. 696, 75th Congress), relating to the reorganization of corporations and superseding Section 77B of that Act.

Chapter X affords the appropriate machinery for the reorganization of corporations (other than railroads) in the Federal courts under the Bankruptcy Act. The Commission's duties under the chapter are, first, at the request or with the approval of the court, to act as a participant in proceedings thereunder in order to provide independent, expert assistance on matters arising in such proceedings. Second, the Commission is empowered to prepare, for

the benefit of the courts and investors, advisory reports on plans of reorganization submitted in such proceedings.

COMMISSION FUNCTIONS UNDER CHAPTER X

The functions of the Commission as a participant in Chapter X proceedings are governed, by Section 208 of the Act. That section provides that the Commission shall, if requested by the judge, and may, upon its own motion if approved by the judge, file a notice of its appearance in a proceeding under Chapter X. Upon the filing of such notice, the Commission is deemed to be a party in interest and has a right to be heard upon all matters arising in the proceeding. However, it may not appeal or file any petition for appeal in the proceeding,

The Commission's functions in connection with advisory reports on reorganization plans are governed primarily by Section 172 of the Act. That section provides that the judge shall, if the indebtedness of the debtor exceeds \$3,000,000, and, may, the indebtedness does not exceed that amount, submit to the Commission for examination and report any plan or plans of reorganization, which the judge deems worthy of consideration. Section 173 of the Act provides that the judge may not approve any plan until the Commission has filed its report or has notified the judge that it will not file a report, or unless no report has been filed within the period fixed by the judge. Section 175 provides that upon the approval of any plan by the judge, the Commission's report, if one has been filed or a summary prepared by the Commission, must be transmitted to creditors and stockholders who are being asked to vote on the plan, along with certain other material.

In general, the Commission's functions under Chapter X are advisory in nature, and are designed to make available to the courts and security holders the expert and impartial assistance of the Commission.

In order that its functions under Chapter X may be more effectively and efficiently exercised, the Commission established the Reorganization Division in Washington and reorganization units in the several regional offices. This decentralization was designed to meet the needs of the courts and the parties involved and to avoid the delay and expense that might have been occasioned by the exercise of all the functions directly from Washington. It has been accomplished, however, without the delegation by the Commission of any power of decision.

PROCEEDINGS IN WHICH THE COMMISSION PARTICIPATED

The amended Act did not become fully effective until September 22, 1938, but the provisions of Chapter X thereof were made applicable in their entirety to proceedings in which the petition for reorganization was approved within 3 months prior to that date. It was further enacted that the provisions of Chapter X should apply, to the extent that their application was deemed practicable by the judge, to proceedings in which the petition was

approved more than 3 months before September 22, 1938. Through the operations of these provisions, the Commission has therefore been active not only in cases instituted since the enactment of Chapter X, but in numerous cases which originated under the provisions of Section 77B of the Bankruptcy Act

In reaching the decision that it should seek to become a participant in any case, the Commission has borne in mind the criterion that the more important provisions now embodied in Chapter X of the Bankruptcy Act were designed to assure greater protection for the interests of the public investor. Accordingly, the Commission has concerned itself with all cases involving a definite public interest, and, generally speaking, has sought to participate in all cases involving more than \$250,000 face amount of securities outstanding in the hands of the public. However, the Commission also has become a party to smaller cases in which there were special factors which indicated, the desirability of its participation, such as a questionable corporate history, or the proposal of an improper plan of reorganization, or inadequate representation for the public investors, violations of various provisions of the new Act.

During the period from September 22, 1938 (the date on which the amended Bankruptcy Act became fully effective), through June 30, 1939, the Commission filed its notice of appearance in 87 proceedings involving the reorganization of 105 corporations (87 principal debtor corporations and 18 subsidiary debtors). Of these 87 proceedings, 38 were commenced under Chapter X, while 49 originated under Section 77B. In 53 proceedings the Commission filed its notice of appearance at the request of the judge; while in the remaining 34 it became a party upon approval by the judge of its own motion to participate. In only one instance was the Commission's motion to participate denied.

The 105 debtors involved in the proceedings to which the Commission became a party showed aggregate assets of over \$550,000,000 and aggregate indebtedness of over \$440,000,000. These proceedings embraced a wide variety of industries, as indicated by the following table:

[table omitted]

Included among the various industries listed above were the following types of companies: A drug concern, traction and power companies, an investment trust, paper manufacturing concerns, a radiator concern, a toll bridge, oil companies, gold and silver mining companies, warehouses, a tanning company, a coal company, and numerous hotels, apartment houses, and other real estate concerns. In individual cases, the outstanding indebtedness of these companies varied from less than \$100,000 to over \$50,000,000. In 23 instances the indebtedness aggregated over \$3,000,000 and in 5 instances it exceeded \$25,000,000. The distribution of cases by amount of indebtedness is shown, in the following table:

[table omitted]

STATISTICS ON REORGANIZATIONS UNDER CHAPTER X

In order to determine in which cases its participation would, in the light of the public interest involved, be desirable and practicable, and in order that it might be in a position to respond to the requests of judges seeking its advice and assistance in connection with specific cases, the Commission has endeavored to keep informed as to the nature of all pending cases. Accordingly, the Commission has investigated or examined, during the fiscal year a total of 1,104 reorganization cases, including the cases in which it became a party. Of this number, 527 were proceedings commenced under Section 77B prior to enactment of the Chandler Act, and the remaining 577 were instituted, under the provisions of Chapter X of the amended Act.

As an aid to the Commission in the performance of its duties wider the Act, it was provided in Section 265a of Chapter X that the Clerks of the various Federal District Courts shall transmit to the Commission copies of all petitions for reorganization filed under that Chapter as well as copies of various other specified documents filed in the proceedings. Thus, the Commission possesses files or records of the more important papers in all Chapter X cases and is in a position to make available to many users information otherwise practically inaccessible to them.

With a view to dissemination of this information, the Commission has inaugurated a series of statistical surveys presenting data on the total number of proceedings under Chapter X and the aggregate assets and indebtedness of the companies involved, classified according to industry, location of principal assets, location of principal place of business, Federal judicial district in which proceedings were instituted, amount of individual indebtedness, and type of petition filed. The first of these statistical analyses, covering the period from September 22, 1938, to March 31, 1939, inclusive, was released on May 8, 1939. A statistical analysis in similar form covering the period from June 22, 1938 to June 30, 1939, inclusive, is contained in Appendix IX of this report.

THE COMMISSION AS A PARTY TO PROCEEDINGS

In general, it may be said that the Commission's activities in reorganization proceedings in which it participates may be as extensive as the issues arising in the proceedings and as varied in their scope. As a party in interest, the Commission is represented at all important hearings in the proceedings. It participates in the discussions on all major issues and on appropriate occasions files legal or factual memoranda in support of its views. In addition, its views with respect to the fairness and feasibility of reorganization plans are fully discussed with all interested and proper parties, and proposals as to plans are fully examined in connection with the Commission's views. In many cases this has led to extensive amendment and improvement in such proposals in advance of the hearings thereon before the court. The range of matters with which the Commission has been concerned is outlined in the following paragraphs.

The Commission has encountered a number of instances of violation of, and noncompliance with, the procedural provisions of Chapter X. In many cases where such situations came to the Commission's attention, a conference with the parties was sufficient to dispose of the matter. In other cases, it was necessary to file a formal motion in court.

Insuring Adequate Notice of Hearings to Security Holders.

Among the more important of such violations of the Act were those connected with the provisions for notice which must be given of the various hearings required by the statute. Occasionally, for example, the Commission has advised the parties of their failure to give notice to the various parties entitled thereto, or of the inadequacy of the notice even when given, as relating to the hearings on the question of continuance in possession of the debtor or the retention in office of the trustee. The Commission has similarly objected to failure to give notice of the statutory hearings for the approval of a plan. In a number of instances applications for interim allowances to the trustees and their counsel were made without the requisite hearing on notice to all creditors, security holders, and parties. In all of these instances it was possible to accomplish a correction of the violations without undertaking any formal court action. Many other examples of procedural noncompliance with the statute could be adduced as to which the Commission has taken remedial action. It is to be emphasized that these matters, though procedural in nature, are of significance to security holders in safeguarding their rights to be heard on all matters arising in reorganization proceedings under the statute.

Securing Compliance With Provisions Regarding Trustees.

A most important phase of the Commission's activity in discerning and correcting noncompliance with the Act dealt with the appointment of independent trustees. As an essential element in the proper conduct of reorganizations, the statute prescribes certain standards of disinterestedness which must be met by trustees appointed under Chapter X. Wherever there was any doubt as to the qualifications of the trustees, the Commission, undertook thoroughgoing examinations into the facts, in three cases, for example, sufficient evidence of conflicting interests was developed to warrant an appearance in court for the purpose of urging the removal of trustees. In one of these cases, where it appeared that the trustee had been in charge of the debtor's operations at the time of his appointment, the trustee resigned after the Commission filed its motion and before testimony was to be taken at the court hearing. In the second of these cases, the court removed the trustee after hearing. In the third case, the Commission was of the opinion that both the trustee and his attorney were disqualified under the statute, but the court overruled its objection and continued them in office.

In a few cases, independent trustees were not appointed although the indebtedness of each of the several debtors was in, excess of \$250,000, the point above which the statute makes their appointment mandatory. However, in all such instances, the omission was promptly

cured when attention was directed to the violation. In other cases questions arose concerning the powers of the disinterested trustee as distinguished from those of the interested trustee. Under the statute the court can, in unusual cases, designate as an additional co-trustee an officer, director, or employee of the debtor, but only for the purpose of assisting in the operation of the business. Accordingly, the Commission objected to an order directing both the disinterested trustee and the co-trustee to prepare and file a plan. The Commission likewise objected to an order depriving the disinterested trustee of the power to participate in the operation of the business and confining his functions to the formulation and submission of the plan. In both instances, the Commission's views were approved and the orders amended.

Securing Compliance With Provisions Regarding Protective Committees and Indenture Trustees.

Another general phase of the Commission's efforts to remedy noncompliance with the provisions of Chapter X related to the activities of protective committees and indenture trustees. The Commission has constantly been alert to secure compliance with the provisions of the statute which require disclosure by committees and indenture trustees of relevant information concerning their appointment, affiliations, and security holdings. Considerable attention also has been given to the controversial question whether formal intervention should be granted to committees and indenture trustees in proceedings under Chapter X. The position advanced by the Commission in the courts has been that, since the new statute affords committees and indenture trustees an unqualified right to be heard, such intervention is unnecessary as a general rule. In only one of the many cases dealing with the question was this view rejected. [Footnote: The numerous cases in which this view was upheld include *The Philadelphia Coal and Iron Co.* case which was appealed to the Circuit Court of Appeals for the Third Circuit. The opinion of the appellate court in that case is summarized *infra*.]

In connection with the activities of protective committees, the Commission was also concerned with the problem of solicitation, of the assents of security holders to plans of reorganization prior to approval of such plans by the courts. The provisions of Chapter X were designed to assure to creditors and stockholders the information essential to the exercise of an informed judgment concerning the plan before their vote thereon is exercised, and also to remove from the courts the pressure which customarily attended "support" of plans that were frequently neither fair and equitable, nor feasible. Consistently with the purpose of these provisions, the Commission in a number of cases objected to such solicitations prior to the court's consideration and approval of the plan under consideration.

PLANS OF REORGANIZATION UNDER CHAPTER X

Many of the more complex problems which confronted the Commission as a party in reorganization cases were concerned with the failure of proposed reorganization plans to

conform with the standards of fairness and feasibility required by Chapter X. As a preliminary to consideration of all plans of reorganization, it was necessary to assemble the essential information bearing on the physical and financial condition, of the company, the causes of its financial collapse, the quality of its management, its past operating performance and future prospects, and the reasonable value of its properties. Information on these matters was obtained through voluntary cooperation on the part of the trustees and the parties; through examination by the Commission's accountants of the books and records of the companies involved; and through the examination of witnesses in court. This information was complemented by the independent research of the Commission's analytical staff into general economic factors affecting the particular company and competitive conditions in the particular industry.

Feasibility of Plans.

Although it is obviously difficult to design a pattern of feasibility into which all cases will fall, a number of matters of concern to the Commission in this category may be summarized. Thus, the Commission found it necessary in a number of cases to direct attention to the inadequacy of proposed working capital; to object to proposed fixed charges which were either in excess of or were not sufficiently covered by reasonably anticipated earnings; to object to proposed funded debt or capital structures bearing no reasonable relationship to property values; and, generally speaking, to point out the conditions essential to a sound financial basis from which to look forward to successful operating results. As a typical instance of the latter, the Commission was, in one case, concerned with a plan which provided for the issuance of large blocks of cumulative income bonds, the charges on which would have been in excess of the earning power of the company, even before making allowance for necessarily substantial depreciation charges. It appeared likely that accumulations of interest would continually accrue and increase the debt of the company; by the same token, there seemed little likelihood of any considerable retirement of the bonds during the life of the issue to counterbalance this increase in debt. As a consequence, at the maturity of the bond issue, the company might well have been burdened with a larger debt, while at the same time the value of its properties, against which no depreciation reserve was provided, would be considerably lower. The Commission advised the interested parties that, in its opinion, the plan would serve only as a prelude to another reorganization and the plan was materially modified. A number of similar improvements in plans were accomplished in this manner and through recommendations to the courts.

Fairness of Plans.

Perhaps the most controversial of the issues presented in the course of the Commission's participation in reorganizations is the question whether a proposed plan is "fair and equitable" as required by the statute. In appraising this aspect of plans, the Commission has taken the position that, to be fair, plans must provide full recognition for claims in the order of their legal and contractual priority, either in cash or new securities or both; and

that junior claims may participate in reorganizations only to the extent of the value remaining in the debtor's properties after the satisfaction of prior claims. The Commission has not considered a plan as fair which accords recognition to junior interests unless there is a residuum of value for such interests or such recognition is based on a fresh contribution made in money or money's worth.

The Commission's position in this regard was fully sustained by the decision of the United States Supreme Court in *Case v. Los Angeles Lumber Products Co, Ltd*, decided November 6, 1939. [Footnote: In this case, the Commission's position was presented to the Court in a brief filed for the United States as amicus curiae and in argument by the Solicitor General. The Commission participated in the preparation of the brief and argument.]

Consistently with the foregoing, the Commission has considered a determination of the value of the debtor's properties essential in evaluating the fairness of reorganization plans. Its view in this regard was recently upheld in a significant decision of the Circuit Court of Appeals for the Third Circuit in the *Philadelphia & Reading Coal & Iron Co.* case, in which the court held that solvency, and by that token value, is appropriately to be determined in advance of approval of any plan of reorganization. It may be added, in connection with the complex problem of determining value for the purposes described, that the Commission shares the view of financial experts generally and of most courts, that an appropriate capitalization of reasonably foreseeable earning power is the most reliable guide to value in reorganization cases.

Although limitations of space preclude any summary in this report of the varying fact situations in which the question of the fairness of plans has been presented to the Commission, a typical instance is briefly outlined in the following paragraphs, which serves also as an indication of the expedition with which the Commission must consider and act upon these matters as presented.

In the case in question, the debtor owned and operated a cold storage warehouse and had outstanding \$1,646,000 of first mortgage bonds, \$598,500 of second mortgage bonds, \$470,000 of unsecured indebtedness, \$550,000 of preferred stock, and 30,000 shares of common stock. The reorganization proceedings had been pending before the court for several years and several plans of reorganization had proved abortive. In order to expedite the proceedings, the judge, on October 21, 1938, ordered the trustees to file, on or before November 10 of that year, a plan of reorganization or a report of their reasons why a plan could not be effected, pursuant to Chapter X. It was further ordered that a hearing on the plan should be held on November 18. On November 2, 1938, the judge entered an order, pursuant to Section 208 of Chapter X, requesting the Commission to file a notice of its appearance.

Members of the Commission's staff immediately began a study of the company's books and records, and the assembling of information from all other pertinent sources which

would bear on the company's history, its financial condition, and its future prospects. In the meantime, the trustees had filed as proposed plan of reorganization which had the support of representatives of holders of the various classes of securities. This plan provided for a bank loan to raise money to pay accrued taxes and by the issuance of second mortgage income bonds and common stock to the bondholders and other claimants, and included substantial participation for the existing stock.

After a study and analysis of the plan based on the data which had been obtained concerning the company, the Commission was convinced that no equity existed for any interests junior to the claims of first mortgage bondholders. This conclusion was founded principally on an examination of past operating results of the debtor and on an estimate of its prospective earning capacity. In the light of this conclusion, it was apparent that the substantial participation accorded junior interests was unfair. Furthermore, the amount of the funded debt proposed by the plan and the difficulty of amortizing the bond issue in any substantial amounts before its specified maturity cast doubt on the feasibility of the plan. These and other considerations led the Commission to believe that the substitution of equity securities would present a more feasible capital structure.

The Commission's views in these various respects were presented to the interested parties at a conference held a few days prior to the hearing, and again formally at the hearing on November 18. As a result of the Commission's suggestions, the plan was substantially amended. The amended plan was approved by the court on December 6, 1938, approximately one month after the Commission had entered its appearance in the proceeding.

ADVISORY REPORTS ON PLANS OF REORGANIZATION

As already noted, the second aspect of the Commission's functions under Chapter X relates to the submission of advisory reports on plans of reorganization. The advisory report serves as an impartial survey and critique for the use of the judge in his consideration of the plan. If the plan is approved by the judge, copies of the report or summaries thereof prepared by the Commission are submitted to all those affected by the plan, thus serving also as an aid to creditors and stockholders in making their decision as to acceptance or rejection of the plan.

It has been noted already that in its capacity as a party the Commission may be actively concerned with every issue arising in a reorganization proceeding under Chapter X. Throughout such proceeding, it lends assistance and advice as to legal and financial matters to the court with respect to both the administration of the estate and the working out of a fair, equitable, and feasible plan of reorganization. In this latter connection, the Commission's duties as a party require it in effect to undertake in every case the same intensive legal and financial studies which are necessary for the preparation of formal advisory reports. The Commission, therefore, seeks to become a party in every case in which it is expected that plans will be referred to it for such reports. On the other hand, the

Commission has become a party in many other cases where such reports will be neither required nor requested, but in which the burden of study and analysis respecting plans is in no wise lessened, since the Commission must be prepared to comment thereon in any event in its capacity as a party. In effect, therefore, the Commission performs both of its functions in all cases in which it participates.

During the past fiscal year, the Commission issued formal advisory reports in 4 reorganization proceedings. In 2 other cases during this period, plans of reorganization were submitted to the Commission for advisory reports, which reports were in the course of preparation at the close of the fiscal year. In more than 20 other cases, the proceedings had not progressed to a point where the plans therein could appropriately be referred to the Commission, but it was clear, in the light of the amount of indebtedness involved, that these must eventually be submitted for advisory reports.

The four proceedings in which the Commission submitted advisory reports during the past fiscal year, were all Section 77B proceedings to which the judge deemed the application of the provisions of Chapter X practicable. Three of these cases involved indebtedness in excess of \$3,000,000. In the remaining case the indebtedness was less than this figure and the Commission was requested to file its advisory report. There follows a brief discussion of these reports:

Penn Timber Company. -- The plan in this case provided for gradual liquidation over a period of years of the debtor's assets, which consisted entirely of timberlands. It provided for a 10-year extension of the maturity date of the debtor's first mortgage bonds and, even though the debtor was admittedly insolvent, for participation in the new company by stockholders as well as junior creditors. The Commission, in its report, took the position that the proposed plan was not feasible because factors affecting the marketability of the timber indicated that liquidation within the 10-year period could not reasonably be anticipated. As a consequence, further reorganization at the expiration period appeared likely. The Commission further pointed out that inasmuch as the probable net proceeds of the sale of the assets would not exceed the principal and interest accrued and to accrue on the bonds, any plan providing for participation by interests junior to bondholders would be unfair. Therefore, the Commission concluded that the plan did not meet the statutory and judicial requirements of fairness and feasibility, and that it should not receive the approval of the court. At the close of the fiscal year, the matter was still pending, the court having neither approved nor disapproved the plan.

Detroit International Bridge Company [Footnote: The advisory report of the Commission in this case was cited by the United States Supreme Court its opinion in the Los Angeles Lumber Products Co case, supra.] -- The plan referred to the Commission in this proceeding provided for the issuance of common stock to holders of bonds and debentures, 923 percent to be issued to bondholders and 77 percent to debenture holders. Although the value of the assets was less than the amount due on the first mortgage, the Commission was of the opinion that the provisions of the plan, allocating 77 percent of the new

common stock to debenture holders, were not unreasonable, it appearing that, at the time the proceedings were instituted, there was a substantial amount of cash on hand to which the debenture holders had a claim.

In addition to the common stock to be issued, the plan provided that present stockholders were to receive warrants entitling them to purchase approximately 2.5 percent of the common stock of the new company at twice the anticipated market value of the stock as of the time of reorganization. The issuance of warrants was justified in the plan on the ground that it was desirable to obtain the consent of stockholders to amendments to the charter of the corporation so as to avoid possible difficulties which might arise through the transfer of the bridge franchise to a new corporation. It had been intimated, moreover, that the warrants were of little, if any, value and, therefore that their issuance was unobjectionable. The Commission questioned the advisability of issuing such securities and suggested that if the benefits to be derived from the issuance of the warrants justified their inclusion in the plan, consideration be given to restricting their transferability. The plan was approved by the court on March 27, 1939.

National Radiator Corporation -- Prior to the time the Commission became a participant in this proceeding, a plan of reorganization had been filed by the trustees which accorded to stockholders a participation in the reorganized company. Upon subsequent investigation of the company's financial condition, the Commission concluded, as did the court, that the debtor was insolvent. The trustees thereafter filed an amended plan of reorganization which provided for the issuance of all of the common stock of the reorganized company to creditors, in exchange for their claims. It appearing that the amended plan was fair and feasible and that the management provisions were generally acceptable, the Commission reported favorably on the amended plan. The plan was approved by the court on March 17, 1939, and thereafter accepted by creditors and confirmed.

Griess-Pfleger Tanning Company. -- The plan in this case provided for the issuance of \$1,540,000 in capital income debentures and 9,240 shares of common stock to holders of the \$1,540,000 principal amount of first mortgage 5.5 percent bonds outstanding, on which interest had accrued in the amount of \$134,000. Holders of 9,875 shares of \$100 par preferred stock on which unpaid dividends amounted to \$548,063, were to receive 37,031 shares of common stock, and holders of 19,000 shares of \$80 par common stock were to receive 4,222 shares of the new common stock.

The capital income debentures proposed to be issued to first mortgage bondholders were not to be a lien on the assets of the new corporation and were to rank junior to the claims of all creditors, present and future. The debentures were to mature in 1954, an extension of 15 years, and were to bear contingent interest at a rate varying from 1 percent to 5 percent. They were to be convertible into stock at any time in the ratio of one share of stock for each ten dollars of debentures. Although no sinking fund was provided for, the debentures were to be redeemable under certain conditions. Holders of the issue, as a class, would be entitled to elect a varying majority of the board of directors so long as the amount

outstanding exceeded \$700,000, and a varying minority thereafter. The Commission expressed the opinion that the debentures were in substance a preferred stock and that they should be frankly labeled as such. It was further pointed out. that such a security, practically unknown in the public markets, was unsound and deceptive and would place the initial holders, as well as subsequent purchasers and sellers, at serious disadvantage in their dealings with one another.

The Commission concluded that, in its opinion, the plan was unfair in that first mortgage bondholders, without being adequately compensated, required to accept burdensome sacrifices, including elimination of accrued interest, reduction in future interest rates, elimination of their lien on the debtor's property, subordination of their claim to the claims of all present and future creditors, and extension of maturity date, while preferred stockholders, whose equity in the property justified at best only minor recognition, were to receive 73.3 percent of the common stock of the new company; and common stockholders, who should have been eliminated entirely, were to receive 8.4 percent of the new common stock. The plan was, however, approved by the court.

APPEALS

In the event that appeals by other parties are taken in cases in which the Commission is participating, the Commission is entitled to appeal in the proceedings before the appellate courts. In four of the cases in which the Commission has participated during the past fiscal year, questions were brought before the Circuit Courts of Appeals, concerning which the Commission submitted briefs expressing its views, and counsel for the Commission appealed in oral argument.

The appeals in two of the cases were disposed of on grounds which did not deal directly with the substantive issues involved. In the other two cases, the opinions of the courts adopted the views urged by the Commission. Because of the signal importance in reorganization law of the propositions established in these cases, there is included below a brief summary of the opinions therein.

In the Matter of South State Street Building Corporation [105 Fed. (2d) 680 (C. C. A. 7th, July 13, 1939.)] -- In this case, the Circuit Court of Appeals for the Seventh Circuit recognized the responsibility of a reorganization trustee, under the provisions of Section 167 of Chapter X, to examine into the financial worth of an individual who was a personal guarantor of the debtor's bonds and who, there was reasonable grounds to believe, was also indebted directly to the debtor. The court upheld the subpoena of books and records relevant to this issue.

In the Matter of the Philadelphia & Reading Coal & Iron Company [105 Fed. (2d) 354, 357, 358 (C. C. A. 3d, June 30, 1939)] -- The Commission participated in various appeals arising in this reorganization proceeding. In one instance, the Commission filed a motion

seeking the appointment of an examiner to investigate and report upon the affairs of the debtor company and to formulate a plan of reorganization. The Circuit Court of Appeals reversed the district court decision denying the Commission's motion because of the district court's failure to consider, on the merits, the practicability of appointing an examiner. The matter was remanded to the district court to bear evidence and determine whether an examiner or a trustee should be appointed in the proceeding. In its opinion, the Circuit Court indicated that it was following the Second Circuit Court of Appeals in holding that the provisions of Chapter X should be applied wherever practicable.

In another phase of this case the Commission participated in an appeal involving principally the question whether the court could properly pass upon a plan of reorganization prior to a determination of solvency or insolvency. The Circuit Court of Appeals reversed the decision of the district court and held that solvency or insolvency must be determined before a plan can be considered. In its opinion the Circuit Court also indicated its adherence to the "absolute priority" rule in judging the fairness of plans.

The Commission also opposed the granting of intervention in this proceeding to the various committees participating in the reorganization. The district court denied intervention and such denial was upheld by the Circuit Court of Appeals. That court held that by the terms of Chapter X the rights which had previously been accorded only to interveners are now available generally to all parties in the proceedings, and that therefore, in the absence of a showing of cause other than a desire to appear generally and to participate in the proceedings, such parties had no right to intervene.

Part II

ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is designed to compel full and fair disclosure to investors of material facts regarding securities publicly offered and sold in interstate commerce or through the mails. Its provisions are also designed to prevent fraud in the sale of securities. Issuers of securities to be publicly offered and sold in interstate commerce are required to file registration statements with the Commission. These registration statements are required to contain specified information on the proposed offering; and are available for public inspection.

REGISTRATION OF SECURITIES UNDER THE SECURITIES ACT OF 1933

Nature and Effect of Registration.

The Securities Act of 1933 does not confer upon the Commission the power to approve the merits or value of any security; instead, it provides for the full and fair disclosure of material facts concerning securities to be offered publicly for sale and the issuers thereof.

A security may be registered under the Securities Act of 1933 by filing with the Commission, on an appropriate form, a registration statement meeting the requirements specified in that Act and the rules and regulations of the Commission promulgated thereunder. Registration forms have been prescribed by the Commission to meet the requirements peculiar to various types of securities. In each case, the form is designed to secure a fair disclosure of material facts concerning the security proposed to be offered for sale or sold to the public in order that the investor may be aided in appraising its desirability as an investment. There is filed with each registration statement a prospectus containing the more essential information set forth in the registration statement. No offering of the security or delivery of it after sale may be made in interstate commerce or through the mails unless accompanied or preceded by such a prospectus.

The registration statement becomes effective on the 20th day after its filing with the Commission, except in certain cases specified in the Act, so that an investor is thus given a 20-day period in which to consider facts concerning the proposed security issue before it is offered for sale. [Footnote: The Commission adopted, effective on July 20, 1939, a revision of Rule 930 (b) of the General Rules and Regulations under the Securities Act of 1933, providing that such "twentieth day" shall begin immediately upon the close of business at the Commission at 4:30 p. m., Eastern Standard Time, after 19 days from the date of filing have elapsed, counting weekdays, Saturdays, Sundays, and other holidays alike.] This period also gives a reasonable time for the Commission to make an examination of the registration statement for omissions, incomplete disclosures and inaccuracies. Where an amendment to a registration statement is filed prior to the effective date of the registration statement, such amendment has the effect of establishing a new filing date and starting a new 20-day period running, although the Commission is given the power to redate the filing of the amendment back to the original filing date when such action is not detrimental to the public interest. [Footnote: An amendment filed after the effective date becomes effective on such date as the Commission may determine, with due regard to the public interest and the protection of the investor.]

Unless a registration statement under the Act is in effect as to a security, the security may not (except where an exemption from registration provided by the Act is available) be publicly offered for sale or sold in interstate commerce or through the mails. Yet it should be emphasized that 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. Since the

registration statement constitutes a record of the representations made in connection with the offering, such registration statement serves, where any such representations are false, to simplify the problem of proof in any legal proceedings which. may result.

Examination of Securities Act Registration Statements.

.In an effort to achieve an intelligent and orderly administration of the Securities Act of 1933 it seemed best, at the beginning, to adopt the practice of sending to a registrant, whose registration statement upon examination and analysis discloses any omission or incomplete statement of material facts, a so-called deficiency letter informing the registrant of the weaknesses appearing in the statement. It has become routine procedure, except in unusual cases, to send such letter or memorandum to the registrant within approximately 10 days after the filing of the registration statement, thus affording the registrant an opportunity to correct the statement by amendment before the indicated effective date and before the securities are offered for sale. While in such cases the deficiency may be corrected ordinarily by the filing of amendments, there may be instances where it may be necessary first to request the registrant to furnish. additional information to contribute to an understanding of a! complicated situation. In some instances, discussions with the registrant may lead to a discovery that the Commission's suggestions as to amendments are inappropriate in the light of additional. facts developed. Clearly, however, the result of the procedure of thus pointing out informally to the registrant what appear to be material misrepresentations or omissions in the information filed with the Commission, rather than the alternative of allowing the defective statement to become effective and then either having the security sold upon such misrepresentations or instituting stop order proceedings, constitutes not only fair treatment of the registrants, but also serves the main purpose of the Act which is to insure that investors have the opportunity of exercising intelligent judgment based upon fair disclosure of the facts concerning the enterprise.

The same procedure followed in the examination and analysis of registration statements is used for amendments to registration statements and annual reports supplemental thereto filed by registrants subject to the Securities Act of 1933 under the conditions specified in Section 15 (d) of the Securities Exchange Act of 1934, as amended.

Disclosures Resulting from Examination.

The following brief summaries of a few actual cases will give some indication of the nature of typical fair disclosures of material information resulting from the Commission's examination of registration statements:

(1) Intangible assets reduced by \$250,000 -- The total assets shown on the balance sheet of a registrant engaged in manufacturing aggregated \$776,626 of which \$708,589 was shown under the caption "Intangibles" in an account titled "Development of Aviation Devices and Licenses." An investigation of this intangible item disclosed that approximately \$425,000 only had been expended by the registrant and its predecessor on such devices and licenses

and that an attempt had been made to capitalize approximately \$150,000 spent by the United States Government in the late 1920's, that is, long before the formation of the registrant's predecessor. Furthermore, an attempt had been made to capitalize approximately \$130,000 which represented work orders given the registrant's predecessor by the United States Government. The propriety of capitalizing expenditures by others on devices similar to those of the registrant and of capitalizing orders for products was questioned, and, as a result, the registrant reduced its assets \$250,000 by reducing the intangible account by such amount and at the same time decreased the amount of capital stock issued to its predecessor from 150,000 to 100,000 shares.

(2) *Property depreciation increased by \$825,000* -- The registration statement filed by an oil and gas producing company included a report by an independent oil expert in which it was stated that the depreciation provisions in respect of intangible drilling costs were inadequate to amortize such costs over the useful life of the property. The income account reflected charges of approximately \$186,000, \$339,000, and \$329,000 during the years 1936, 1937, and 1938, respectively, relating to property dismantled and retired and against which depreciation had not been provided. In a conference with the registrant's representatives and the independent oil expert, the latter indicated the rate which he considered would be adequate for the purpose of computing depreciation. As a result of this conference, the registrant amended its balance sheet and income statements to reflect an additional provision of \$825,000 for depreciation. Of this amount, approximately \$424,000 was charged to earned surplus as at the beginning of the 3-year period and approximately \$116,500, \$131,000, and \$144,000 was provided out of income for the years 1936, 1937, and 1938, respectively.

(3) *Item of \$1,277,083.34 bond discount eliminated* -- From an examination of the registration statement filed under the Securities Act of 1933 by a utility company, it appeared that the property accounts included an amount of \$1,277,083.34, representing the discount on the sale to an affiliate of certain bonds which the registrant had issued to the affiliate for certain physical properties. The bonds had been redistributed by the affiliated company at the abovementioned discount. There appeared to be no justification for carrying this discount in the property accounts and the registrant was so advised. The registrant amended its balance sheet to eliminate the amount involved from the property accounts and to charge off against earned surplus at the beginning of the three-year period, and against income for each of the three annual periods under review, a pro rata amount of the discount in question. The unamortized portion of the discount at the balance sheet date, namely \$893,958.34, was shown as a separate item and appropriately captioned and classified on the amended balance sheet.

(4) *Hazards of enterprise disclosed* -- A registrant, which with its predecessor had been engaged in the manufacture of automobiles over 20 years, filed a registration statement covering an offering of \$600,000 of stock, accompanied by a prospectus which failed to disclose clearly certain important features of the company's future plans.

After an investigation, during the course of which an engineer and an attorney of the Commission inspected the registrant's plant and physical assets and examined its future plans, substantial amendments were made. The amended prospectus reveals under a caption entitled "Present Hazards of the Enterprise" that, due to circumstances beyond the control of the issuer, it is possible the necessary working capital will not be procured, that future production of cars for the latter and other reasons might be considerably hampered, that the future of the company is wholly dependent on the ability of the management successfully to manufacture and sell a different type of car from that made by it in the past, and with its limited resources the company will be unable to conduct any extensive advertising campaign for the sale of this new type of car. The facing sheet of the amended prospectus contains a statement that the shares are offered "solely as a speculation."

(5) Implication of continued gold production eliminated -- In a registration statement filed by a mining company, it was stated, in effect, that (1) the company was engaged in prospecting, exploration, and development; (2) the mine workings consisted of workings on several levels down to the 600-foot level; (3) the property was equipped with a mill capable of treating 100 tons of ore per day; and (4) gold bullion was being recovered at the rate of about \$25,000 per month, it being the hope of the management to maintain this rate of production.

Upon examination of the maps and other information supplied with the registration statement, it appeared that the nature of the undertaking was not accurately reflected in the statement and the registrant was notified of the particular items of the statement which appeared to be deficient or misleading.

The registrant thereupon amended its registration statement to show that (1) the mineral values became progressively impoverished with depth below the 200 foot level, the veins being non-commercial where exposed on the bottom level; (2) "The construction of the mill may not have been warranted by the extent of the known ore, and may not be warranted by the amounts of ore presently indicated;" and (3) "* * * the registrant feels that it may have no reasonable ground to believe that the recent rate of production can be maintained over a substantial period."

(6) Dim profit possibilities revealed -- Investors would furnish 93% of cash capital for 11% of voting rights -- A registration statement, as originally filed by a mining company, proposed the public sale of stock amounting to approximately \$1,650,000 for the purchase and operation of a gold placer mining dredge. It was stated that preliminary results, according to the company's officials and engineers, indicated the existence of vast deposits of gold bearing material from which exceptional profits would be realized. Upon examination of the registration statement, it appeared that substantial amendments and clarifications were required, and the deficiencies noted were pointed out to the registrant in conferences and by correspondence.

The registration statement, as subsequently amended, states that success for the undertaking involves the successful completion of two stages: (1) the exploration for and discovery of adequate gold deposits of commercial value, and (2) if and when such deposits are developed, the provision of extractive equipment and operating capital of an estimated cost in excess of \$1,000,000. It was also disclosed that no deposits of substantial value had yet been discovered, and that actual operations involved numerous difficulties because of the physical location of the property. The first stage of the undertaking was stated to require a minimum expenditure of approximately \$155,000, at which time the investing public would have contributed about 93 percent of the cash capital in return for 11 percent of the entire voting rights. If substantial deposits were not discovered by the expenditure of such funds and the venture was terminated, it appeared that "all funds put into the project would be lost" The second stage, contingent upon the discoveries of the first, would involve the public contribution of approximately 98 percent of the cash capital in return for 38 percent of the voting rights. The remainder or 62 percent of control would be vested entirely with the promoters. Further disclosure was made that, according to preliminary indications at the present time, approximately 27 years of commercial operations would be required to repay the original offering price of shares to an investor.

Statistics of Securities Registered.

At the beginning of the fiscal year, there were 3,740 registration statements on file, of which 2,943 were effective, 153 were under stop or refusal order, and 578 had been withdrawn, while 66 were under examination or held pending the receipt of amendments.

During the period July 1, 1938, to June 30, 1939, inclusive, 375 registration statements were filed, and there were 359 registration statements which became effective during the period (of which all but 25 were fully effective); a total of 3,249 statements were effective at the end of the period, 53 of those effective at the beginning of the period or during the period having been either withdrawn or placed under stop order.

The net number of registration statements withdrawn increased by 69 to a total of 647 on June 30, 1939. The net number of stop or refusal orders increased during the period by 6, a total of 159 of such orders being in effect on June 30, 1939. As of June 30, 1939, there were 60 registration statements in the process of examination or awaiting amendments.

The following table indicates the disposition of registration statements filed under the Securities Act of 1933:

[table omitted]

Appendix III identifies by name the registrant and indicates the aggregate dollar amount of the proposed offering involved in the case of each registration statement as to which stop orders, consent refusal orders, and withdrawal orders were issued during the year.

A total of 1,275 amendments to registration statements were also filed during the past fiscal year requiring examination by the Commission. [Footnote: These amendments include 873 classed as “pre-effective” and 402 as “post-effective” and do not take into account 463 others of a purely formal nature classed as “delaying” amendments.] The corresponding number of amendments filed during the 1938 fiscal year was 1,815. [Footnote: Adjusted figure.]

There were also filed during the year a total of 172 annual reports and 66 amendments thereto by certain registrants pursuant to Section 15 (d) of the Securities Exchange Act of 1934, as amended, requiring examination. These figures compare with figures for the previous fiscal year of 150 reports and 62 amendments to reports. [Footnote: Adjusted figure.]

In addition, the following figures show the volume of certain supplemental prospectus material filed during the past fiscal year under the Securities Act of 1933 : (1) 328 prospectuses were filed pursuant to Rule 800 (b) which requires the filing of such information within 5 days after the commencement of the public offering; (2) 244 sets of supplemental prospectus material were filed by registrants to show material changes occurring after the commencement of the offering; and (3) 413 sets of so-called 13-month prospectuses were filed pursuant to Section 10 (b) (1) of the Act. Thus during the past fiscal year there were filed in the aggregate 985 additional prospectuses of these 3 classes,

At the same time, 259 supplementary statements of actual offering price were filed as required by Rule 970; and there were 41 instances where registrants voluntarily filed supplemental financial data.

During the fiscal year ended June 30, 1939, registrations for \$2,494,000,000 of securities became effective under the Securities Act of 1933. This compares with a total of \$1,912,000,000 for the previous fiscal year and \$4,687,000,000 for the fiscal year ended June 30, 1937. [Footnote: In addition to these issues, there were effectively registered during the fiscal year ended June 30, 1939, approximately \$85,000,000 of reorganization and exchange securities as well as the guarantee of one issue. In the preceding fiscal year registrations of reorganization and exchange securities covered securities valued at \$193,000,000 as well as the guarantee of one issue.]

Of the total of \$2,494,000,000 of securities registered during the fiscal year ended June 30, 1939, \$2,052,000,000 was proposed for sale by issuers. Approximately one-half, or \$1,008,000,000, of this amount represented issues of electric and gas utility companies. Manufacturing companies with \$575,000,000, or 28 percent of the total, were next in importance. Securities of financial and investment companies totaled \$309,000,000, or 15 percent of the total. These three major industry groups thus accounted for all but about 8 percent of the total.

Approximately three-fourths of the effectively registered securities proposed for sale by issuers consisted of fixed interest-bearing securities which aggregated \$1,581,000,000. Included in this total were \$907,000,000 of secured bonds, or 44 percent of the total, and \$674,000,000 of debentures and short term notes, or 33 percent of the total. Common stock ranked next in importance among the various types of securities with \$191,000,000, or 9 percent of the total, followed by certificates of participation with \$168,000,000, or 8 percent, and preferred stock with \$112,000,000, or almost 6 percent. Thus all equity financing combined amounted to slightly less than one-fourth of total registrations.

A detailed breakdown of the registration statistics for the fiscal year ended June 30, 1939 shows that 316 statements for 487 issues became effective in the gross amount of \$2,494,000,000. Of this total, however, \$442,000,000 represented securities not proposed for sale by issuers. Among the larger items representing securities not proposed for sale by issuers were \$215,000,000 of securities reserved for conversion, \$101,000,000 of securities to be issued in exchange for other securities, \$68,000,000 of securities registered for account of others, \$47,000,000 of securities reserved or other subsequent issuance, and \$10,000,000 of securities reserved for exercise of options. The remaining amount of \$1,000,000 consisted of securities to be issued against claims, for other assets and as compensation for selling and distributing services.

There remained after these various deduction items \$2,052,000,000 of securities proposed for sale by issuers. The total compensation to be paid underwriters and agents on these securities was \$61,000,000, or approximately 29 percent of expected gross proceeds. Other selling and distributing expenses aggregated \$13,000,000, or 0.6 percent of gross proceeds.

Indicated net proceeds to accrue to issuers after all selling and distributing expenses amounted to \$1,978,000,000. Some 62 percent of these net proceeds was to be applied for repayment of indebtedness and retirement of preferred stock. Repayment of indebtedness alone amounted to \$1,135,000,000, or 57 percent of net proceeds, and retirement of preferred stock to \$105,000,000, or 5 percent. Net proceeds to be applied for expenditures for plant and equipment totaled \$264,000,000, or 13 percent of the total, and for increase of working capital \$153,000,000, or 8 percent. Therefore, indicated expenditures for these new money purposes aggregated slightly more than one-fifth, of total net proceeds. The amount to be expended for purchase of securities for investment was \$265,000,000, or 13 percent of net proceeds.

The proportionate distribution of the proposed uses of net proceeds for the past fiscal year as against proposed uses for the two preceding fiscal years is shown in the following table:

[table omitted]

The great bulk of effectively registered securities proposed for sale by issuers was to be offered through underwriters. A total of \$1,580,000,000, or 77 percent of the total, was to be offered through underwriters, as compared with \$390,000,000, or 19 percent, to be

offered through agents, and \$82,000,000, or 4 percent, to be offered directly by issuers. The amount of securities to be offered to the public aggregated \$1,695,000,000; or 83 percent of the total, with offerings to security holders amounting to \$251,000,000, or 12 percent, and offerings to all others \$106,000,000, or 5 percent.

Detailed statistical tables showing the 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 fiscal year ended June 30, 1939, are contained in tables 1 to 9 of 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. Therefore, all the data refer to the 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. [Footnote: The difference between the amount of securities registered and the amount of registered securities actually sold may be assumed to be largest -- apart from registrations by investment companies and trusts with continuous sale -- for the issues of small and unseasoned corporations. Special inquiries of the Commission show that for issues of this type actual sales have averaged less than one-fourth of the amounts registered. The relevant figures may be found in "Selected Statistics on Securities and on Exchange Markets," table 19.]

Securities registered under the Securities Act of 1933 constitute only part of all new issues offered for cash. Whereas the statistics of registrations reflect only registrants intentions to sell securities; the statistics of new offerings include only actual offerings. Comprehensive statistics of new cash offerings of securities for the period July 1, 1934, through June 30, 1939, are presented in tables 10 and 11 of Appendix V. The tables show the estimated gross proceeds of issues offered for sale, classified by type of offering, type of security, and type of issuer. [Footnote: Monthly figures from January 1, 1934, through June 30, 1938, may be found in "Selected Statistics on Securities and on Exchange Markets," tables 2 and 3.]

In general, the data cover only such issues over \$100,000 in amount, and (for debt issues) of a maturity of 1 year or over at date of issuance as were reported as offered for cash in the financial press, in documents filed with the Commission, or in other available sources. The statistics include offerings irrespective of whether the issues were publicly or privately placed, and regardless of whether or not they were registered under the Securities Act of 1933. The statistics of new offerings thus embrace certain corporate and non-corporate issuing groups exempt from registration under the Securities Act of 1933 either by virtue of the nature of the transaction or issuer, chiefly securities of common carriers, most issues placed privately, and Federal, State, and local governmental issues.

According to these tables, \$6,919,000,000 of new issues of securities was offered for cash during the fiscal year ended June 30, 1939, compared to \$3,484,000,000 during the

preceding year, \$7,639,000,000 in the fiscal year ended June 30, 1937, \$11,265,000,000 in the fiscal year ended June 30, 1936, and \$3,768,000,000 in the fiscal year ended June 30, 1935. Of the \$6,919,000,000 issues floated during the fiscal year ended June 30, 1939, \$2,552,000,000 was issued by corporations, \$2,939,000,000 by the United States Government and Agencies, \$1,326,000,000 by states and municipalities, \$83,000,000 by foreign governments (sold in this country), and \$19,000,000 by eleemosynary institutions. Of the corporate securities offered, public utility companies were the largest issuers, comprising 59 percent of the total. The principal instrument of flotation was the fixed-interest-bearing security, 97 percent of total securities (corporate and non-corporate)-having the form of bonds, notes, or debentures.

EXEMPTION FROM REGISTRATION REQUIREMENTS

Section 3 (b) of the Securities Act of 1933, as amended, authorizes the Commission to provide by rules and regulations conditional exemptions from the registration requirements under that Act for certain small issues. Specifically, these exemptions may be provided only where the public offering does not involve an aggregate amount of more than \$100,000. Acting under this authority, the Commission has adopted Regulation A, governing such exemptions other than those relating to oil and gas interests; Regulation B, covering exemptions pertaining to fractional undivided interests in oil or gas rights; and Regulation B-T, providing exemptions of interests in an oil royalty trust or similar type of trust or unincorporated association.

During the past fiscal year there were received and examined a total of 179 prospectuses filed pursuant to Rule 202 of Regulation A. These prospectuses related to exempted issues (exclusive of oil and gas offerings), which represented mainly stocks and involved a total offering price of \$13,352,323. The individual issues ranged in aggregate offering price from a low amount of \$10,000 to the maximum possible amount of \$100,000. The decline in the filing of these prospectuses, compared with the number received during the 1938 fiscal year (353 prospectuses involving a grand total offering price of \$26,827,793) appears to be due largely to the greater use being made of the newer exemption available under Rule 210 of Regulation A.

Also, during the past fiscal year, there were filed with the Commission, under Rules 202, 203, and 210 of Regulation A, 52 prospectuses and numerous amendments to correct deficiencies in the prospectuses as originally filed, relating to exempted issues of oil and gas offerings. The aggregate offering, as disclosed by the prospectuses, amounted to \$3,427,816.

As one of several measures adopted temporarily by the Commission to aid small business enterprises in raising capital, Rule 210 of Regulation A was, on February 25, 1939, continued in effect until further action by the Commission. This indefinite extension will afford the Commission further opportunity to study the results of the operation of this rule

in the light of a proposed complete revision of all exemptions provided under Regulation A. The Commission received and examined under Rule 210 during the year a total of 284 letters of notification for issues involving a total amount of \$20,958,450, the aggregate amount of individual issues ranging from \$7,000 to the maximum possible amount of \$100,000.

In addition to the indefinite extension of Rule 210 and work on the proposed complete revision of all exemptions provided under Regulation A, the Commission took other steps during the year in its effort to ascertain how the requirements may be revised so that particularly the small business enterprises will find the raising of new capital easier and less expensive. These additional measures include an indefinite extension of Amendment No. 32 to the Instruction Book for Form A-2, which amendment, originally adopted at the same time as Rule 210 during the latter part of the 1938 fiscal year, widens the scope of Form A-2 and permits the omission of certain financial data in specified instances. Also, the work of the special unit, created in the Registration Division to aid prospective registrants and advise them and their representatives on any problems which may arise in connection with their registration statements, has been continued throughout the year and is being extended indefinitely.

As before stated, Regulation B of the General Rules and Regulations under the Securities Act of 1933, pertains to exemptions relating to fractional undivided interests in oil or gas rights. During the past fiscal year, 1,607 offering sheets, as well as 633 amendments thereto, were filed with the Commission pursuant to Regulation B and examined. The aggregate offering price of the securities described thereunder was approximately \$25,000,000. The following statistics indicate the various actions of the Commission with respect to those filings which did not satisfy the requirements of the regulation:

Permanent, Suspension Order (Rule 340) -- 1

Temporary Suspension Orders -- 396

Orders Terminating Proceeding After Amendment -- 246

Orders Consenting to Withdrawal and Terminating Proceeding -- 153

Orders Terminating Effectiveness of Offering Sheet (No Proceeding Pending) -- 87

Orders Consenting to Amendment (No Proceeding Pending) -- 282

Orders Consenting to Withdrawal (No Proceeding Pending) -- 103

Order Terminating Effectiveness of Offering Sheet and Terminating Proceeding -- 1

Order for Hearing -- 1

Pursuant to Regulation B-T, covering exemptions relating to interests in an oil royalty trust or similar type of trust or unincorporated association, two prospectuses, representing an aggregate offering price for the securities offered thereunder of \$119,260, were filed with the Commission . The following actions were taken in regard thereto:

Temporary Suspension Order (Rule 380) -- 2

Permanent Suspension Order (Rule 380) – 1

Order Consenting to Withdrawal and Terminating Proceeding (Rule 380) -- 1

Part III

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 is designed to eliminate manipulation and other abuses in the securities markets; to make available currently to the investing public information regarding the affairs of the corporations whose securities are traded in the securities markets; and to prevent the diversion into security transactions of a disproportionate amount of the Nation's credit resources.

NATIONAL SECURITIES EXCHANGES

Efforts to Improve the Disciplinary Procedure of the New York Stock Exchange and the Business Practices of its Members.

On March 8, 1938, Richard Whitney & Company, a member firm of the New York Stock Exchange, was suspended from membership on that Exchange because of insolvency. [Footnote: On April 11, 1938, Richard Whitney was sentenced to an indeterminate term of 5 to 10 years in Sing Sing Prison on two indictments charging him with grand larceny in the first degree.] This Commission immediately instituted a preliminary investigation. On April 6, 1938, the Commission commenced public hearings to determine the facts and circumstances antecedent to, and culminating in, the failure of that firm. The hearings in *In the matter of Richard Whitney et al*, continued until June 29, 1938.

At the very outset of the Commission's investigation into the Whitney failure, it became apparent that fundamental revision of outmoded brokerage practices and a clear reversal of the traditional viewpoint of certain reactionary but important elements of the financial community must be immediately brought about if there were to be even partial assurance that such a catastrophe would not again occur. This need for increased protection to customers, and the equally important need that the New York Stock Exchange should no

longer be managed and regarded as a private club but as a public institution with important public obligations, became increasingly apparent as the shocking circumstances of the Whitney failure were unfolded during the hearings.

Therefore, the Commission and the new management of the New York Stock Exchange undertook a joint reappraisal of the whole problem of increasing protection to customers funds and securities. In particular, this study sought definite remedies for the shortcomings of a business system which had permitted the insolvency of Richard Whitney & Company and the flagrant misappropriation by Richard Whitney himself of his customers' securities to continue for so long unchecked and undiscovered. [Footnote: For at least 3.5 years prior to its collapse, Richard Whitney & Company had done business as a member firm while insolvent. Richard Whitney's own misappropriation of customers' securities had commenced as far back as 1926, and, subsequent to 1936, had continued undetected as a regular practice. See page 1 of the Commission's *Report on Investigation In the matter of Richard Whitney et al.*] Round table conferences were held with William McC. Martin, Jr., president of the New York Stock Exchange, and certain other representatives of that Exchange. These conferences, begun in June of 1938, were continued at frequent intervals during the summer and fall of the past year. Although the statutory powers of the Commission were also reexamined in the light of the Whitney case, these discussions primarily emphasized the need for self-regulatory steps which the Exchange itself might take, rather than direct intervention by the Commission under its rules and regulations. Thus, insofar as possible, the Commission continued to play its residual regulatory role and to encourage self-reform within the Exchange.

Reorganization of the New York Stock Exchange and the New York Curb Exchange

During the preceding fiscal year, which ended June 30, 1938, all of the more important phases of reorganization of the New York Stock Exchange proceeded. [Footnote: See Fourth Annual Report of the Securities and Exchange Commission, pp. 20-21.] This improvement of the administration of that Exchange was the outcome of the recommendations made by an independent committee appointed for the purpose of making a study and report on the need for such a reorganization, which was headed by Carle C. Conway, Chairman of the Board of Directors of the Continental Can Company. During the past fiscal year, the Commission has continued its collaboration with the new management of the New York Stock Exchange, installed in the spring of 1938, in carrying out some of the remaining details of the reorganization program recommended by the so-called "Conway Committee." Among important steps which were taken was the amendment of the Exchange's Constitution on January 1, 1939, classifying as "allied members" all general partners of member firms who do not individually hold seats on the Exchange. This measure resulted in an extension of the direct disciplinary powers of the Exchange, formerly limited to individual members, to all general partners of its member firms. On September 28, 1938, the New York Stock Exchange, in accordance with its revised constitution, elected Messrs. Carle C. Conway, Robert E. Wood and Robert M. Hutchins to serve on its Board of Governors until May, 1939, as representatives of the general public.

[Footnote: On December 28, 1938, Robert M. Hutchins resigned from the Board of Governors of the New York Stock Exchange subsequent to its decision to take no further action with reference to certain partners of a member firm who were aware of, but who did not report to the Exchange, the insolvency and accompanying misconduct on the part of Richard Whitney. On May 24, 1939, Curtis E. Calder was elected to succeed Mr. Hutchins and to serve until May 1940. At the same time, Messrs. Conway and Wood were reelected to serve until the same date.]

The New York Curb Exchange also found itself faced with substantially the same problems that had confronted the New York Stock Exchange. Accordingly, during the past fiscal year, that Exchange was likewise encouraged to address itself to the need for internal reorganization for the purpose of more properly performing its obligations to the investing public. On August 31, 1938, a Special Committee on Organization and Administration rendered its final report recommending certain moderate revisions in the organization of the New York Curb Exchange. These recommendations were considered inadequate and on October 4, 1938, and subsequent to a series of conferences between certain of its representatives and officials the Commission, the Board of Governors of the New York Curb Exchange adopted a plan of reorganization considerably more far reaching than had been the earlier proposals of its Special Committee. The reorganization, as advocated by the Board of Governors and adopted with but one dissenting vote, effective February 23, 1939, reclassified the constituency of the Board and altered the nominating procedure so as to give a more equitable representation to members and partners of member firms doing business directly with the public, to out-of-town firms, and to the public itself. Under this reorganization the constitution of the New York Curb Exchange, like the new constitution of the New York Stock Exchange, provided for three non-member governors to sit as representatives of the general public. Among other things, the Board of Governors also proposed and recommended the study of a central trust institution or brokerage bank to protect the securities and funds of customers through the assumption of the banking and custodial functions now performed by brokers in connection with the brokerage business. On April 20, 1939, George P. Rea was elected president of the New York Curb Exchange.

During the fiscal year ended June 30, 1939, officials of the Commission have also conferred with representatives of certain other national securities exchanges in an effort to assist in a reconstruction of their internal organizations in the interests of more efficient supervision of their members practices and the better protection of the investing public.

Self-Policing by National Securities Exchanges -- The Whitney Report

In the administration of those phases of the Securities Exchange Act of 1934, which affect the internal functioning of securities exchanges and the business practices of their members, the Commission continued the policy of encouraging self-policing by the brokerage and investment banking industries during the past fiscal year.

National securities exchanges already have disciplinary machinery which can be very useful in protecting the public interest, particularly with respect to activities not directly regulated by statute. The Commission continuously has urged the exchanges to exercise their disciplinary powers in a way to provide adequate protection of the investing public with respect to these matters outside of our statutory standards of conduct.

There are many fields of activity which, under the statute, the Commission may police by or through the promulgation of its own rules and regulations. With respect to many of these areas, the Commission has sought to play a residual role with the thought that the exchanges would adopt and enforce adequate self-regulatory and self-disciplinary measures. To the extent that the exchanges do not foster such protection to the public, the Commission will, of course, be forced itself to take direct remedial steps. With respect to those aspects of the securities business which by law the Commission is directed to supervise and regulate, we have in many instances assumed our primary role and obligations in the enforcement of the Act. In other instances the Commission is proceeding with its studies and with discussions with the industry to the end of promulgating rules which will be practicable as well as efficacious in their operation.

In the past, the organization and administration of securities exchanges have not always been conducive to adequate protection of the investing public. In fact, it was the failure of the financial community to recognize its paramount public obligations which necessitated first the Securities Act of 1933, and later the creation of this Commission for the purpose of administering that Act, the Securities Exchange Act of 1934 and other federal legislation relating to financial matters.

Since the two major exchanges have adopted the framework of reorganization, the Commission through periodic conferences with exchange officials has sought to carry forward the program of self-discipline the necessity for which was indicated so clearly by the failure of Richard Whitney & Company in 1938.

As noted, the conferences of the summer and fall of 1938 between the Commission and representatives of the New York Stock Exchange sought methods of preventing other brokerage failures similar to the *Whitney case*. This joint study of the problem of adequately protecting brokers customers gave rise to the recommendations set forth in Part II of the Commission's report on its investigation in the matter of *Richard Whitney et al.* This particular portion of that report presents immediate remedial measures which both the Exchange and the Commission proposed to adopt in a joint effort to control the major sources of danger to customers funds and securities. Accordingly, on October 26, 1938, a thirteen-point program of immediate safeguards was adopted and announced by the Board of Governors of the New York Stock Exchange, in cooperation with this Commission, and the text thereof included in Part II of the *Whitney Report*.

Briefly, the New York Stock Exchange Program of October 26, 1938, proposed to permit and encourage its member firms to organize "affiliated companies" which would carry on

dealer and underwriting activities separately from brokerage activities in order to reduce the risks to customers inherent in the present combination of the brokerage with the dealer business within the same organization. This program also provided for an increase in the number of members periodic financial statements and for an annual audit by independent accountants of all member firms doing business with the public. The extent and frequency of the Exchange's surprise examinations of its member firms and partners were to be increased. The minimum capital requirements to be met by member firms were to be strengthened and methods were to be studied whereby, to some extent at least, customers might be insulated against the risks incident to the dealer business conducted by many brokerage firms for their own account. This program further provided that all members, member firms, and partners, with certain exceptions, must report to the Exchange all substantial loans. Furthermore, with but minor exceptions, all loans by and between officials of the Exchange and its members were to be prohibited. Weekly information as to underwriting positions was also to be filed with the Exchange by its members. Finally, the Exchange undertook to study the feasibility of a central securities depository which the President of the Exchange had then anticipated could serve as the first step toward the ultimate formation of a "Central Trust Institution" or "Brokerage Bank" Such a brokerage bank would constitute a depository into which customers credit balances and securities could be placed and thus be wholly removed from the hazards of brokerage insolvencies to which they are now subjected by the present fusion of brokerage with banking functions.

Progress of the New York Stock Exchange's Program of October 26, 1938.

The series of conferences which had culminated in the New York Stock Exchange's self-regulatory Program of October 26, 1938, were continued throughout the past fiscal year in order that this program could be achieved through discussion of appropriate enabling rules of the Exchange. Various aspects of the proposal to insulate brokerage firms and their customers from the financial risks of the dealer and underwriting businesses were also discussed at length. During the late spring of 1939, the Exchange held open hearings upon the proposal to permit, and eventually to require, the formation of affiliated limited liability corporations which would take over the trading, dealer, and underwriting activities from brokerage firms with a consequent lessening of the danger to brokerage customers. Other than this, however, by the close of the past fiscal year, the Exchange had taken no steps to permit, or to encourage, the formation of such affiliated dealer corporations.

The revised capital requirements which, under the program, were to limit members aggregate indebtedness to an amount not in excess of 1,500 percent of the firm's net capital were discussed also and the many technical problems and differences of opinion were ironed out ultimately in the course of a series of round table conferences. The Exchange's new capital requirements, including technical definitions of the terms "aggregate indebtedness" and "net capital," were adopted by the Exchange, effective April 1, 1939. The technical and accounting phases of the Exchange's requirements are similar in most fundamentals to the tentative drafts of rules under Section 8 (b) of the Securities Exchange Act of 1934 relating to brokerage solvency which were then under study by the

Commission. Thus, the operation of the Exchange's capital requirements has afforded, and will continue to afford, a valuable basis of actual experience in the light of which the Commission can estimate accurately the practical operation of certain of the fundamental principles which it believes should be embodied in its own rules directed toward preservation of brokerage solvency.

Another difficult problem which was eventually solved at these continuing conferences was that of effectuating the principle that neither brokerage firms nor general partners thereof who do business with the public should be permitted to trade in securities on margin. On June 28, 1939, the Board of Governors of the New York Stock Exchange adopted Rule 616 which, with certain exceptions, prevents margin trading by those serving the public as fiduciaries. The ban against margin trading seeks to mitigate, so far as possible, the risks to customers which in the past were created by speculation of brokerage firms and their partners. The remaining items of the Program of October 26 were likewise effectuated only after conferences between the Commission and the Exchange had worked out the many inevitable technical difficulties.

Brokerage Banks

The Commission's increasing realization of the dangers to customers inherent in the present combination of brokerage with banking functions, the possibilities of which were so tellingly illustrated by the failure of Richard Whitney & Company, brought it to the conclusion that full protection to customers necessitated either the complete separation of these functions or the imposition of safeguards upon the broker's banking function comparable to those which apply to banks. Rules which do no more than prohibit misconduct or practices jeopardizing the funds and securities of customers can represent no more than an imperfect approach toward that measure of protection which the Commission feels to be both necessary and feasible. Rules and regulations, like the law, can always be violated. The science of detection is as yet far from an exact science, as shown not only by the Whitney case but, more recently, by the Elfast Frisk & Company case with its disclosure of the mishandling of accounts. [Footnote: The Expulsion of Henry C. Elfast from membership on the New York Stock Exchange on May 24, 1939, followed the dissolution of the firm of Elfast Frisk & Co. In March 1930, and the consequent disclosure to Exchange officials of irregularities in the conduct of the business of that firm. It is not without significance that the Exchange was originally informed of this situation through the complaints of one of the firm's partners, not by its own examining staff of accountants.] Therefore, the Commission believes that the complete safeguard to customers credit balances and securities must lie either in the separation of banking risks from the brokerage business or some equally effective assurance of the safety of customers' cash deposits and securities.

As stated by the Commission in Part II of the *Whitney Report*, the banking business done by brokers involves customers funds and securities estimated as totaling more than three billion dollars. Notwithstanding the recent increase in the regulation which the New York

Stock Exchange has imposed upon its own members the banking business of the broker, with its concomitant use of customers credit balances and repledging of customers' securities by brokers, is still unsupervised as a banking business by the State or Federal Government. Following close upon the disclosures in the Whitney case, in May 1938, William O. Douglas, then Chairman of the Commission, proposed to the brokerage fraternity the establishment of a "Central Trust Institution" which would take over from brokers all the banking and credit functions which they now exercise. It was anticipated that the establishment of such a trust institution would result in substantial economies to the industry as a whole through centralized bookkeeping and the clearance and settlement of transactions by bookkeeping entry rather than by physical delivery. But it is most important to note that such an institution, by its very assumption of the banking activities of the broker, would wholly isolate customers from the varied hazards of brokerage insolvency. Therefore, in Part II of the Whitney Report, the establishment of such trust institutions or "brokerage banks" was unequivocally advocated. Again, on June 23, 1939, Jerome N. Frank, present Chairman of the Commission, publicly urged that the problem of establishing "brokerage banks" or providing equally effective substitute safeguards for customers be immediately attacked and solved by the financial community.

It was then the sincere hope of the Commission that prompt progress would be made by the New York Stock Exchange and other representatives of brokerage interests towards the establishment of "brokerage banks" or some equally adequate substitute under which the broker's banking activities involving the possession and control of customers' funds and securities aggregating billions of dollars -- the real source of the present financial risks to customers -- would either be eliminated or protected by the development of adequate safeguards.

Exchanges Registered and Exempted from Registration.

During the past fiscal year there has been no change in the number of exchanges registered with the Commission as national securities exchanges, nor has there been any change for the past three fiscal years in the number of exchanges exempted from such registration. The 20 registered exchanges and the 7 exchanges exempted from registration remain as follows:

REGISTERED

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 Curb Exchange
New York Real Estate Securities Exchange, Inc..
New York Stock Exchange
Philadelphia Stock Exchange
Pittsburgh Stock Exchange
St Louis Stock Exchange
Salt Lake Stock Exchange
San Francisco Mining Exchange
San Francisco Stock Exchange
Standard Stock Exchange of Spokane
Washington (D. C) Stock Exchange

EXEMPTED

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

There has been, of course, a continuing flux in the rules, practices, and organization of the registered and exempt exchanges as reflected in their applications for registration or exemption. Thus, during the past year the national securities exchanges filed 225 amendments to their applications. All such amendments were promptly examined and their effects analyzed not only to determine compliance with relevant legislation and regulations, but also to the end that appropriate comments and suggestions could be addressed to the exchanges concerned in order to facilitate the performance of their public obligations.

REGULATIONS PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934 PRIMARILY DIRECTED TO NATIONAL SECURITIES EXCHANGES, THEIR MEMBERS, OR NON-MEMBER BROKERS AND DEALERS TRANSACTING A BUSINESS IN SECURITIES THROUGH THE MEDIUM OF SUCH MEMBERS

Financial Safeguards

In general, Section 8 (b) of the Securities Exchange Act of 1934 provides for the adoption by the Commission of rules which will increase the margin of solvency which must at all times be maintained by brokers and dealers, whether members of national securities

exchanges or nonmembers transacting business through the medium of exchange members. More specifically, the statute authorizes the Commission to fix a maximum ratio between a broker's aggregate indebtedness and his net capital, which in any event cannot exceed 20 to 1. Subsection (c) of Section 8 of the statute further authorizes the Commission to promulgate rules and regulations governing the commingling and the hypothecation of customers' securities. Section 17 of the Act authorizes the promulgation of rules governing the character and extent of books and records which must be maintained and kept by members and other brokers and dealers. Rules and regulations which may be promulgated under these three portions of the Act would constitute an integrated body of regulation directed toward the preservation of the solvency of brokerage houses and the safeguarding, in other respects, of customers' securities and credit balances carried by brokerage houses.

Although the Commission has exhaustively studied the problems which exist in the effectuation of these basic provisions of the statute and has considered numerous drafts of rules which might be promulgated thereunder, the situation prevailing during the past fiscal year made promulgation of such rules inappropriate. As previously stated, the Commission, in June of 1938, was engaged in joint consideration with officials of the New York Stock Exchange to determine those respects in which the Exchange might itself take appropriate protective measures to safeguard customers of its member firms. This consideration resulted in the program of reforms adopted by that Exchange on October 26, 1938, and embodied in Part II of the Commission's report in the matter of *Richard Whitney et al.* Thereafter, the general principles enunciated in the Exchange's Program remained to be put in effective operation. Consequently, the joint consideration by the Commission and officials of the Exchange was continued in order to solve the additional problems -- more detailed, more technical, but nevertheless difficult -- which were involved in the drafting of definite Exchange rules. The joint efforts of the Commission and the Exchange to effectuate the latter's program thus entailed negotiations and conferences which, extended to the close of the past fiscal year.

The New York Stock Exchange's program of October 26, 1938, and the rules which it has adopted thereunder, constitute at least an interim approach toward these objectives of customer protection. With this evidence of a liberal approach by brokerage and exchange interests toward the problem of better protection of customers, the Commission has withheld its own rules and regulations in the hope that the financial community would itself undertake thorough-going measures to achieve with greater flexibility and, if possible, to a greater extent those objectives to which Sections 8 (b), 8 (e), and 17 of the Securities Exchange Act of 1934 are directed. As of the close of the past fiscal year, the proposal for the establishment of a central trust institution or of some equally adequate alternative for safeguarding customers funds and securities was still pending. However, unless an adequate solution is otherwise reached, eliminating wholly or satisfactorily mitigating the present risks to customers, the Commission will be forced to act through the exercise of its own regulatory powers. Tentative drafts of the Commission's rules and regulations have already been discussed informally with representatives of the industry in order that, when necessary, such rules and regulations may be promulgated promptly.

Short Selling Rules.

During the past year, upon the recommendation of the New York Stock Exchange and following conferences with its President, William McC. Martin, Jr., and other officials, the Commission modified its rules governing short selling on national securities exchanges. It was the view of the Exchange that the amendment would provide greater freedom of market action in accumulating short positions when market trends were generally upward, but nevertheless would retain effective restraints on short selling.

The Commission's short selling rules originally in effect had permitted a short sale of a security at a price above its last sale price. The amendment, however, permits short sales at the price of the last sale, provided that the last sale price was itself higher than the last *different* price which preceded it.

In order to determine whether international arbitrage transactions should be exempted from the Commission's short selling rule, a study of international arbitrage operations in their relation to short selling was undertaken during the course of the year. After considering the report submitted as a result of this study, the Commission also added an exemption applicable to certain short sales made in the course of international arbitrage which are of a true arbitrage nature, that is, transactions in which a short position is taken on one exchange which is to be immediately covered on a foreign market. Thus the exemption is available only where the market effect of a domestic short sale is intended to be immediately neutralized by the covering purchase on a different market.

From time to time, members of the Commission's staff have discussed with representatives of the exchanges rumors that the Commission's short selling rules were being evaded by persons placing their orders through European correspondents of domestic brokers. As a result of these discussions, the New York Stock Exchange presently requires its members to report periodically any transactions of this nature which come to their attention.

The Commission also created an exemption applicable in certain: types of situations where a short sale was made because of a *bona fide* error.

Pegging, Fixing, and Stabilizing of Security Prices.

On July 11, 1938, the Commission sent to various groups of the financial community a draft of comprehensive rules under Section 9 (a) (6) of the Securities Exchange Act of 1934, regulating the pegging, fixing, and stabilizing of prices of registered securities to facilitate distributions of the same or related securities. During the summer and fall of the past fiscal year, the Commission continued discussion of this draft and several subsequent drafts of these rules with representatives of the underwriting and brokerage interests. The later drafts embraced stabilizing of unregistered securities to facilitate public offerings of over-the-counter issues as well as stabilization of securities registered on national

securities exchanges. However, the series of conferences held with respect to the tentative drafts of such inclusive rules indicated the existence of difficult fundamental problems some of which arose from the many differences between trading on exchanges and trading in the over-the-counter markets as maintained by the various security dealers and trading houses, and the inability of the two groups to reconcile their differences up to the present time.

The Commission then determined that before taking further steps, it would be desirable to acquire additional detailed knowledge of the varied practices and techniques employed to stabilize unregistered as well as registered securities to facilitate their distribution, knowledge of the precise interrelationships between stabilization and the success or failure of the accompanying distribution, and knowledge of the price characteristics and market behavior of stabilized issues under varying circumstances. On February 9, 1939, the Commission adopted two related rules for the several purposes of acquiring this data, aiding in the enforcement of the anti-manipulation sections of the Acts, and affording greater protection to the investing public by requiring unequivocal disclosure of an intention to stabilize. The first, Rule 527 under the Securities Act of 1933, provides that where stabilization is contemplated there must be included in the prospectus a simple statement that it is intended to stabilize security prices to facilitate the distribution in respect of which a registration statement is filed under that Act. The second, Rule X-17A-2 under the Securities Exchange Act of 1934, in effect requires that any underwriter of the issue or any other broker or dealer who stabilizes in aid of a distribution as to which a Securities Act registration statement is filed, must submit daily reports to the Commission showing all transactions effected during the period of stabilization and distribution of the issue. These rules, and the forms for reports prescribed by Rule X-17A-2, became effective on March 15, 1939.

Rules 827 and X-17A-2 do not purport to regulate market operations effected for the purpose of pegging, fixing, or stabilizing security prices. Consequently they are not, and are not intended to be, a substitute for regulation pursuant to Section 9 (a) (6) of the Securities Exchange Act of 1934. Furthermore, the disclosure and reporting requirements of these rules in no wise limit the applicability or operation of those provisions of the Securities Exchange Act of 1934 or the Securities Act of 1933 which prohibit manipulative or fraudulent practices.

All daily reports of stabilizing are analyzed as received. On the basis of the information supplied by these reports, price charts are kept current which show the market behavior of the stabilized security in relation to the movement of market averages of comparable securities. In addition, statistical summaries and analytical studies are prepared with respect to all stabilizing operations subject to the rules.

In the 3.5 months period from March 15 to June 30, 1939, 142 registration statements were filed under the Securities Act of 1933, of which 83 contained a statement that it was intended to stabilize the issue. Of these, 56 became effective prior to June 30, 1939.

Stabilizing operations were conducted to facilitate 21 of the offerings, aggregating \$208,459,041, to which these effective statements related. Eleven of these stabilizing operations were completed prior to June 30, and 10 were still in progress as of the close of the past fiscal year.

REGISTRATION OF SECURITIES ON EXCHANGES

Nature and Effect of Registration of Securities on Exchanges.

Section 12 of the Securities Exchange Act of 1934 provides that an issuer may obtain the registration of a security on a national securities exchange by filing with the Commission and the exchange an application containing certain specified information. Section 13 of that Act provides for the subsequent filing of certain annual and other periodic reports in order to keep the basic information up to date. Thus, one of the chief purposes of the Act, that is, to make available to investors reliable, comprehensive, and current information as to the affairs of the issuers of securities listed and registered on a national securities exchange, is accomplished.

The information which is required to be submitted in an application for registration must be prepared on the form prescribed by the Commission as appropriate to the particular type of issuer or security involved.

In general, the Act provides that an application for registration shall become effective 30 days after the receipt by the Commission of the Exchange's certification of approval thereof, except where the Commission determines it may become effective within a shorter period of time. It is unlawful under the statute for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on any national securities exchange unless a registration is effective as to the security for such exchange.

An annual report is required to be filed with the Commission and the exchange within 120 days after the close of the fiscal year of the registrant, except where an extension of time is granted in a particular case under the conditions specified in the Commission's rules and regulations. Approximately 10 percent of the registrants subject to the filing of annual reports sought, during the past year, such an extension of time in their particular cases. It may be noted that the reason most frequently stated for seeking such an extension is that the accountants of the registrant will be unable to complete within the prescribed time the preparation of the necessary financial statements because of the pressure of their work arising particularly from the fact that a majority of the registrants have an identical fiscal year, coinciding with the calendar year. Another reason frequently stated by certain registrants with foreign subsidiaries is the considerable delay after the close of the fiscal year in the receipt by the registrant of the accounts of its subsidiaries.

Examination of Data Filed Under Sections 12 and 13.

The applications and reports filed under Sections 12 and 13 of the Securities Exchange Act of 1934 are examined by the Commission for the purpose of determining whether they contain full and adequate disclosure of the information required by the Act and the rules and regulations promulgated thereunder. This examination does not involve an appraisal of and is not concerned with the merits of the registrant's securities. When the examination discloses that generally accepted accounting principles and procedures have not been followed in the preparation and presentation of financial statements, or that any material information has not been fully disclosed in accordance with the requirements, the registrant is so advised, either by sending it a so-called deficiency letter or through the medium of a conference held with its representatives, and necessary amendments are obtained. These amendments in turn are examined in the same manner as the original application or report. That this examination procedure, together with the policy of releasing opinions of the Chief Accountant with respect to certain accounting practices which are of general interest to registrants, has led to a greater understanding of the requirements for the proper preparation of the application and periodic reports is suggested by the fact that a total of 4,493 amendments to applications and annual and current reports were filed during the previous fiscal year, as compared with 3,210 such amendments filed during the past fiscal year.

Registrations Terminated Under Section 19 (a) (2).

Under Section 19 (a) (2) of the Securities Exchange Act of 1934, the Commission, if in its opinion such action is necessary or appropriate for the protection of investors, has the power to deny, delay, suspend, or withdraw the registration of a security if an issuer fails to file any required data. During the past fiscal year, the Commission instituted action under Section 19 (a) (2) against 16 registrants, based upon their alleged failure to comply with Sections 12 and 13 of the Act and rules and regulations thereunder, in order to determine whether to suspend for a period not exceeding 12 months or to withdraw the registration of their securities. At the beginning of the fiscal year, 3 such cases were pending, making a total of 19 cases pending during the year. Seven of these proceedings were disposed of during the year, 2 by dismissal and 5 by orders of the Commission withdrawing the registration; and 12 were pending at the close of the year. Four such actions were instituted in the case of foreign private issuers who subsequently filed certain delinquent reports in question (including three cases where such reports were filed after the close of the year).

Statistics of Securities Registered or Exempt From Registration on Exchanges.

At the close of the past fiscal year, securities of 2,449 issuers were registered on national securities exchanges. These registrants include most of the leading nationally known commercial and industrial enterprises in the United States as well as many others with activities confined largely to a particular region or locality. They also include a number of foreign private issuers, governments and political subdivisions.

The number of applications, reports, and amendments filed with the Commission during the past year relating to the registration and listing of securities on national securities exchanges are as follows:

New applications on basic forms and supplemental applications for registration -- 259

Applications for "when issued" trading --19

Exemption statements for issued warrants -- 24

Annual and current reports -- 4, 657

Amendments to applications and annual and current reports -- 3, 210

Annual reports of issuers having securities listed on exempted exchanges -- 125

[5 statistical tables omitted]

Withdrawal or Striking of Securities from Listing and Registration on Exchanges.

During the preceding fiscal year, which ended June 30, 1938, the New York Stock Exchange developed a policy of removing from its list of securities eligible for trading those issues which, for one reason or another, had become no longer suited to trading in the auction market which it maintains. During the past fiscal year, that Exchange continued this policy by seeking to remove from listing and registration those issues which, because of inadequate public distribution, inactivity, or the reduced market value of public holdings, it considered to be no longer properly included within its security list. In carrying forward this program to improve the quality of its stock and bond lists, that Exchange filed 22 applications for withdrawal or striking of securities from listing and registration in accordance with the requirements of Section 12 (d) of the Securities Exchange Act of 1934, of which 15 were granted and 7 were pending as of the end of the year.

In all, 54 applications were filed with the Commission during the past fiscal year seeking the delisting and striking from registration of securities fully listed and registered on national securities exchanges. As of June 30, 1938, 21 such applications were pending. Of this combined total of 75 applications, 60 were granted and 15 were pending as of June 30, 1939.

The Commission also received during the past fiscal year 154 certifications, filed in accordance with the Commission's rules, from exchanges which had stricken securities from listing and registration because of their payment, redemption, or retirement.

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

Pursuant to the amendment of May 27, 1936 to Section 12 (f) of the Securities Exchange Act of 1934, national securities exchanges may extend unlisted trading privileges to securities as to which corporate information comparable to that available in the case of securities fully listed and registered is contained in registration statements filed with the Commission. Since the provisions of this amendment became effective, a considerable reduction has occurred in the number of securities which continued to enjoy unlisted trading privileges by reason of their admission to such trading privileges prior to March 1, 1934. At the time of the passage of the Securities Exchange Act of 1934, there were 2,685 stock and 1,288 bond issues dealt in on an unlisted basis and as to which unlisted trading privileges were automatically continued by the original, as well as the amended, Section 12 (f) of that Act. By June 30, 1939, there were but 1,531 stock and 409 bond issues so admitted to unlisted trading privileges, a total decline of 2,033 issues. During the past fiscal year, the Commission was notified, in accordance with its rules, of the removal for various reasons of 121 securities from unlisted trading privileges.

On June 30, 1938, 13 national securities exchanges had facilities for permitting trading in securities on their floors on an unlisted basis. During the past fiscal year, the Cleveland Stock Exchange and the Cincinnati Stock Exchange revised their practices so as to permit this type of trading, thus bringing the total number of exchanges affording facilities for unlisted trading to 15. Of these exchanges, 5 permitted unlisted trading in both stocks and bonds, and 10 in stocks only.

At the end of the previous fiscal year, the number of stock and bond issues admitted to unlisted trading privileges on registered exchanges was 1,603 and 514, respectively, a combined total of 2,117. issues. On June 30, 1939, the number of stock and bond issues so admitted was 1,639 and 426, respectively, a combined total of 2,065 issues. Thus, during the year, there was a net decline of 52 issues dealt in on an unlisted basis on registered exchanges. [Footnote: The figures in this paragraph include some slight duplication because of the fact that certain security issues are admitted to unlisted trading on more than one exchange.]

As of June 30, 1939, 5 exempted exchanges permitted unlisted trading in 157 stock and 12 bond issues. As of the close of the fiscal year, one exempted exchange had pending before the Commission an application to extend unlisted trading privileges to a security on the ground that it is listed and registered on a national securities exchange.

Clause 2 of Section 12 (1) of the Securities Exchange Act of 1934, as amended, provides that the Commission, upon application by a national securities exchange, may extend unlisted trading privileges to any security duly listed and registered on any other national securities exchange. Clause 3 of Section 12 (1) 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 periodic reports or other data filed pursuant to 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.

[four statistical tables omitted]

Proposals for the Registration of the Securities of “Unlisted Issuers”

On November 22, 1938, the Board of Governors of the New York Stock Exchange adopted a report which, among other things, took the position that it would be in the public interest if all of the major corporations whose securities, although widely distributed in public hands, are not registered under the Securities Exchange Act of 1934 but, on the contrary, are traded only on an unlisted basis or in the over-the-counter market, were subjected to corporate information and reporting requirements comparable to those which now apply to issuers of registered securities. The Commission has undertaken a study of the legislative, economic, and market problems which are raised by a proposal for the registration of all issues in which the investing public has a substantial interest. Although circumstances prevented any major progress towards this objective during the past fiscal year, the Commission has nevertheless continued its study of the problem and of the mechanisms whereby the investing public may most easily be afforded the protection of corporate information, proxy regulation, and the prevention of speculation by corporate “insiders” with respect to all securities which enjoy an interstate trading market and not, as is now the situation, only with respect to those securities which are listed and registered on national securities exchanges.

OVER-THE-COUNTER MARKETS

Formation of National and Affiliated Securities Associations Pursuant to Section 15 (a) of the Securities Exchange Act of 1934, as Amended.

In the over-the-counter securities markets, the Commission, during the period covered by this report, has continued to administer the program inaugurated by the Maloney Amendment to the Securities Exchange Act of 1934 (Public, No. 719, 75th Congress), approved by the President on June 25, 1938. This amendment, in its essentials, provides for a system of regulation in the over-the-counter markets through the formation of one or more voluntary associations of investment bankers, brokers, and dealers doing business in these markets under appropriate governmental supervision.

In furtherance of this program of voluntary regulation among brokers and dealers, it was deemed advisable to have the new legislation and the policies of the Commission thereunder explained in detail to as large a number of firms and individuals conducting an over-the-counter securities business as possible. Furthermore, from the outset it was the desire of the Commission to obtain the views with respect to the formation of effective voluntary associations of as many such brokers and dealers as might wish to express themselves. To accomplish these objectives, members of the Commission and of its staff conducted conferences, open to all interested persons, in financial communities situated in the various sections of the country. This work was deemed to be an essential preliminary to the registration with the Commission of any national, or affiliated securities association.

To facilitate this work and to assist brokers and dealers in the formation of associations, the Commission created a special unit, designated as the Securities Association Unit, within its Trading and Exchange Division. This unit has conducted a large number of informal round table conferences with committees of the Investment Bankers Conference, Inc., their counsel, and other interested groups and individuals. During the course of such conferences, the principal objective has been to be of all possible assistance to the representatives of the securities business in their work of creating an organization designed to secure the approval and support of the better element of brokers and dealers throughout the country and to be effective in the regulation of the business conduct of members.

The very scope of this program, together with the fact that it is without precedent in the over-the-counter securities markets, has made the task of organization a necessarily protracted one. However, as of the close of the past fiscal year, there was every indication that the Investment Bankers Conference, Inc., reconstituted as the National Association of Securities Dealers, Inc., and provided with a duly amended constitution, by-laws and rules of fair practice, would file an application for registration with the Commission in the reasonably near future. [Footnote: The National Association of Securities Dealers, Inc., filed its application for registration as a national securities association on July 20, 1939, which, after hearing, was granted by the Commission on August 7, 1939. See Securities Exchange Act Release No. 2211.]

Membership in this new association will be open to all brokers and dealers conducting business in the over-the-counter markets, except those who have disqualified themselves by their previous conduct and, as a result, are laboring under certain disabilities set forth in the statute. However, both the Commission and the Conference have expressed themselves as favoring the grouping of those brokers and dealers who transact business in the more specialized types of securities, oil royalties, for example, in affiliated associations to be formed subsequent to the registration of a national association.

In order that every reasonable opportunity may be afforded such association or associations as may become registered with the Commission to exercise as broad a regulatory function as possible, the Commission has refrained from any substantial amplification of its own rules for regulation of over-the-counter markets. However, the Commission recognizes its

duty under the law to eliminate by direct regulation such abuses and undesirable practices as may be found by experience to be beyond the reach of registered, securities associations. In this connection it should be stated that at conferences preliminary to the registration of an association it was definitely indicated that many of the regulatory measures intended by the Maloney Act which could have been assumed by such an association would not be so assumed.

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

On August 11, 1938, the Commission published a complete revision of its rules and regulations under Section 14 (a) of the Securities Exchange Act of 1934, relating to solicitation of proxies, consents, and authorizations in respect of securities registered on national securities exchanges. These revised, rules and regulations designated as "Regulation X-14," became effective October 1, 1938, and supplanted the LA proxy rules under which the Commission operated for approximately 3 years.

Regulation X-14, like the LA rules, is a "disclosure" regulation and requires that persons from whom proxies, consents, or authorizations are solicited be furnished with information pertinent to the matters in respect of which the solicitation is made and to the interest of the persons who make it. Whereas the LA rules, in addition to certain items of general information, merely called for a brief description of the matters in respect of which the proxy, consent, or authorization was solicited, Regulation X 14 specifies in some detail the types of information to be furnished the persons solicited, the specifications varying according to the character of the matters involved.

During the fiscal year, 1,595 original filings and 557 supplemental filings of proxy, consent or authorization soliciting material were examined for compliance with Regulation X -14 and the LA rules. On innumerable occasions, the staff considered drafts of soliciting material and had conferences with persons proposing to solicit proxies, consents, or authorizations, or with counsel for such persons. In cases in which definitive soliciting literature was materially deficient (in failing to respond to the express requirements of Regulation X-14, or to respond adequately, or in containing false or misleading statements), supplemental corrective material was, at the suggestion of the Commission, sent to security holders. In such cases, depending upon the nature of the Commission's objections to the soliciting material, action pursuant to the proxies, consents, or authorizations obtained from the use of the deficient soliciting material was deferred until the proxies, consents, or authorizations had been confirmed, by the security holders on the basis of literature complying with Regulation X-14, or until, on the basis of similar literature, the security holders had been afforded a reasonable opportunity to revoke the proxies, consents, or authorizations which they had given.

In one case, the management of an investment company solicited proxies for the reelection of directors, two of whom were originally selected by persons who later became involved in lawsuits based upon alleged fraudulent transactions with the company. It was charged that the proxy soliciting material falsely stated that the original designation of the two candidates for reelection to the directorate originated with the board of directors. It was further alleged that the annual report to stockholders which accompanied the proxy soliciting material was designed to mislead the stockholders as to the true condition of the company. It labeled the company's deficit as "earned surplus," and then relied upon scarcely distinguishable italicized figures to correct the misnomer. Moreover, the balance sheet on its face stated a "Quoted Market Value" for the company's securities, whereas approximately 70 percent of the amount shown as quoted market value represented the cost of a security which had no quoted market value and which had been acquired otherwise than in an arm's length transaction; furthermore, the right of the issuer of such security in the underlying assets appeared to be precarious. There was also included in the proxy soliciting material a message by the president of the company which dealt in part with the above mentioned lawsuits, but which omitted to state that he and one other candidate for reelection to the directorate were defendants in one of the suits. As a result of the position of the Commission that by reason of these deficiencies the proxy soliciting material failed to comply with Regulation X-14, the management agreed to defer use of the proxies obtained from the solicitation until they had been confirmed on the basis of a further communication to stockholders fully complying with Regulation X-14. Upon the filing of revised soliciting material, it was noted that the two directors, concerning whose original designation objectionable statements had appeared in the original soliciting material, had resigned as directors and officers and had been replaced by other persons having the approval of a State court, which, as of a date prior to the original solicitation, had appointed a custodial receiver of the company's assets.

In another case, the management of a corporation submitted to the Commission a draft of the material proposed to be used by it in soliciting proxies for a special meeting of common stockholders to amend the by-laws of the corporation so that 33.5 percent (rather than 50 percent) of the stock entitled to vote would constitute a quorum at any meeting of stockholders. After examination of its files, the Commission found that the president of the corporation, who was also a director thereof, owned approximately 38 percent of the common stock. The management was requested by the Commission to state these facts in its proxy soliciting material and to indicate therein that the president of the corporation could, if the proposed by-law amendment were adopted, assure a quorum solely by use of his own stock at any meeting at which the preferred stock of the corporation had no vote. The management agreed to make these disclosures but, at a later date, gave up the proposed plan as not being feasible.

In a further case, the management of a corporation filed with the Commission proxy soliciting material containing the following statement: "One of the purposes of said Meeting is the election of five directors, each for a term of 3 years. Other matters may properly be brought before said Meeting by stockholders, but proxies in such form will

confer authority only with respect to the election of directors and will not confer any authority with respect to any such other matters.” Prior to the preparation of the management’s proxy soliciting material, a stockholder of the corporation, had advised the president that he proposed to offer at the annual meeting certain amendments to the by-laws of the corporation, one of which would change the place of the stockholders meeting and another of which provided for the election of independent auditors by the stockholders instead of their being appointed by the management. The Commission took the view that, since the proposed amendments pertained to matters to which the stockholders might properly address themselves, and since the management was advised of the proposed amendments prior to the time its proxy soliciting material was prepared and sent to stockholders, and since the proxies were apparently to be used for purposes of a quorum supporting action upon the proposed amendments, the omission from the proxy soliciting material of information concerning such amendments rendered, the above quoted statement of the management misleading within, the meaning of Regulation X-14. Thereupon, the management of the corporation sent to stockholders a further communication fully apprising them of the two proposed amendments, in the meantime adjourning the meeting two weeks in order to give the stockholders an opportunity on the basis of the supplemental information, to revoke the proxies which they had given.

The Commission has received the support of a Federal court in its administration of Regulation X-14. An injunction was granted in the United States District Court for the District of Massachusetts against one party to a proxy contest who, it was alleged, had violated the provisions of such regulation by the use of false and misleading statements and otherwise. The injunction restrained the defendants from using those proxies which the court determined were obtained in contravention of the Commission’s proxy regulations, and further restrained them, in future solicitations of proxies in respect of the common stock of the corporation, from using false and misleading statements, particularly in specified respects. The complaint in the case was the first one filed by the Commission to enjoin violation of its proxy rules.

Part IV

ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 is designed to eliminate abuses and to provide a greater degree of protection for investors and consumers in the field of public utility holding company finance and operation. In addition to requiring full and fair disclosure of financial transactions, the Act provides for Commission supervision of security transactions by holding companies and subsidiaries; supervision of acquisitions of securities, utility assets, and other interests by holding companies and their subsidiaries; and supervision of dividends, proxies, intercompany loans and service, sales, and

construction contracts. The Act also calls for simplification of uneconomic holding-company structures.

REGISTERED HOLDING COMPANIES

The past fiscal year has been the first full year in the administration of the Public Utility Holding Company Act of 1935. It will be recalled that a substantial percentage of holding companies delayed registration under the Act until after the decision of the Supreme Court of the United States on March 28, 1938, upholding the constitutionality of the registration provisions of the Act. Thereupon, however, all companies affected by the Act, with the exception of such companies as claimed exemption, registered and are now subject to the regulatory provisions of the Act. At the end of this fiscal year, the registered holding companies represented 51 separate public utility systems, comprising 142 registered holding companies and including 1,524 individual holding, subholding and operating companies. The total approximate consolidated assets of these companies "at book" amount to approximately \$14,097,000,000.

During the time the Act has been in effect, the Commission has had before it applications, declarations, and proceedings under almost all of the provisions of the Act. In both numbers and amounts involved, those relating to the issuance of securities lead the rest.

SECURITY ISSUES

Since the effective date of the Act approximately \$2,637,718,000 of securities have been issued in accordance with the provisions thereof, all of them complying sufficiently with the statutory standards to permit their issuance. Of this amount, \$1,449,810,000 of securities were issued during the past fiscal year. Moreover, at the close of this fiscal year, there were pending before the Commission 60 applications and declarations relating to securities amounting to over \$592,723,000.

Each security issue to be considered by the Commission under the Public Utility Holding Company Act of 1935, unless exempt, must meet the statutory standards of Section 1 of that Act. That section prohibits the Commission from permitting the issuance of preferred stock or unsecured obligations by holding companies except in the case of certain refinancing, refunding, or reorganization operations or in cases where the issuance is necessary for urgent corporate purposes and a more rigid standard would impose an unreasonable financial burden upon the company. The section further requires, in the case of operating as well as holding companies, that the security be reasonably adapted to the security structure of the company and the system and to the earning power of the issuer; that the financing involved be appropriate to the economical and efficient operation of a business in which the applicant is lawfully engaged or has an interest; that the fees, commissions, and other remuneration paid in connection with the issue or sale or distribution of the security be reasonable, and that the terms and conditions of the issue or sale be not detrimental to the public interest or the interest of investors or consumers.

The determination of whether a particular security issue meets the standards of the Act demands accounting, engineering, and legal skills, together with an expert knowledge of public utility financing. The Commission, while insisting at all times upon adherence to the standards of the Act, does not approach security issues with a rigid preconceived set of requirements applicable to all situations, nor does it measure its effectiveness by the number of issues stopped. It considers one of its major functions to be that of helping companies to meet the requirements of the Act. For example, where the terms of a proposed security issue, as initially filed with the Commission, fail to meet one or more of the statutory standards, the Commission does not simply refuse to permit to become effective the declaration concerning the issue, but seeks to strengthen the terms of the issue to the point where investors and consumers receive the protection afforded by the safeguards of the Act. This work is done largely over the conference table and in informal meetings with the company's officials and its financial and legal advisors.

In a great number of cases, conferences precede the formal filing of the issue with the Commission and here, in its embryonic stage, the company and the Commission build up the terms of the issue to meet the requirements of the Act. For example, changes such as more adequate maintenance and depreciation charges, restrictions on dividends, greater voting rights, limitations as to the future issuance of securities having a preference over the proposed issue, elimination of conflicts of interest of indenture trustees, restatement of certain accounting items, and similar matters, have been worked out informally, both before and after filing. In several instances, it has been possible to promote the rehabilitation of a weak company and to convert a speculative issue into one more conservative. In those cases where the conference method is not used fully or where it fails to produce an agreement, the Commission's order permitting the declaration to become effective has often been conditioned upon the company's amending the terms of the security or the underlying indenture so as to comply with the standards of the Act.

For all its flexibility, the Commission has required strict adherence to the standards of the Act. As a result, securities issued under the Act have been in many respects of a considerably higher grade than those not so issued. For example, in the case of preferred stock, the Commission, has insisted that such shares carry fair voting- rights. In certain cases provision has been made that preferred stock normally carry the right to elect a number of directors as a class, and, in the event of a stated number of dividend defaults, the right to elect the majority of the board. [Footnote: *In the Matter of The North American Company*, Holding Company Act Releases Nos. 1425, 1427, and 1436. *In the Matter of New York State Electric & Gas Corporation*, Holding Company Act Releases Nos. 1613 and 1627.]

In certain cases where the proposed issue has already been approved by a State commission, the issue is exempt and the jurisdiction of the Securities and Exchange Commission is limited to attaching, for the protection of investors and consumers, terms

and conditions to its order of exemption. It has been the Commission's practice to communicate with the State commission which has approved the security, to discuss the problems raised by the issue. Where differences of opinion have arisen, they have been settled cooperatively and to the mutual satisfaction of both commissions.

The Commission has attempted to avoid every unnecessary delay in the issuance of its order permitting a declaration to become effective. The financing by *The North American Company* furnishes a striking example of this. [Footnote: For the Commission's findings, opinions, and orders in this matter, see Holding Company Act Releases Nos. 1425, 1427, and 1430.]

On December 31, 1938, *The North American Company* (the top company in a system with consolidated assets of approximately \$1,247,000,000) and North American Edison Company filed a joint application pursuant to Section 11 (c) of the Act, for the approval of a plan for partial simplification of the corporate structure of the North American system. In connection with the plan, and for purposes of a refinancing program of its own, The North American Company proposed to amend its certificate of incorporation so as to change various provisions of its outstanding preferred and common stock; to issue 696,580 additional preferred shares, \$50 par value; and to call its outstanding debentures and issue new debentures in the principal amount of \$70,000,000. The plan involved the elimination of North American Edison Company, one of the principal intermediate holding companies in the North American system, by having The North American Company acquire its assets. This was to be done by retiring the outstanding debentures and preferred stock of North American Edison Company out of proceeds of the issuance and sale of debentures and preferred stock of The North American Company. The proposal involved the largest financing under the Public Utility Holding Company Act of 1935 to that time.

The magnitude of the issue, and a renewal of the threat of war in Europe, emphasized the importance of the prompt offering of the securities, provided they complied with the standards of the Act. Within 23 days of the filing of the application, voluminous supplementary material had been gathered and analyzed and preparations made for a hearing, which was held on January 24 and 25, 1939, on all phases of the plan, except the offering price of the securities. The findings, which included provision for various conditions deemed to be essential, were prepared in time for the Commission to issue on Monday, January 30, 1939, its order authorizing the proposed alteration of the rights of outstanding securities, so that the proposed changes might be voted on by the stockholders at a special meeting called for later that day. The changes were approved, and on the following day the final hearing was held as to the public offering prices of the new securities. On the afternoon of that day, the Commission issued its supplemental findings and the necessary orders for the authorization of all indisposed matters, and the securities were offered in a very favorable market the next morning, February 1, 1939.

[statistical table omitted]

ALTERATION OF RIGHTS OF AN OUTSTANDING SECURITY

Apart from its duties in regard to the issuance or sale of the securities of companies subject to its jurisdiction, the Commission is also called upon to regulate the exercise of any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of outstanding securities of such companies. Under Section 7 (e) of the Public Utility holding Company Act of 1935, the Commission may not permit the exercise of any such privilege or right where it would result in an unfair or inequitable distribution of voting power, or would be otherwise detrimental to the public interest or the interest of investors or consumers.

One type of situation, in particular, has arisen a number of times during the past fiscal year. Some companies were willing to restate their property accounts downward so as to eliminate questionable items, such as those arising from revaluations and intra-system profits. But since charging such write downs to earned surplus account would in the usual case create a deficit in that account, and thereby prevent the payment of dividends, it was desired to make the charges to capital surplus account. In a number of instances, those write downs were so substantial as far to exceed both the earned and the capital surplus accounts of such companies. Therefore, in such cases, it was sought to reduce the par or stated value of the Common stock in order to create a capital surplus against which to charge the amount of such write downs.

Undoubtedly, the immediate effect of such a procedure would be beneficial, to the extent that it would make more trustworthy the balance sheets of such companies. But it would be far from an unmixed blessing so far as preferred stockholders are concerned, for it would permit the payment of dividends to common stockholders as well as to preferred instead of having that money go to build up the equity junior to the preferred stock. [Footnote: The New York Court of Appeals has recently decided, *Matter of Kinney*, 279 N Y 423 18 N E (2d) 645 (1939), that a reduction in stated capital accompanied by a corresponding addition to capital surplus which the court held available for the payment of dividends was such an alteration of the preferential rights of the preferred stock as to give a non-assenting preferred stockholder the right to have his stock appraised and paid for.] Another result would be to leave the preferred stock in a poorer condition to weather any future storm.

The Commission has sought to achieve the good and guard against the evil by permitting the outlined procedure, but attaching conditions to its order designed to protect preferred stockholders. *The Columbia Gas & Electric Corporation* case is a particularly interesting example, because of the amounts involved. The capital represented by the common stock was to be reduced from \$194,349,005.62 to \$12,304,282.00 -- a total of \$182,044,723.62, to be set up in a separate account designated "Special Capital Surplus." The Commission permitted the company's declaration to become effective, subject to the following conditions:

(a) That the proposed restatement of common capital account be submitted to a class vote of the preferred and preference stockholders, and receive the approval of a majority of the stock of each class voted at the meeting called for such purpose;

(b) That no charge be made to "Special Capital Surplus" without giving 30 days prior notice to the Commission. The Commission reserved jurisdiction to disapprove such charge after notice to the company and opportunity for hearing;

(c) That, unless the time be extended by application to the Commission and order thereon, any balance remaining in "Special Capital Surplus" on December 31, 1942, be restored to the common capital stock account as of the date last mentioned. [Footnote: Holding Company Act Release No. 1417. Commissioners Healy and Mathews each wrote separate concurring opinions, not agreeing with the majority of the Commission on all points. Commissioner Frank explained his views concerning the Columbia Gas & Electric Company decision in his dissenting opinion in *The North American Company*, Holding Company Act Release No. 1427, pp. 63-73.]

In addition, the Commission reserved broad jurisdiction over dividends and surplus, including jurisdiction to prevent the payment of dividends on common stock unless, after the declaration thereof and making provision for all existing dividend requirements on the preferred and preference stocks, there would remain consolidated "Earned Surplus Since December 31, 1937," equal to the requirements for six quarterly dividends on the preferred and preference stock of the company. Moreover, the Commission required that all published balance sheets of the company indicate, by appropriate footnotes, the conditions and limitations imposed by the Commission's order.

ACQUISITIONS OF SECURITIES, UTILITY ASSETS, AND OTHER INTERESTS

Acquisitions by registered holding companies or their subsidiaries of securities, utility assets, or any other interest in any business also come under the scrutiny of the Commission. Since the Act requires holding company systems to be reduced to integrated systems, it was obviously desirable that the Commission have power to control their growth in the meanwhile. Also, the Commission can prevent the pyramiding of control through many layers of holding companies, which was one of the evils principally complained of with respect to holding companies.

Application must be made for approval of an acquisition, and the procedure in passing on it is closely parallel to that used in connection with security issues. Among the standards by which the Commission must be guided in approving acquisitions is a requirement that no acquisition shall be approved unless the Commission finds that it will serve the public interest by tending toward the economical and efficient development of an integrated public utility system. The Commission must also deny an application if it will tend toward interlocking relations or the concentration of control of public utility companies in a manner detrimental to the public interest or the interest of investors or consumers; if the

consideration to be paid is not reasonable; if the acquisition will unduly complicate the capital structure of the system; or if it will otherwise be detrimental to the public interest or the interest of investors or consumers or the proper functioning of the system.

Here, too, as in the case of security issues, in determining whether these conditions are satisfied, an examination is made not only by financial experts and lawyers, but also, in appropriate instances, by engineers. Again, as in the case of security issues, the Commission does not regard it as its duty mechanically to deny those applications which do not, as first filed, comply with the statutory requirements. Wherever possible, modifications and conditions which make the transaction acceptable are suggested and worked out with company officials and counsel.

INTEGRATION AND CORPORATE SIMPLIFICATION OF PUBLIC UTILITY HOLDING COMPANY SYSTEMS

Section 11(b) of the Public Utility Holding Company Act of 1935 imposes upon the Commission certain duties with regard to the integration and corporate simplification of public utility holding company systems. The Commission is directed to require every registered holding company to take such action as the Commission shall find necessary to limit the operations of its system to those of a single integrated public utility system and to such other businesses as are reasonably, incidentally, or economically necessary or appropriate to the operation thereof. However, the Commission must permit one holding company to control more than one integrated system if it shall be proved that each such additional system cannot be operated independently without the loss of substantial economies, that all of such additional systems are located in one State or in adjoining States or in a contiguous foreign country, and that the continued combination of such systems under the control of the one holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission must also cause the companies under its jurisdiction to bring about a simplification of holding company structures so as to eliminate unnecessary complications or unfair distributions of voting power. This must include elimination of holding companies beyond the second degree.

Instead of waiting for the Commission to bring action, registered holding companies or subsidiaries may invoke the aid of the Commission in carrying out voluntary reorganizations designed to satisfy the integration and corporate simplification requirements. If, after hearing, the Commission finds such a plan necessary to effectuate the provisions of Section 11(b), and fair and equitable to the persons affected by the plan, the Commission is directed to issue an order approving the plan.

On August 3, 1938, William O. Douglas, former Chairman of the Commission, addressed a letter to the chief executives of all registered holding companies, requesting them to

inform the Commission as to their tentative plans for compliance with Section 11 (b). Since publication of such tentative plans might be misleading, the Commission stated that they would be treated as informal and confidential. The purpose of this request was to focus the attention of the industry upon the steps needed to comply with the statute, and to assist the Commission in determining the best procedure to secure such compliance, as well as to obtain both data and ideas that might prove helpful to the Commission. With few exceptions, the registered holding companies submitted more or less elaborate statements in response to this request. These have been carefully studied and analyzed, and have aided considerably in the formulation of working plans for securing compliance with the statute. The next step is the specific and separate determination of each company's problem, a matter which in each case must be based on the evidence produced, both by the Commission and the company, at a public hearing.

Turning now to the specific accomplishments of the last fiscal year, on July 20, 1938, the Commission instituted its first proceeding under Section 11 (b) (1). On January 4, 1937, *Utilities Power & Light Corporation*, a holding company owning securities of widely scattered utility and non-utility subsidiaries, filed a petition for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois. In view of the non-integrated character of the properties, and the need of reorganization apart from the provisions of the Public Utility Holding Company Act of 1935, the Commission considered it appropriate to require attention to the integration provisions in the course of the reorganization. The plan of reorganization now pending, filed by Atlas Corporation, principal creditor of Utilities Power & Light Corporation, provides for the conversion of Utilities Power & Light Corporation into an investment company through the disposal of assets, the reorganized corporation not to own 5% or more of the voting securities of any public utility holding or operating company. [Footnote: The plan, as amended July 10, was approved by the Commission on July 26, 1939; the Commission reserving jurisdiction with respect to the Section 11(b) (1) proceeding. See Holding Company Act Release No. 1655.] The new company is to submit to this Commission, within 30 days after completion of the reorganization, a plan under Section 11 (e) for the divestment of control of securities or other assets, for the purpose of enabling the new company and its subsidiaries to comply with Section 11 (b) of the Act. The proposed 11 (e) plan is to provide that such divestment of control be accomplished within two years from the date filed and shall also provide that, if the plan is not consummated within such time limit, the Commission may apply to a court for the appointment of a trustee to carry out the terms and conditions of the plan. The procedure provided for in the amended plan of reorganization was worked out in the hope of making it unnecessary for the Commission to continue with the Section 11 (b) (1) proceeding by reason of the voluntary compliance with the integration provisions of the Act.

On October 28, 1938, the Commission approved a plan filed under Section 11 (e) by *Republic Electric Power Corporation* providing for reorganization and simplification in conformity with the provisions of Section 11 (b). Republic Electric Power Corporation, a Delaware holding company, controlled four utility companies operating in California and

Oregon, a small natural gas distribution system in Oklahoma (Apache Gas Company) and two non-utility subsidiaries (Gas Transport Company and Needles Steam Laundry). The plan provided for the merger of the California and Oregon utility companies, the disposition by Republic Electric Power Corporation to third persons, other than the present management of Republic Electric Power Corporation, of its interest in Apache Gas Company and Gas Transport Company, and the dissolution, within one year, of the Republic Electric Power Corporation through distribution of its stock holdings in the surviving operating company to its stockholders.

Five additional applications under Section 11 (e) were filed during the past fiscal year by (1) American Gas and Electric Company, (2) Columbia Gas & Electric Corporation, (3) East Tennessee Light & Power Company, (4) Redfield Proctor, C. Brook Stevens, and Henry G. Wells, Liquidating Trustees under an Agreement of Trust between International Paper and Power Company, [Footnote: This step was taken in connection with the plan of International Paper & Power Co. to divest itself of its power properties so that, as a paper company, it would not be subject to the Act. The power properties ultimately will constitute a registered holding company.] International Paper Company and said trustees, and (5) International Utilities Corporation. All of these applications were pending June 30, 1939.

The voluntary plan filed by The North American Company for the dissolution of North American Edison Company, a sub-holding company, has been previously discussed.

REORGANIZATION OF REGISTERED HOLDING COMPANIES AND SUBSIDIARY COMPANIES THEREOF

Sections 11(f) and 11(g) of the Public Utility Holding Company Act of 1935 give the Commission extensive powers over the reorganization of companies subject to its jurisdiction. Briefly, these may be summarized as a right to be heard concerning the appointment of trustees or receivers; a veto power over plans, plus the privilege to propose plans; and regulatory jurisdiction over protective committees and solicitation practices, including claims for fees and expenses.

In passing upon reorganization plans, the Commission has insisted upon adherence to the principle, usually associated with the Boyd case [228 U. S. 482 (1913)], that the assets of an estate must be divided, among security holders, as far as they will go, in accordance with their contract rights and priorities. [Footnote: Many attempts have been made to distinguish on legalistic grounds the Boyd case and its related cases. The Commission has consistently refused to adopt such arguments, and its position in that respect has recently been clearly vindicated by the Supreme Court of the United States in *Case v. Los Angeles Lumber Products Company, Ltd*, decided on November 6, 1939. The opinion in that case clearly and definitely reaffirmed the *Boyd* doctrine.] During this past fiscal year, the Commission has approved three plans, those of The United Telephone -and Electric

Company, West Ohio Gas Company, and Mountain States Power Company. [Footnote: Holding Company Act Releases Nos. 1187, 1284, and 1570, respectively.] Each one of these indicates the Commission's concern with that equitable and democratic principle. They also show the Commission's concern with the feasibility of the plan, to the end of avoiding the waste and hardship involved in repeated failures.

Undoubtedly, the focal point of most reorganization proceedings is a proper valuation of the enterprise. The Commission has relied upon reasonably foreseeable earning power as a paramount consideration, while endeavoring to give due weight to other factors and to the many varying considerations which may be present. In arriving at a conclusion, the Commission has been guided by the consideration that, from the standpoint of investors, the commercial value of the enterprise is the dominant consideration.

The Commission approved the plan of *The United Telephone and Electric Company*, allowing the old common stock a participation of 28 percent of the new stock, largely on the ground that "a substantial amount of the common stock is held by operating men employed by the company's subsidiaries, and that their participation in the plan involves an element of goodwill, which may be of importance to the senior security holders." The opinion makes it clear, however, that even that would not have been a ground for allowing the old common stock to participate, were it not for the small amount involved.

Not only does Section 11 (f) empower the Commission to pass upon plans before they may be submitted to a court, but also it gives the Commission jurisdiction over reorganization fees and expenses. A number of such applications, for interim allowances, have been approved, although in some cases it was found that unreasonably high allowances were being sought and that the interest of investors required a modification. In passing upon these applications, the Commission has considered the following to be some of the relevant factors: past experience in reorganization; time devoted, both from point of view of length of time spent and of whether other activities were carried on currently; extent and nature of services rendered; additional expenses incurred in rendering the services, e. g., appointment of attorneys or engineers as assistants; itemized schedule of out-of-pocket expenses; interest in companies for whose benefit the services were rendered; and division of fees or arrangements therefor.

[statistical table omitted]

With regard to solicitation practices, the Commission has been given express jurisdiction in respect of any reorganization or recapitalization plan of a registered holding company or a subsidiary company thereof. The Commission's rules on this subject are designed to accomplish the following things, generally speaking:

(a) To prevent solicitation of consents to any plan unless such solicitation is accompanied by an analysis of the plan by the Commission;

(b) To prevent protective committees or others from obtaining a deposit of securities unless it can be demonstrated that such deposit is necessary for purposes which cannot adequately be served by proxies;

(c) To permit solicitation, in any event only after disclosure has been made of the interests and affiliations of the persons who are soliciting or are causing the solicitation to be made;

(d) To assure to security holders the right to revoke their authorization.

The maintenance of these standards was well illustrated during the past fiscal year by two instances in which permission to solicit the deposit of bonds was refused. [Footnote: In the matter of Dawson et al, Holding Company Act Release No. 1200; In the matter of Gardner et al, Holding Company Act Release No. 1400.] Each of these cases arose in connection with the 77B proceedings of Utilities Elkhorn Coal Company, a subsidiary of Utilities Power & Light Corporation. The major asset of Utilities Elkhorn was a contract with Utilities Power & Light. The stated purpose of the petitioning bondholders committee, in each case, was to enforce that contract -- it was part of their claim that the Trustee, under the corporate deed of trust, was without power or authority to enforce it. In the first of these cases, the deposit agreement filed with the Commission indicated that the committee sought to acquire the following authority over the securities to be deposited: Power to approve or disapprove any plan of reorganization for Utilities Elkhorn, although to date no plan had been formulated; power to act without the necessity of reporting to the bondholders or of furnishing any intermediate report; and power to limit the right of withdrawal of securities. Also, the committee members reserved full power to deal in the securities affected by, and to participate in any underwriting connected with, the reorganization.

The Commission found that the powers sought by the committee were far too broad and, indeed, were in violation of express provisions of the Act and the rules thereunder. It further found that the applicants had not demonstrated the necessity for obtaining the deposit of bonds under any circumstances. The Commission considered that the Trustee, under the deed of trust, had the primary duty to enforce the rights of the bondholders and that should the Trustee fail to perform that duty, there was the further possibility of a class suit by a bondholder. However, the Commission indicated that it would be proper to renew the application for permission to solicit deposits (on modified terms) should subsequent developments indicate the necessity therefor.

Sometime later, another committee sought permission to solicit the deposit of those same bonds. This time there were not the objectionable features in the deposit agreement. Nevertheless, the Commission again denied permission on the ground that there had still been no showing of the necessity for deposits, with the expense necessarily attendant thereon, which expense must ultimately be borne by the security holders.

In addition to working on the questions presented by those particular cases in which applications relating to reorganizations and recapitalizations have been filed, serious attention has been given to the problem of clearing up the existence of huge arrearages of preferred stock dividends. That is now one of the most pressing tasks facing the public utility industry. Not only is there the obvious investor interest in the payment of arrears and in the resumption of current dividends, but, also, the present situation is unquestionably an impediment to new equity financing needed for maintenance and expansion purposes, even by companies which do not have such arrears. A drastic financial reorganization of some holding companies, particularly those which cannot reasonably expect to clear up the situation in the near future, seems inevitable.

[statistical table omitted]

SERVICE COMPANIES

Another important area of public utility activity which it is the duty of the Commission to regulate pursuant to Section 13, is the performance of service, sales, and construction contracts. In the main, that section, enacted, to prevent excessive or unearned fees and other charges which holding companies or their controlled service subsidiaries have exacted from operating companies in the past, makes illegal the performance of any service, sale, or construction contract by any registered holding company or any subsidiary company thereof, except in compliance with rules, regulations, or orders of the Commission. The rules are designed to insure that, such contracts are performed economically and efficiently for the benefit of such associate companies at cost fairly and equitably allocated among such companies. Generally speaking, it is necessary for subsidiary companies to show that they are qualified before they perform services for associates. Provision is also made for the qualification of "mutual service companies," which are owned by the companies served thereby, so-called member companies. These companies, too, must service associates at cost, although any profit would of necessity go back to the serviced companies in their capacity of stockholders.

The administration of Section 13 tends to fall into two parts. The first of these may be termed organizational and it involves the qualification of mutual and subsidiary service companies. The Commission will not find that a company is qualified unless it can find, after detailed investigation and public hearing, that the company is so organized as to make it likely that the standards of the Act will be met. Moreover, the Commission has followed the practice of conditioning its finding that a company is qualified, reserving jurisdiction to make retroactive adjustments to, assure compliance with, the standards of the Act. This work is of necessity preliminary and has virtually been completed.

The Commission is now well into the second and more important aspect of service company regulation. This involves a painstaking study of what is actually 'being done by', these, qualified companies to determine whether or not the objectives of the Act are being achieved. The Act does not establish merely a standard of service at cost, but in addition

requires that services be performed economically and efficiently, that they be for the benefit of the companies serviced, and that charges be fairly allocated among the various companies. To do that job properly requires careful and detailed work in the field, for, in the last analysis, the enforcement of such aims as the prevention of duplication in servicing (merely one item in the broader aim that the services be for the benefit of the serviced company) and the proper allocation of costs depends on a careful study of actual records of a detailed character. However, even at this early stage the field investigations that have been conducted by the staff have indicated abuses that require correction, and far more important, have supplied a wealth of information and experience which will be of immeasurable benefit in the administration of such statutory provisions in the future.

Aside from (or, more realistically, as part of) this general and steady progress towards the achievement of efficient and economical intra-system servicing, this past year witnessed many individual benefits of the administration of the provisions of Section 13. To take one case, the statutory requirement of economical and efficient servicing influenced one large holding company to take action which brought about a reduction of approximately \$400,000 in the annual expenses of one service company, an amount which represented 30 percent of the total servicing costs of that particular company. In another case, annual rent was reduced \$65,000. In the case of many service companies qualified during the past year, substantial reductions were effected in the capitalization of such companies, often resulting in reduced expenses to all the companies affected.

The task of compelling proper allocation of costs deserves special mention, for it has become particularly important in the light of the prohibition against profits on these intra-system contracts. Preliminary investigations pose the question whether some holding companies are seeking to profit indirectly by shifting holding company expenses upon the operating companies through the medium of controlled service companies, and otherwise.

In large part, the commission's practice of compelling direct charges to a specific company for a specific transaction, insofar as practicable, does much to prevent this abuse. Where the Commission finds that expenses which do not readily lend themselves to the method of direct charges are allocated on an unfair basis, it compels a reallocation. The Commission is also inquiring into other practices which would tend to have the same effect, with a view to corrective measures.

[statistical table omitted]

EXEMPTION FROM THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Sections 2 and 3 of the Public Utility Holding Company Act of 1935 grant authority to the Commission to exempt by regulation or order certain types of companies from the obligations, duties, and liabilities imposed by the Act. The form such exemption may take varies considerably. Thus, a company may be declared not to be a "holding company" as

that term is defined in Section 2 (a) (7) of the Act; or a company may be declared not to be a subsidiary of a specified holding company pursuant to Section 2 (a) (8); or a holding company may be exempted from the requirements of the Act if it falls into one of the categories specified in Section 3 (a) of the Act, Sections 3 (b) and 3 (d) further authorize the Commission to exempt subsidiary companies of registered holding companies under certain circumstances.

Whether a company is entitled to exemption under the statute depends ultimately on the determination of matters of fact. In some instances, the Commission has been able to reach broad general conclusions about whole groups of companies, and has granted total or partial exemption by rule and regulation. For example, all companies in a system whose total annual gross revenues from utility business are less than \$350,000 have been exempted. In other cases, a more individualized consideration is necessary and questions such as those of control, the predominant nature of the company's business, whether or not it is a holding company only temporarily and how it came to be such, and similar factual matters are decisive. In such cases, the Commission has felt that a proper disposition of the issues requires thorough and painstaking investigation. Nor has any applicant been prejudiced by the time required for such thorough treatment, for the Act grants a temporary exemption to those companies whose applications for exemption, filed in good faith, are pending. Although at the end of the fiscal year a number of cases were still pending, they were receiving active attention and there was every indication that the Commission's duties in this matter were close to completion.

Among the applications for exemption which were disposed of by the Commission during the past fiscal year, several are of more than usual interest. Prior to filing its application for exemption, International Paper and Power Company controlled International Hydro-Electric System and through it, Gatineau Power Company, an important public utility company in Canada, and New England Power Association, a large public utility system in the New England States, as well as two other public utility companies doing business in New York and in some of the New England States. International Paper and Power Company segregated its utility holdings by conveying them to liquidating trustees with instructions to dispose of them within a period which, at the option of the Commission, may extend to January 31, 1943. If, at the end of the period, the liquidation is not completed, the Commission may go into court and request the appointment of court trustees to consummate the liquidation. The liquidating trustees submitted to the Commission the steps that had been taken effectually to divorce the operations of the public utility companies from control by International Paper and Power Company, pending the sale of the properties. On these facts, the Commission granted to International Paper and Power Company exemption as a holding company. [Footnote: Holding Company Act Release No. 1515.]

Another case, involving the question of control of one company over another, was that of the application of Allied Chemical & Dye Corporation [Footnote: Holding Company Act Release No. 1600] for an order declaring it not to be a holding company within the

meaning of Section 2 (a) (7) (A) of the Act. This corporation owns more than 10 percent of the voting securities of American Light and Traction Company, a registered holding company, which investment is divided between the preferred and common stock. More than 51 percent of the voting securities of American Light and Traction Company is owned by, and a majority of its officers and directors are also officers and directors of, United Light and Power Company. Although the investment of Allied Chemical & Dye Corporation in the common stock of American Light and Traction Company is small, that in the preferred stock represented 43 percent of the total number of shares of that class of stock outstanding. Thus, Allied Chemical & Dye Corporation, since it owns more than one-third of the preferred stock of American Light and Traction Company, has what amounts to a veto power over certain corporate actions of that company because of the provisions of Section 27 of the General Corporation Act of New Jersey. The evidence in this case disclosed that on one occasion only had the so-called veto power been used by Allied Chemical & Dye Corporation. In 1926, Allied Chemical & Dye Corporation acquired sufficient of the preferred stock of American Light and Traction Company for the purpose of preventing the issuance of a new class of preferred stock which, would have been senior to that then outstanding.

There were other relationships between the subsidiaries of Allied Chemical & Dye Corporation and those of American Light and Traction Company which were also considered by the Commission in reaching its decision in this case. Nevertheless, the Commission was of the opinion that the business transactions between such companies were not such as to prevent it from making the findings required by Section 2 (a) (7) of the Act and that the possible veto power held by Allied Chemical & Dye Corporation over certain of the corporate actions of American Light and Traction Company, could be exercised only in such rare and extraordinary circumstances that "control" or "controlling influence" as contemplated by Section 2 (a) (7) of the Act was absent. The order declaring Allied Chemical & Dye Corporation not to be a holding company, however, imposed certain conditions which would, control, at least to a limited extent, relationships between Allied Chemical & Dye Corporation and American Light and Traction Company or among subsidiaries of those companies.

Among the applications filed under Section 2 (a) (8) of the Act for orders declaring applicants not to be subsidiaries of specified holding companies, those filed by Northern Natural Gas Company [Footnote: Holding Company Act Release No. 1618] for orders declaring that company not to be a subsidiary of Lone Star Gas Corporation, The United Light and Railways Company and United Light and Power Company, and North American Light and Power Company, and The North American Company are of rather peculiar interest. The voting stock of Northern Natural Gas Company is held by the three above named holding company systems; 35 percent by The North American Company system; 35 percent by the United Light and Power system; and 30 percent by Lone Star Gas Corporation. The record in the case disclosed that Northern Natural Gas Company was organized by these three interests; that officers and representatives of the proprietary companies had served as officers and directors of The Northern Natural Gas Company

from the time of its organization to the present; that Northern Natural Gas Company had until quite recently been financed either through sale of common stock to the proprietary companies or through advances made by the proprietary companies to Northern Natural Gas Company; and that, in general, it might be said that the three proprietary companies acted in a manner similar to a partnership in supervising the affairs of Northern Natural Gas Company. In order for the Commission to grant these applications filed by the Northern Natural Gas Company, Section, 2 (a) (8) requires, in general, that the Commission find (1) that the Northern Natural Gas Company is not controlled by any of the proprietary companies; (2) that Northern Natural Gas Company is not a company through which the proprietary companies controlled another company; and (3) that Northern Natural Gas Company is not subject to such a controlling influence as to make it necessary in the public interest that it be subject to the provisions of the Act applicable to the subsidiaries of a registered holding company. In its opinion, the Commission found that Northern Natural Gas Company was subject to a controlling influence by the proprietary companies in such a way as to make it necessary that that company be subject to the provisions of the Act applicable to it as a subsidiary of registered holding companies. The applications of Northern Natural Gas Company were therefore denied.

ACQUISITION OF SECURITIES BY THE ISSUER

Rule U-12C-1, adopted pursuant to Section 12 (c) of the Act, forbids any registered holding company or any subsidiary company thereof, to acquire, retire or redeem any security of which it is the issuer, unless the Commission has issued an order of approval. The standards governing action by the Commission are the protection of the financial integrity of the companies in the holding company system, and the safeguarding of their working capital.

[statistical table omitted]

DIVIDEND DECLARATIONS AND PAYMENTS

In addition to regulating the acquisition by a company of its own securities, the Commission also exercises supervision over the payment of dividends out of capital or unearned surplus. Here, too, the purpose is to protect the financial integrity, and safeguard the working capital, of the companies involved.

[statistical table omitted]

SALE OF PUBLIC UTILITY SECURITIES AND UTILITY ASSETS

Pursuant to Sections 12 (d) and 12 (f) of the Act, the Commission has adopted rules regulating the sale of public utility securities and utility assets by a registered holding company or, when the sale is to an associate or an affiliate, by either a registered holding company or a subsidiary company thereof. The selling company must file an application, and a public hearing must be held to enable the Commission to determine whether the statutory safeguards are being met. The Commission may approve the sale only if it finds that the terms and conditions of such sale with respect to the consideration to be received, maintenance of competitive conditions, fees, and commissions, disclosure of interest, and similar matters, are not detrimental to the public interest or the interest of investors or consumers, and will not tend to circumvent the provisions of the Act, or any rules, regulations, or orders of the Commission thereunder.

There have been a number of sales in which the purchasing company also has been required to file an application in respect to the acquisition. In such cases duplication has been avoided wherever possible by having a consolidated hearing on both applications. This is a procedure that will probably be used with increasing frequency to keep pace with the revamping of holding company systems, pursuant to the mandate of Section 11(b) (1) of the Act.

[statistical table omitted]

UNDERWRITERS AND FINDERS FEES

The Commission has adopted Rule U-12F-2, based on Section 12 (f) and other provisions of the Act, controlling the payment of fees to underwriters and “finders” who may be in a position, by reason of stock ownership or other relationship, to gain an unfair advantage in bargaining for such fees. Persons affected by the rule are substantially those falling within the statutory definition of “affiliate” in Section 2 (a) (11) of the Act, which includes, in addition to officers, directors, and persons having specified stock ownership, any person whom the Commission finds to stand in such a relation to the issuing company “that there is liable to be such an absence of arm’s-length in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities” imposed upon affiliates. The rule, like the statutory provision which it parallels, recognizes the impossibility of precisely defining the facts which make for absence of arm’s-length bargaining, and permits the disposition of each case in the light of the evidence therein developed. No fee may be paid, unless on the basis of competitive bidding, to underwriters or “finders” subject to the rule, unless the justification is clear or unless such person merely has a participation of not more than 5% and the fee is the same as that paid to non-affiliated underwriters. The Commission has not taken a position insisting on competitive bidding generally but merely provides through its rules that where the sale is through an affiliate the participation must be limited as described above when the issue has not been sold by competitive bidding.

POLITICAL CONTRIBUTIONS

Section 12 (h) of the Act makes it unlawful for any registered holding company or any subsidiary company thereof to make any contribution in connection with any political office. The Commission has been conducting an extensive investigation into the affairs of the Union Electric Company of Missouri in connection with an alleged violation of this section.

STATEMENTS REQUIRED PURSUANT TO SECTION 12 (i)

Section 12 (i) of the Public Utility Holding Company Act of 1935 requires the filing of statements by persons who represent registered holding companies or their subsidiaries 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 prescribe. The information required to be contained in these statements pertains to the nature and character of such representation, and the amount of compensation received or to be received, directly or indirectly, in connection therewith.

Effective August 1, 1938, the Commission rescinded Form U-12(i)-1, the form of statement to be made pursuant to Section 12 (i) of the Act and, in lieu, thereof, adopted Forms U-12(i)-A and U-12(i)-B. Form U-12(i)-A is the form of statement to be made by a person who presents, advocates, or opposes any matter before any of the above-mentioned bodies or persons and Form U-12(i)-B is the form of annual statement to be used by a person who is regularly employed or retained by a registered holding company or subsidiary company thereof. This annual statement relieves such regularly employed or retained persons, who frequently represent such companies, from the necessity of filing numerous reports on Form U-12(i)-A.

During, the past fiscal year, 64 statements on Form U-12(i)-1, 181 statements on Form U-12(i)-A, and 112 statements on Form U-12(i)-B were filed with the Commission.

INTERLOCKING DIRECTORSHIPS

Section 17 (c) of the Act forbids registered holding companies to have persons with financial connections as officers or directors, except in such cases as rules prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers. These rules of exemption were completely revised during this past year, such revision being largely based on the Commission's experience in the administration of the provisions of this section.

REPORTS

In examining the various periodic reports that are required to be filed by companies and persons subject to the Act, and comparing them with other available data, the Commission considers the accuracy and completeness of the information filed, cites deficiencies, and requests the filing of amendments and supplements for correction of such deficiencies. In addition, the various phases of transactions are examined to determine whether or not the successive steps in particular transactions are exempt under the Act and, if not, whether an application or declaration has been filed. This work not only assures adequate and accurate public information, but also is an important function in the administration of the Act. An important benefit is that the knowledge so obtained makes possible more speedy and intelligent disposition of the applications to the Commission with respect to matters under its jurisdiction.

During the fiscal year ended June 30, 1939, the Commission received 102 annual reports by registered holding companies and 177 annual supplements to registration statements.

RULES, REGULATIONS, AND FORMS

The Commission is constantly studying the rules, regulations, and forms adopted under, the Act with a view towards achieving the simplest requirements consistent with a vigorous administration of the Act. During the past fiscal year, the Commission adopted 13 new rules and repealed 14 rules. The Commission also adopted 24 amendments to 17 existing rules. In many instances, proposed rules are discussed with, and critically examined by, companies and persons affected thereby and suggestions or objections voiced by those groups are given thorough consideration by the Commission.

Part V

OTHER ACTIVITIES OF THE COMMISSION UNDER THE VARIOUS STATUTES

ENFORCEMENT ACTIVITIES

Prohibition Against Manipulation in the Securities Markets.

During the past fiscal year, the Commission's efforts to protect the securities markets from manipulation and fraud were vigorously continued. Almost five years of experience has

enabled the Commission to improve substantially its techniques of detection and enforcement.

It has become increasingly evident that if the public is to receive adequate protection the Commission's enforcement activities, so far as possible, must be preventive rather than punitive. Thus, the, periodic inspection of offices of registered brokers and dealers has been extended. The Commission's representatives, in addition t, checking on compliance with the law, also endeavor to educate the trade in the requirements of the statutes and rules, to suggest the installation of proper financial controls and to bring about improvement in the ethical standards of the securities business. Such inspections also permit the detection of hopelessly weakened financial conditions at a time when there is still enough left to pay off customers and other creditors.

Manipulation is detected in many ways. Complaints, although frequent, are not always a trustworthy source of information. For instance, a person who had sold short 2,000 shares of a security once tried to show that a manipulation was in progress, in the hope that he could induce the Commission to take action which would depress the market price of that security, thus enabling him to cover his short position at a profit. Furthermore, many complaints, although well intentioned, prove upon investigation to be wholly baseless. Nevertheless, all complaints are carefully analyzed and considered since, from time to time, complaints from the public have resulted in the detection of real manipulations.

However, the Commission cannot perform its duties merely by waiting for complaints. Normally these are received only after the public has been injured. When price rises are due to manipulation, complaints are seldom received until after manipulation is finished and "the plug has been pulled" to the loss of innocent purchasers. Therefore, the Commission endeavors to maintain a day to day scrutiny of the trading on security markets. The "ticker tape" is also under constant observation, both in Washington and in New York. To the same end, a section has been established in the Commission to analyze possible reasons in the business of corporations concerned which may explain unusual price fluctuations in their securities and to determine what fluctuations are apparently the result of manipulation. This type of market surveillance often results in informal inquiries of the officers of exchanges and others who can assist in determining reasons for such movements.

Because many manipulations begin by a gradual increase in the tempo of trading, it is not always possible to detect immediately the possible illegality of trading by current "tape" observation and market analysis. However, as soon as there is reason to suspect the character of the market for a security, the Commission has been quick to inquire. As a matter of fact, in some instances the Commission has been able to prevent manipulation by taking action before the market has shown any response at all to efforts to manipulate.

[Footnote: In the summer of 1938, a study of a recently filed amendment to a registration statement under the Securities Exchange Act, revealed the following situation:

A company whose stock was traded on a national securities exchange had voted to liquidate. Its assets were sold and the proceeds distributed. Its charter, however, was not surrendered. A group of five individuals then acquired all of the stock of the liquidated corporation, changed its name, revamped its capitalization, amended the charter and by-laws and prepared to embark on a business entirely foreign to that in which the corporation had formerly engaged. In short, nothing was left, of the old business except the listing on a national securities exchange. An immediate investigation disclosed that the five new stockholders were about to make a distribution of their holdings to the public, on the basis of market prices to be raised by manipulation. The security was promptly delisted.]

In other cases, the Commission has been able to commence its inquiry while the manipulation was still incipient, with the result that the investing public was spared the losses attendant upon purchases of large blocks of stock at artificial and manipulated prices. Thus, in one case, the Commission's prompt investigation stopped a manipulation when its sponsors had been able to unload but 150 out of 10,000 shares which they had under option. In the Richards case, which involved trading in the common stock of Simplicity Pattern Co, Inc. on the New York Curb Exchange, the Commission's rapidity of action ended a manipulation being engineered from England before any of the 40,000 shares under option could be sold. In still another instance, prompt action forestalled a manipulation designed to facilitate the distribution of 375,000 shares by English underwriters.

Examples could be multiplied of instances in which the Commission has been able to suppress manipulation at its inception. Many of these cases never come to the attention of the public because the promptness of the Commission's investigation stops the manipulation at a time when insufficient proof exists to justify punitive or other formal proceedings. In such cases the Commission refuses to give the manipulators the rope necessary to hang themselves, but instead chooses to protect the public by beginning its investigation before unwitting investors have been drawn into an artificial market. Needless to say, manipulations almost invariably cease as soon as the Commission's representatives appear on the scene.

Particular vigilance is required to forestall manipulation from abroad. Although frequently lacking jurisdiction over the individuals responsible and thus being unable to take punitive action against them, the Commission has been able to deal with manipulations having theft origin in Canada due to the cooperation of various official and semi-official bodies in the Canadian provinces. The ability of the Commission to cope with manipulations which are international in character was demonstrated publicly not only in the Richards case, but even more saliently by the successful prosecution in June 1939, of the individuals responsible for the artificial market created in the Philippine Railway Bonds in January and February 1938.

Although trading investigations are instituted primarily in order to detect violations of the anti-manipulative sections of the Securities Exchange Act of 1934, the Commission is

alert to uncover other violations of the law. To this end, the Commission seeks to achieve constant flexibility in its attack on manipulation. If proceedings may be instituted more conveniently and with a greater probability of success under statutes other than those administered by the Commission, the policy of cooperating with other branches of the Federal Government and also of the State Governments for that purpose is followed. Thus, the Philippine Railway Bond case, which led to the convictions of William Buckner, William Gillespie, and Felipe Bueneamino in New York in June 1939, was prosecuted under the mail fraud statute after it has been determined that that statute offered the best means of attack.

As in the past, trading investigations have disclosed violations by exchange members or their employees of the rules of the various national securities exchanges. In these instances, of which there were many during the past fiscal year, the Commission referred the matter to the appropriate exchange and, as a result, the exchange applied its own sanctions.

Margin Regulations.

As mentioned in previous annual reports, Congress made this Commission responsible for the enforcement of Regulation T promulgated by the Board of Governors of the Federal Reserve System. The Commission has continued to make such margin inspections of brokerage firms as were permitted by the limited personnel available for this work.

In previous years, most of the margin inspection activity was concentrated on firms which were members of national securities exchanges, but during this last fiscal year more emphasis was placed on the inspection of non-member firms. Margin inspection, particularly among non-member firms, has been made part of a broader effort undertaken to assure proper compliance on the part of brokers with the applicable rules and regulations. Inspection of cash and margin accounts of 69 member and non-member firms were completed during the year. As usual, the results of these inspections bearing upon compliance with Regulation T have been made available to the Board of Governors of the Federal Reserve System, and in some cases the Commission has submitted certain results of these inspections to the appropriate national securities exchanges for disciplinary action. The Washington (D.C.) Field Office is now equipped to carry on margin inspections on a limited scale. Thus, insofar as available personnel permits, the New York, Boston, Chicago, and San Francisco Regional Offices and the Washington Field Office of the Commission carry on margin inspection work.

Market Surveillance.

The systematic surveillance of volume and price movements in securities on exchange markets has been continued and extended. The number of issues, including duplications on the various exchanges, under continual observation at the close of the past fiscal year amounted to 3,410 as compared with 3,133 at the close of the previous fiscal year. Rationalization of deviations in price or volume is sought, and in cases where the

explanation for appreciable price or volume fluctuations is not apparent, further study and inquiry is made. Rationalization of movements in the price or volume of trading in particular security issues involve not only investigation of the market situation in such securities, but the continuing analysis of balance sheets, income statements and other current data with respect to both the particular issuer and the general market.

Regular review is made of the terms of offering of all issues for which registration statements are filed under the Securities Act of 1933, pertaining to securities traded on national securities exchanges or convertible into or bearing warrants for the purchase of securities traded on these exchanges. In those instances in which securities registered are subject to options, the related security traded on the exchange has been placed under observation for the life of the option. As of June 30, 1939, a total of 311 companies were under special observation due to the existence of options or warrants.

Continuing studies have been made of secondary distributions, and trading in the issues subject to such distributions, both preceding and during the period of offering, has been closely scrutinized.

The systematic recording and examining of all reports filed under Section 16 (a) of the Securities Exchange Act of 1934, pertaining to changes in beneficial ownership of equity securities by all persons required to report such changes, has been continued. Reports of transactions in issues of an average of 832 companies per month have been so recorded and examined.

Studies have been made of the effect upon price and volume fluctuations of publicity releases in the financial press, various so-called "tipster sheets," and other sources.

Extensive research has been conducted in both specific and over-all characteristics of the exchange markets, the strictly over-the-counter markets, and that middle ground consisting of issues traded in both markets.

Trading Investigations.

Trading investigations are primarily conducted to ascertain if transactions by any person in a security registered or admitted to unlisted trading privileges on any national securities exchange are effected in violation of Section 9 of the Securities Exchange Act of 1934. However, such investigations may also develop facts and circumstances indicating violations of other sections of that Act, or sections of the Securities Act of 1933, as well as violations of the rules of national securities exchanges.

During the past fiscal year, the volume of cases reviewed increased substantially, a total of 222 cases having been reviewed, compared with 119 cases the previous year. As of June 30, 1939, 53 cases were in progress, compared with 65 on June 30, 1938. The use of flying quizzes (preliminary, informal, and substantially contemporaneous inquiries into the

causes for unusual market behavior) has enabled the enforcement staff substantially to increase the scope of its activity and reduce the time element involved in conducting investigations. The use of these rapid fire check-ups of suspicious market activity has also been extended to the Commission's Regional Offices throughout the country. As the result of trading investigations, four cases were referred to the Department of Justice during the year for criminal prosecution, six persons were enjoined from continuing manipulative activity, four cases involving transactions by the members of the New York Stock Exchange and New York Curb Exchange were referred to those Exchanges for consideration and action, and proceedings were instituted in one case for the suspension or expulsion of a member of a national securities exchange and in three cases for the revocation of broker-dealer registrations.

Record of Public Action Taken in Connection with Proceedings Brought to Enforce the Anti-Manipulative Provisions of the Securities Exchange Act of 1934.

During the past year, the Commission has taken formal public action in the course of 11 proceedings to enforce the anti-manipulative provisions of the Securities Exchange Act of 1934. The nature of these proceedings and their status as of the close of the year are briefly described below.

On February 15, 1939, the Commission instituted proceedings under Section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether the registration of Callahan Zinc-Lead Company common stock \$1 par value, a registered security on the New York Stock Exchange, should be suspended or withdrawn. This action resulted from an investigation into the trading in the stock of this company, and was also based on a preliminary investigation which indicated that reports filed by this company pursuant to Section 12 and Section 13 of such Act contained false and misleading statements of material facts. On the same date, the Commission also authorized stop order proceedings under Section 8 (d) of the Securities Act of 1933 to determine whether or not the effectiveness of registration statements filed by this company should be suspended. At the close of the fiscal year, both of these proceedings were pending.

On October 26, 1938, Norman W. Minuse, Joseph. E. H. Pelletier, and Russell Van Wyck Stuart were indicted by the Federal Grand Jury of New York charged with conspiracy to violate Sections 9 (a) (1) and 9 (a) (2) of the Securities Exchange Act of 1934 by the manipulation of the Class A common stock of Tastycast, Inc., listed on the New York Curb Exchange. This action resulted from the reference by the Commission to the Department of Justice of its files on the investigation of transactions effected by these persons during 1935 and 1936. As of June 30, 1939, the proceedings were still pending.

On December 19, 1938, Harry J. Weisbaum, Edward J. Weisbaum, and Otto Leudeking consented to being permanently enjoined by the U. S. District Court for the Southern District of Ohio from further violation of Section 9 (a) (2) of the Securities Exchange Act of 1934. This action resulted from an investigation of market transactions effected by these

persons during August 1938, in Weisbaum Bros. Brower Co. common stock listed on the New York Curb Exchange.

On December 30, 1938, William P. Buckner, Jr., and William J. Gillespie were indicted by the Federal Grand Jury for the Southern District of New York, charged with mail fraud and conspiracy violations. This action resulted from an investigation of the activities and transactions of these persons in Philippine Railway Co. 4% bonds during 1938 and the reference of such case by the Commission to the Department of Justice on November 21, 1938, for prosecution. Following their conviction on June 30, 1939, Federal Judge Henry W. Goddard sentenced Buckner and Gillespie to 2 years and to 18 months, respectively, in prison, and fined each of them \$2,500. Felipe Buencamino, member of the Philippine Assembly, convicted on conspiracy charges, was sentenced to 18 months in prison and fined \$5,000.

On January 14, 1939, H. Waiter Blumenthal consented to the issuance of a permanent injunction by the U. S. District Court for the Southern District of New York against his further violating any provisions of Section 9 (a) of the Securities Exchange Act of 1934. This action resulted from an investigation of his transactions during 1937 in Red Bank Oil Co. common stock listed on the New York Curb Exchange.

On January 23, 1939, Klopstock & Co, Inc., of New York City withdrew its registration as an over-the-counter broker and dealer. The withdrawal occurred subsequent to the institution of proceedings by the Commission to determine whether such registration should be revoked or suspended. The proceedings were based on alleged violations of both the Securities Act of 1933 and the Securities Exchange Act of 1934, which included alleged violations involved in the market operations undertaken by Klopstock & Co, Inc., to facilitate the underwriting and distribution of Austin Silver Mining Co. common stock in 1936 and 1937. On January 13, 1938, the Commission issued a stop order suspending the effectiveness of the registration statement filed on February 3, 1937, by the Austin Silver Mining Co. under the Securities Act of 1933. This action was based on proceedings under Section 8 (d) of the Securities Act of 1933 and upon preliminary facts obtained in a trading investigation. This stop order was lifted August 30, 1938.

On February 11, 1939, David A. Schulte consented to being permanently enjoined by the U. S. District Court for the Southern District of New York from further violations of Sections 9 (a) (1), (b) and (c) and 9 (a) (2) of the Securities Exchange Act of 1934. This action resulted from an investigation of accounts maintained and guaranteed by David A. Schulte and transactions by such accounts during 1935, 1936, and 1937 in Schulte Retail Stores Co, Dunhill International, Inc., Park & Tilford, and Philip Morris, Ltd, Inc., securities listed on the New York Stock Exchange and Huylers of Delaware, Inc., preferred stock listed on the New York Curb Exchange.

On March 4, 1939, William E. Hutton, II, a partner of W. E. Hutton & Co. and as such a member of the New York Stock Exchange, New York Curb Exchange, Philadelphia Stock

Exchange, Detroit Stock Exchange, Chicago Stock Exchange, Baltimore Stock Exchange, Cincinnati Stock Exchange, and the Board of Trade of the City of Chicago, was suspended from membership on such exchanges for a period of three months from March 15, 1939, and H. H. Michels, a partner of William Cavalier & Co. and as such a member of the New York Stock Exchange, New York Curb Exchange, San Francisco Stock Exchange, Los Angeles Stock Exchange and the Board of Trade of the City of Chicago, was suspended for one month commencing on March 15, 1939. These actions resulted from the institution of proceedings by the Commission under Section 19 (a) (3) of the Securities Exchange Act of 1934 on November 13, 1936, based upon an investigation of transactions by these persons in violation of Sections 9 (a) (1) and 9 (a) (2) of that Act during 1935 and 1936 in Atlas Tack Corporation common stock listed on the New York Stock Exchange.

On March 24, 1939, Junius A. Richards, a partner of Smith, Barney & Co. and as such a member of the New York Stock Exchange, New York Curb Exchange, Baltimore Stock Exchange, Chicago Stock Exchange, Board of Trade of the City of Chicago, Boston Stock Exchange, and Philadelphia Stock Exchange, was suspended from membership on such exchanges for a period of 10 days from March 27 to April 5, 1939, inclusive. This action resulted from the institution of proceedings by the Commission on March 2, 1939, under Section 19 (a) (3) of the Securities Exchange Act of 1934 based upon an investigation of transactions effected by Richards during 1938 in Simplicity Pattern Co, Inc., common stock listed on the New York Curb Exchange for persons whom it was charged he had reason to believe were violating provisions of Sections 9 (a) (1) and 9 (a) (2) of that Act.

On May 19, 1939, J. J. Maschuch, President of Breeze Corporations, Incorporated, and Douglas C. Hoff, an associate, were arrested and subsequently indicted for perjury. This action, which was still pending on June 30, 1939, resulted from an investigation of the activities and transactions of such persons in Breeze Corporations, Incorporated, common stock listed on the New York Curb Exchange in connection with which it was alleged false testimony was given.

On July 1, 1939, Robert R. Selember, Jr., consented to being permanently enjoined from further violations of Sections 9 (a) (1), 9 (a) (2) and 9 (a) (4) of the Securities Exchange Act of 1934 following a complaint entered on June 30, 1939, in the U. S. District Court for the Southern District of New York. This action resulted from an investigation of the transactions and activities of Selember during 1938 in the common and preferred stocks of Crystal Oil Refining Corporation and H. C. Bohack, Inc., the Class B common stock of Durham Hosiery Mills, Inc., and Ludlow Valve Manufacturing Co. common stock, all listed on the New York Curb Exchange.

Complaints and Investigations.

The Commission, in its effort to protect investors, has 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, and has encouraged the filing of complaints by investors who feel they have been defrauded.

Most of the complaints are received by the Commission and its regional offices directly from investors. However, many complaints are submitted to the Commission through 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 complainant and, to the extent that the Commission's powers and the subject matter permit, every complaint is investigated and every complainant given all possible assistance, together with, all available public information.

At the beginning of the past fiscal year 735 investigation and legal cases, under the Securities Act of 1933 and the Securities Exchange Act of 1934, were pending. During the year, 768 new cases have been set up. Of these 1,503 cases, 730 were disposed of during the past year, leaving 773 pending as of June 30, 1939.

[statistical tables omitted]

In conjunction with the investigation of complaints the Commission has established, through its Securities Violations Files, a vast amount of information concerning fraudulent securities transactions by individuals and corporations. These files have been enlarged during the past fiscal year by the addition of 6,257 items of information pertaining to existing files, and the addition of 4,184 new names to such files. As of June 30, 1939, the Commission had assembled data concerning 32,660 persons or corporations against whom State or Federal action had been taken in connection with the sale of securities.

Civil Proceedings.

During the past fiscal year the Commission instituted 76 civil proceedings under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. Since its creation, the Commission has initiated 312 such proceedings and disposed of 288. Of the 312 such proceedings, 288 were injunctive actions, as a result of which 657 firms and individuals have been permanently enjoined. During the fiscal year, 69 such actions were instituted against 186 persons. The 67 cases disposed of during the fiscal year resulted in injunctions against 155 persons.

While a number of the injunctions secured by the Commission were issued upon consent of the defendants, many others were issued only after a trial of the facts. With the exception of the case of *Securities and Exchange Commission v. Gold Hub Mines Company*, the Commission was successful in every injunctive action prosecuted by it during the fiscal year.

[statistical tables omitted]

A brief description and the status of the civil cases filed or pending during the year ended June 30, 1939, are outlined in the tables comprising Appendix VI of this report. A more detailed description of some of the more important cases is set forth below.

Oklahoma-Texas Trust v. Securities and Exchange Commission. -- On January 5, 1939, the United States Circuit Court of Appeals for the Tenth Circuit unanimously affirmed a stop order issued by the Commission suspending the effectiveness of a registration statement filed by Oklahoma-Texas Trust covering an offering of 107,000 participating interests having a face value of \$10 each. The order reviewed was issued on September 23, 1938, under Section 8 (d) of the Securities Act, and is so far the only such order in the history of the Commission to be reviewed on the merits by any court.

The court, in its opinion (100 F. (2d) 888), upheld the constitutionality of the statute, rejected the registrant's contention that a stop order could not be entered after all of the securities sought to be registered had been sold, and affirmed the action of the Commission in refusing to permit the registrant to withdraw its registration statement. The court also affirmed the Commission's findings that one who instigated and had a substantial interest in the outcome of the organization of a corporation was a promoter, even though not a participant in the mechanics of organization; that the registrant did not, as stated, intend to render quarterly reports to security holders; that certain pending litigation had not been disclosed; that engineers reports included in the registration statement were inaccurate and misleading; and that the present revenues from the properties to be acquired by the Trust had been misstated.

Securities and Exchange Commission v. O'Hara Re-Election Committee et al. -- On June 16, 1939, the Commission commenced an action in the United States District Court for the District of Massachusetts seeking to restrain the so-called O'Hara Re-Election (or Proxy) Committee, Walter E. O'Hara, William A. Needham, George Cohen, and Nelson Warren Moore from violating Section 14 of the Securities Exchange Act of 1934 by using the mails to solicit proxies from stockholders of Narragansett Racing Association, Inc., by means of letters of solicitation which did not comply with rules promulgated by the Commission, under authority of the statute, and from exercising proxies thus obtained at the annual meeting of the Association.

On June 27, 1939, the court, after hearing, issued a preliminary injunction granting the relief prayed for and restraining the Association from holding its annual meeting before a specified date in order to afford time to obtain new proxies.

Securities and Exchange Commission v. Associated Gas & Electric Company et al. -- In the course of the administration of the Public Utility Holding Company Act, it came to the attention of the Commission that the Associated Gas & Electric Company was engaged in requesting holders of its 5.5% Investment Certificates, due November 15, 1938, to extend the maturity of those certificates to November 15, 1939, or November 15, 1943, the inducements being an increased interest rate or part payment of the principal. No attempt

was made by the Company to register the securities under the Securities Act of 1933 or to file a declaration under Section 7 of the Public Utility Holding Company Act of 1935.

The Commission commenced an action in the United States District Court for the Southern District of New York to enjoin the extension of the maturity of these notes under these circumstances, alleging that such extension involved the sale of a new security to the same extent as an exchange of new bonds for old. The complaint charged violation of the Securities Act and of various provisions of the Public Utility Holding Company Act. The court, on August 29, 1938, granted a preliminary injunction based on Section 6 (a) of the Public Utility Holding Company Act, enjoining the extensions as the issuance and sale of securities of a registered holding company unless the Company first complied with Section 7 of the Public Utility Holding Company Act. On appeal to the United States Circuit Court of Appeals for the Second Circuit, this was the sole issue, and the position of the Commission was again sustained. By stipulation, the injunction was made permanent.

Securities and Exchange Commission v. William P. Lawson. -- On August 19, 1938, William P. Lawson of Baltimore, Maryland, a securities broker and dealer, doing business as William P. Lawson & Company, was enjoined by the United States District Court for the District of Maryland from continuing to engage in acts and practices violating the fraud provisions of the Securities Act of 1933 and the insolvency provisions of the Securities Exchange Act of 1934.

The court stated in its opinion (24 F. Supp. 360) that what Lawson did

“* * * was from time to time to sell securities of some of his customers which he had purchased for them (and for which they had in many cases fully paid) or which he was otherwise holding for their accounts not in default, without due authority, and to keep them in ignorance of the fact that he had done so; and to convert the proceeds of the sale of the securities to his own use, while he was insolvent. This he did from time to time over a period of eight months with respect to the securities of numerous customers. At the time of filing the bill of complaint, he had sold or hypothecated securities of his customers and was short on securities which he should have had in his possession for delivery to them to the amount in value of \$78,716.38. The proof shows that in one or more instances after the securities had been sold, the customer was required to deposit further sums of money as margin on his account, and in one or more instances dividends were forwarded as having been paid on securities which had previously been sold.”

Securities and Exchange Commission. v. Timetrust, Incorporated, et al. -- On April 5, 1939, the Commission brought an action for an injunction in the United States District Court for the Northern District of California to restrain Timetrust, Incorporated, Bank of America National Trust & Savings Association, Meredith Parker, Ralph W. Wood, H. E. Blanchett, A. P. Giannini, L. Mario Giannini, and John M. Grant from continuing to violate Section 17 (a) (2) of the Securities Act of 1933 by engaging in alleged fraudulent acts and practices in the sale of Timetrust certificates and Bank of America stock. Each of

the defendants moved to dismiss, for a more definite statement or bill of particulars, and to strike alleged redundant and immaterial matter from the Commission's complaint.

On June 10, 1939, the court held on these motions that Timetrust certificates were securities as defined in the statute; that Section 17 applied to fraudulent sales of securities by use of the mails wholly within one State; that the Commission's complaint conformed fully with the new Rules of Civil Procedure; that the allegations charging the defendants Grant, A. P. Giannini, L. Mario Giannini, and Bank of America with aiding and abetting the actions of Timetrust were not defective; and that since a simple and expeditious method of discovery was provided by the new Rules of Civil Procedure, a more definite statement or bill of particulars, which would delay trial, should be denied.

Securities and Exchange Commission v. Universal Service Association et al. -- On June 23, 1939, the United States Circuit Court of Appeals for the Seventh Circuit unanimously affirmed an order of the District Court for the Northern District of Illinois enjoining Universal Service Association and certain individuals from violating the registration and fraud provisions of the Securities Act of 1933 in the sale of subscriptions and memberships in the Association and in the Universal Order of Plenocrats. [Footnote: See Fourth Annual Report.] A petition for rehearing is pending.

While the appeal was pending, the defendants continued their activities, and on June 22, 1939, in proceedings instigated by the Commission, the Association was adjudged in contempt of court and was fined \$1,000, and C. Franklin Davis, one of the promoters, was sentenced to serve six months in jail. From this judgment an appeal is pending before the United States Circuit Court of Appeals for the Seventh Circuit.

Resources Corporation International v. Securities and Exchange Commission. -- On July 5, 1938, Resources Corporation International, a Delaware corporation controlling other corporations owning, leasing, and selling timber and ranch lands in Mexico, brought an action in the United States District Court for the District of Columbia to enjoin the Commission from holding further hearings or taking other action in a proceeding instituted by it on March 21, 1938, to determine whether a stop order should issue suspending the effectiveness of a registration statement filed by the plaintiff on February 28, 1938, and from, engaging in alleged unlawful activity which the plaintiff claimed was injuring its business. The plaintiff also prayed that a mandatory injunction issue requiring the Commission to vacate an order issued in the course of the stop order proceeding, denying plaintiff leave to withdraw its registration statement, and that an order issue directing the Commission to return the plaintiff's records.

In a memorandum opinion filed on July 19, 1938 (24 F. Supp. 580), the court dismissed the complaint, holding that the Commission's action in denying plaintiff leave to withdraw was interlocutory, that it could avail itself of a method of review provided by the Securities Act of 1933 when a final order issued and that the statutory method of review was exclusive. [Footnote: On June 17, 1938, the Circuit Court of Appeals for the Seventh

Circuit for similar reasons refund to review the order denying plaintiff the right to withdraw (97 F. (2d) 788).] From this ruling the plaintiff appealed.

On February 27, 1939, the United States Court of Appeals for the District of Columbia affirmed the order of the trial court (103 F. (2d) 929). In so doing the court distinguished the case from *Jones v. Securities and Exchange Commission* (298 U. S. 1), and held that the plaintiff did not have an unqualified right to withdraw after its registration statement became effective, and that the Commission could properly find that withdrawal would not be consistent with the public interest, notwithstanding the fact that the stock covered by the registration statement constituted only a small part of the total issue and that none had been sold prior to the filing of the application for withdrawal.

Securities and Exchange, Commission v. Cultivated Oyster Farms Corporation et al. -- On March 22, 1939, Judge Louie W. Strum of the United States District Court for the Southern District of Florida signed an order permanently enjoining Cultivated Oyster Farms Corporation and William Lee Popham from violating the registration and fraud provisions of the Securities Act of 1933 in the sale of interests in a project, the alleged object of which was the cultivation and marketing of oysters. The court found the defendant's promises of profit were so exaggerated that they were prima facie fraudulent.

Securities and Exchange Commission v. Fidelity Investment Association. -- On December 14, 1938, the Commission commenced an action for an injunction in the United States District Court for the Eastern District of Michigan in Detroit against Fidelity Investment Association of Wheeling, West Virginia, alleging that the defendant had engaged in fraudulent practices in violation of the Securities Act of 1933 in connection with the sale of investment contract certificates sold on a deferred payment plan. The complaint alleged, that the defendant, operating through 58 district offices, had sold approximately \$600,000,000 face amount of certificates throughout the country, on which some 60,000 persons were then making monthly payments.

Acting upon the Commission's verified complaint, accompanying affidavits, and the defendant's consent to the entry of a final judgment, the court, on December 22, 1938, permanently enjoined the defendant, its officers, directors, and employees in selling the contracts, from depositing with West Virginia or any other State insufficient securities or securities which did not meet deposit requirements; failing to segregate and maintain sufficient statutory deposits against appropriate liabilities; failing to create and maintain separate contract reserve funds or permitting cash overdrafts between various funds; failing to maintain cash reserves; transferring to defendant's general fund gains belonging to contract funds, or transferring securities from one fund to another; paying dividends, except from earned surplus; purchasing securities to the personal benefit of anyone connected with the defendant; and maintaining subsidiaries to conceal the nature or amount of indebtedness or investments.

In addition, the defendant was enjoined from making false or misleading statements with respect to its financial statements, the extent or availability of its reserves or assets, the cost of its portfolio securities, the rating and liquidity of its investments, its earnings or financial condition, its method of meeting maturities, the costs of the contract certificates to investors, the amounts payable to or withdrawable by investors, and the yield to investors.

Bank of America National Trust & Savings Association v. William O. Douglas et al. -- On January 16, 1939, the Bank of America National Trust & Savings Association, a national banking association, brought an action in the United States District Court for the District of Columbia against individual members of the Commission and certain of its officers. The action was an outgrowth of a proceeding instituted by the Commission on November 22, 1938, under Section 19 (a) (2) of the Securities Exchange Act of 1934, to determine whether it was necessary or appropriate for the protection of investors to suspend or withdraw the registration of the \$2 par value stock of Transamerica Corporation, which corporation, during the years 1934-1936, owned all of the capital stock of the plaintiff bank. The purpose of the action was to restrain the defendants from investigating its affairs, attempting by subpoena to secure its books and records, and from publicizing information concerning the plaintiff contained in a national bank examiner's reports made available to the Commission by the Secretary of the Treasury. The plaintiff also sought a declaratory judgment that neither the Federal Reserve Act, the National Bank Act, nor the Securities Exchange Act of 1934 authorized the release or publication of the bank examiner's reports. The defendants moved to dismiss the action, asserting that the court was without jurisdiction and that neither the action of the Secretary of the Treasury nor the Commission was contrary to law.

On January 31, 1939, the court, after hearing, held that it had jurisdiction and that the action was not prematurely brought; that although the Commission intended to make an appraisal and valuation of a substantial portion of the plaintiff's assets and to investigate its reserves, such action did not constitute the exercise of any visitorial power over the bank; that even if it were visitorial, it was not unlawful; and that the Secretary of the Treasury was authorized to furnish the reports to the Commission for its official use. Judgment was accordingly entered dismissing the complaint, from which the plaintiff took an appeal.

On May 8, 1939, the United States Court of Appeals for the District of Columbia handed down an opinion, in part affirming and in part reversing the decision of the District Court. The Court of Appeals held that the delivery to the Commission by the Secretary of the Treasury of the Examiner's reports was authorized and legal; that their use in proceedings to obtain the necessary facts and information whereby to carry out the investigatory function of the Commission was proper; that except to the extent necessary to carry out the purpose mentioned, the reports should be treated as confidential, and that the subpoenas were unreasonable and should not be enforced, since they required the plaintiff to remove so many of its books and records from San Francisco to Washington that compliance therewith would "for all practical purposes, close the Bank." The cause was remanded to

the District Court with directions to vacate the decree dismissing the complaint, but with instructions that, since the subpoenas had expired, no injunction need issue.

In re Verser-Clay Co, et al. -- On August 31, 1938, the United States Circuit Court of Appeals for the Tenth Circuit affirmed an order (98 F. (2d) 859) of the District Court for the Western District of Oklahoma directing E. C. Clay, as President of Verser-Clay Company and the Mid-Continent Crude Oil Purchasing Company, to appear before an officer of the Commission and produce certain books, records, and documents of those companies which he had refused to produce in obedience to subpoenas duces tecum issued on November 18, 1935, in an investigation of alleged violations of the Securities Act of 1933. The basis of the respondent's refusal to produce the records of the companies was that they were being sought for use in a pending criminal proceeding in the District of Columbia in which he was a defendant, and that they might incriminate him. To this argument the Circuit Court of Appeals replied:

“* * * Clay can not claim the constitutional privilege for the acts of the corporations. (citing cases) It may be true that there is something in the corporate books and documents that shows personal acts of Clay that tend to incriminate him. If so, he had an opportunity to present them to the District Judge and ask that he be protected in his constitutional right, but he sought no protection in that respect. It is not claimed that when he was on the witness stand any question was asked the answer to which would tend to incriminate him. Clearly the privilege asserted by him does not extend to the two corporations. * * *”

Securities and Exchange Commission v. Gold Hub Mines Company et al. -- On January 9, 1939, the Commission instituted an action for injunction in the United States District Court for the District of Colorado against Gold Hub Mines Company and others, alleging that the defendants, in violation of Section 17 (a) of the Securities Act of 1933, were inducing sales of Gold Hub stock by means of untrue and misleading statements concerning the value and extent of certain gold and tungsten deposits, the need for erecting a mill, and the reason for abandoning certain mining operations.

On January 26, 1939, the court, after hearing much expert testimony on both sides, dismissed the complaint, holding in substance that since the experts differed as to the character of the deposits, and since the statements made by the defendants were, according to his view, very largely expressions of opinion not entirely without justification, the Commission had not proved its case.

Securities and Exchange Commission v. Edward A. Sloane et al. -- On April 15, 1939, Edward A. Sloane and Edward P. Tuber consented in the United States District Court for the Northern District of Illinois to the entry of a judgment restraining them individually and as co-partners, doing business under the name of A. D. Lowe & Associates, from effecting over-the-counter transactions in securities without having registered under the broker-dealer provisions of the Securities Exchange Act of 1934, and from inducing their customers, by means of deceptive and fraudulent devices and contrivances, to sell

securities which they owned and apply the proceeds to the purchase of whiskey warehouse receipts. The Commission's complaint charged that the defendants misrepresented the value of the securities delivered to them for sale and the value of the whiskey warehouse receipts purchased.

Securities and Exchange Commission v. E. S. Hansberger. -- On March 2, 1939, the Commission instituted an action in the United States District Court for the Western District of Oklahoma alleging that E. S. Hansberger, individually and as trustee, was engaged in selling securities, entitled "Founder Member Certificates, Producers Finance Corporation, in Process of Organization," through the mails without the same having been registered under the Securities Act of 1933, and requested the issuance of an injunction restraining further sales.

The defendant contended that the securities were exempt from registration under Rule 200 of the Commission's General Rules and Regulations under the Securities Act of 1933, which rule in general exempts offerings under \$30,000. In rejecting this contention and granting the injunction, the court, on April 28, 1939, held that the securities represented interests or rights of participation in a trust, a substantial portion of the assets of which consisted of oil and gas leasehold interests and rights, and that subparagraph (5) of Rule 200 specifically excluded from the application of the Rule securities of this type (27 F. Supp. 846).

Securities and Exchange Commission v. James B. Macon et al. -- On February 1, 1939, the United States District Court for the District of Colorado, in an action instituted by the Commission on November 1, 1938, to enjoin violations of Section 17 (a) of the Securities Act of 1933 in the sale of Butler Oil & Refining Company common stock, handed down an opinion granting an injunction restraining James II. Macon, Erie Schley, H. O. Bartholomew, Butler Oil & Refining Company, and Macon & Company, Inc., from making untrue and misleading statements in the sale of the stock concerning the likelihood of a new gusher being discovered on defendant's property, the results of tests thereon, the quantity of oil and gas discovered, and arrangements made with a purchasing company to pipe the same.

Securities and Exchange Commission v. R. H. Carleton et al. -- In this case, a companion case to *Securities and Exchange Commission v. James B. Macon et al.*, instituted by the Commission on the same day (November 1, 1938), the United States District Court for the District of Colorado, on February 3, 1939, handed down an opinion granting an injunction restraining R. H. Carleton and Davenport & Company, Inc., from violating Section 17 (a) (2) of the Securities Act of 1933, in the sale of Butler Oil & Refining Company common stock by making untrue and misleading statements similar in character to some of those involved in the Macon case.

Boise Petroleum Corporation and C. S. Hassler. -- On June 7, 1937, Boise Petroleum Corporation and its sales manager, C. S. Hassler, were fined \$500 and \$300, respectively,

in the United States District Court for the District of Idaho for criminal contempt arising out of a failure to observe a decree restraining them from violating the registration and fraud provisions of the Securities Act of 1933 in the sale of certain oil and gas leasehold interests and from acting as brokers or dealers in securities unless registered as such under the Securities Exchange Act of 1934. [Footnote: See Third Annual Report.]

On October 8, 1938, the defendants were again found guilty of contempt by the same court. For this second offense Hassler was sentenced to serve six months in jail and fined \$500; Boise Petroleum Corporation and C. S. Hassler, Inc., were fined \$250 each; and John T. Glass was fined \$500.

John Lawless, Jr. v. Securities and Exchange Commission et al. -- On April 11, 1939, the United States Circuit Court of Appeals for the First Circuit handed down the first decision reviewing action of the Commission under the Public Utility Holding Company Act of 1935. [Footnote: Prior to the rendering of this decision two other petitions for review of Commission orders under the Public Utility Holding Company Act of 1935 had been filed. One of these, filed by Houston Natural Gas Corporation, was, on motion of the Commission, dismissed for want of jurisdiction; the other, filed on October 3, 1938, by Utilities Employees Securities Company in the Circuit Court of Appeals for the Third Circuit, was dismissed upon stipulation after the refusal of the Court to grant a temporary stay pending hearing on the petition for review.] International Paper and Power Company had filed with the Commission an application asking for (1) a report "in the manner provided in Section 11(g) (2) of said Act" upon a plan for change in capitalization which the company desired to propose for the approval and authorization of its shareholders, and (2) for 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. On September 11, 1937, John Lawless, Jr., a stockholder of International Paper and Power Company who had appeared before the Commission in opposition to the application, filed his petition for review of the action of the Commission in issuing the report and order applied for.

At the time International Paper and Power Company filed its application with regard to the plan for change in capitalization, and at the time of the Commission's report and order thereon, there were pending before the Commission two other applications by the company, one for exemption under Section 3 (a) (5) of the Act, and the other for an order under Section 2 (a) (8) of the Act declaring that certain other companies were not its subsidiaries. The pendency of these applications, if filed in good faith, served under the statute to afford the company a temporary exemption from the requirements of the Act. At the times in question, therefore, the company had neither registered as a holding company nor been declared not to be a holding company. [Footnote: International Paper and Power Company has since been declared not to be a holding company (Holding Company Act Release No. 1515).]

In the proceedings for review it was contended, as it had been before the Commission, that the company, although an unregistered holding company, was justified in seeking

Commission action with regard to the plan for change in capitalization because of the fact that if the temporary exemption which the company claimed to enjoy should be terminated 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. The Circuit Court of Appeals for the First Circuit held that “unregistered companies” are not entitled to the benefits conferred by the Public Utility Holding Company Act of 1935, and that therefore the Commission was without power or authority to issue the order in question. Accordingly, the court vacated the Commission’s order and remanded the cause to the Commission for further proceedings not inconsistent with its opinion. [Footnote: After the close of the fiscal year, and on November 30, 1930, the Commission issued a further opinion and an order dismissing the application in question. (Holding Company Act Release No. 1812)]

Austin Silver Mining Company v. Securities and Exchange Commission. -- On July 13, 1938, the Commission issued an order under Section 8 (d) of the Securities Act of 1933 suspending the effectiveness of a registration statement filed by Austin Silver Mining Company. Thereafter on August 6 and 26, 1938, the company filed amendments designed to eliminate the deficiencies upon which the Commission’s order was based, and on August 30, 1938, the Commission declared that the registration statement had been amended in accordance with the stop order and directed that the stop order should cease to be effective.

After the stop order had thus been lifted, the company, on September 10, 1938, filed a petition in the United States Court of Appeals for the District of Columbia for review of the record, order, and proceedings before the Commission. The Commission moved to dismiss the petition for review on the ground that since the stop order had been lifted prior to the filing of the petition for review the questions raised by the petition for review had become moot. The question whether a stop order which has been lifted following the filing of amendments can nevertheless be reviewed by an appellate court was thus presented for the first time in any court.

On March 4, 1939, the Court of Appeals denied the motion to dismiss without opinion. The Commission then filed a memorandum requesting the Court to issue an opinion setting forth its reasons for so ruling. On May 24, 1939, the court set aside its earlier order, and granted the motion to dismiss the petition for review, stating:

Upon re-examination and reconsideration of the Commission’s petition to dismiss, we are of the opinion that the action of the Commission in annulling its formal order leaves nothing for us to review, and consequently that the petition to dismiss should be granted.

Houston Natural Gas Corporation v. Securities and Exchange Commission. -- On November 10, 1938, the Fourth Circuit Court of Appeals dismissed a petition by the Houston Natural Gas Corporation to review an order of the Securities and Exchange Commission denying the petitioner an exemption as a holding company from the

provisions of the Public Utility Holding Company Act of 1935. The court held that the order of the Commission is “. . . negative in form and substance” and that under applicable cases decided by the United States Supreme Court, orders of this character are not subject to review (100 F. 2d 5). The petitioner did not appeal from the decision of the Circuit Court of Appeals. Subsequently, in cases involving the Federal Power Commission and the Federal Communications Commission, the United States Supreme Court overruled the “negative order” doctrine, and held that such orders are now reviewable.

Criminal Proceedings

Up to July 1, 1939, 1096 persons had been indicted in 158 cases which had been referred by the Commission to the Department of Justice for criminal prosecution. During the fiscal year, 46 indictments were returned against 285 persons. Fifty-one additional cases were referred to the Department of Justice for criminal prosecution. In 98 cases disposed of before the close of the fiscal year, 403 defendants were convicted. In 39 cases which had been referred to the Department of Justice, 95 persons were convicted during the past fiscal year.

In addition to the foregoing, seven persons were indicted during the past fiscal year for perjury alleged to have been committed in the course of Commission investigations; one case involving one of these defendants was disposed of during the fiscal year and resulted in a conviction. [Footnote: On October 10, 1928, the United States Supreme Court denied a petition for a writ of certiorari in the case of *United States v. Woolley*, in which the defendant Woolley had previously been convicted of perjury in the course of a Commission investigation.]

Up to July 1, 1939, the Commission had secured the citation of 19 defendants in 5 proceedings for contempt of injunctions which had been secured by the Commission. Nine of these defendants were found guilty of contempt of court and sentenced; three were found guilty during the past fiscal year.

A brief description and the status of the criminal cases filed or pending during the year ended June 30, 1939, are outlined in the tables comprising Appendix VI of this report. A more detailed description of some of the more important cases follows.

Kopald-Quinn & Company et al. v. United States. -- On February 16, 1939, the Circuit Court of Appeals for the Fifth Circuit affirmed the conviction of four defendants, Joseph H. Mendelson, Leonard I. Sutterman, Joseph N. Sherman, and Kopald-Quinn & Company, for violations of the Securities Act of 1933 and conspiracy to violate that Act. The petitions for certiorari were denied by the Supreme Court of the United States on May 15, 1939. Sherman, Mendelson, and Sutterman had been sentenced to serve 5 years on 1 count and 2 years on another count, to run concurrently, Kopald-Quinn & Company was fined \$5,000 on each of 11 counts in the indictment.

The sentences of two, other defendants, Joseph Ricebaum and Gould & Company, were affirmed in part and reversed in part. Ricebaum had been sentenced to serve 3 years on count 1 and 2 years on count 15, to run concurrently, Gould & Company had been fined \$5,000 on both counts 1 and 15. The convictions of Ricebaum and Gould & Company were reversed as to count 1, but affirmed as to count 15.

The defendants had been charged with employment of a scheme to defraud, involving the sale of securities through various investment firms and corporations by means of false representations and manipulative activities. The use of the mails, charged in the indictment, was the mailing of confirmation slips. The defendants argued that these slips were not used "in the sale" of the securities and were not fraudulent per se and consequently the mailing was not sufficient to bring the transactions within the scope of Section 17 of the Securities Act of 1933. The Court of Appeals held that such a construction unduly narrowed the language used in the Securities Act and unduly limited its scope and effect.

Troutman et al v. United States. -- On December 8, 1938, the Circuit Court of Appeals for the Tenth Circuit affirmed the conviction of Percival H. Troutman, President of the Union Trust Company of Denver, Colorado, and Ralph L. Young, President of the Bankers National Securities Corporation. Petitions for *certiorari* were denied by the Supreme Court of the United States on March 13, 1939.

Troutman had been sentenced to serve five years in Leavenworth and fined \$2,500. Young was sentenced to serve 15 months for conspiracy. The indictment charged that the defendants had made false representations in the sale of stock agreements and that operations of the companies under the control of the defendants were largely carried on by means of the so-called "sell and switch" device, by means of which large numbers of persons in many states were induced to switch out of one kind of trust unit into another unit or stock of corporations affiliated with the Union Trust Company.

The defendants contended that the count charging violation of the Securities Act of 1933 was faulty in that it accused the defendants of violating all three sub-paragraphs of Section 17 (a) of that Act. The court held that where the statute denounces several acts as a crime they may be charged in one indictment or a single count if connected in the conjunctive. The court also held that it was proper to admit evidence of the failure of the Union Deposit Company to forward to the trustee for safekeeping monies collected from investors as it was required to do by the terms of the trust indentures. The court held that such evidence was clearly admissible for the purpose of shedding light upon the good or bad faith with which the plan to sell the stock was formed.

United States v. Norman Berry et al. -- Eight officers and salesmen of Norman Berry & Company of Detroit, Michigan, were convicted in the United States District Court for the Eastern District of Michigan of violations of the fraud provisions of the Securities Act of 1933. On December 30, 1938, and January 5, 1939, the defendants were sentenced to terms

of imprisonment ranging from one to seven years, and six of the defendants received fines of \$1,000 each. An additional defendant, Samuel Lachman, pleaded *nolo contendere* and was sentenced to serve three years imprisonment.

It was charged in the indictment that the customers of Norman Berry & Company were persuaded by means of misrepresentations to purchase well known securities listed on the New York Stock Exchange and other national securities exchanges through that company, pay one-half of the purchase price in cash and arrange to pay the balance through a loan agreement with United Acceptance Corporation, an affiliate which was insolvent. The securities were then pledged - with United Acceptance Corporation as collateral for the loan, and, without the knowledge or consent of the customer, were sold out and the proceeds converted by the defendants. The indictment also charged that many of the customers orders were "bucketed," that is, the customers orders were accepted but never executed, and the money paid in by the customers kept by the defendants.

McKesson & Robbins, Inc. -- On December 15, 1938, the notorious Musica brothers, together with McKesson & Robbins, Inc., were indicted in the United States District Court for the Southern District of New York, for violations of the Securities Exchange Act of 1934 in connection with false and misleading statements made in annual reports filed with the New York Stock Exchange and the Securities and Exchange Commission. The statements were charged to be false in that they reflected fictitious assets, consisting of large items of inventory and accounts receivable, which did not exist. Philip Musica, alias F. Donald Coster, president of the company, committed suicide. George Musica, alias George Dietrich, secretary of the company, and Arthur Musica, alias George Bernard, pleaded guilty.

On March 30, 1939, another indictment was returned charging John H. McGlooin, Vice-President, Horace B. Merwin, Director and Treasurer, Rowley W. Phillips, Director, Benjamin Simon, Leonard Jenkins, John. O. Jenkins and the Musica brothers with violations of the Securities Exchange Act of 1934, conspiracy, and mail fraud. This indictment charged that the defendants planned and conspired to inflate the assets of McKesson and Robbins and affiliated corporations by means of fictitious purchases and sales, and that they fraudulently caused the companies to pay out fees and commissions to various other companies for services which were not performed. It was further charged that the defendants caused to be paid dividends and pretended that these dividends were being paid out of earnings and profits, when, in fact, the earnings were in whole or in part fictitious, and that the defendants participated in the filing of financial reports which included fictitious items of inventory, accounts receivable, cash in banks; sales, earnings, and profits, all for the purpose of deceiving the security holders of the company.

United States v. Parkinson. -- On March 29, 1939, J. B. Parkinson of Dallas, Texas, was sentenced in the United States District Court for the Southern District of Texas to serve 2 years in the Southwestern Reformatory for violation of the fraud provisions of the Securities Act of 1933. Parkinson pleaded guilty to a 10 count indictment which charged

that the defendant operated a “bucket shop” in the city of Houston, Texas. The indictment charged that the defendant represented that he was in the legitimate securities brokerage business, sent out confirmations of the execution of orders, and credited customers with dividends, when, in fact, he never executed the orders and never purchased any stock for the customers. Parkinson also operated branch offices at Austin, San Antonio, Port Arthur, Beaumont, and Luling, Texas.

United States v. Gage. -- On February 16, 1939, E. P. Gage was convicted in the United States District Court for the Southern District of Florida for a violation of the Mail Fraud Statute in an indictment which charged him with engaging in the “advance fee” or “front money” racket. Gage held himself out as a specialist in the raising of capital for small businesses by the sale of stock and the registering of such stock issues with the Securities and Exchange Commission. He was sentenced to serve a year and a day and placed on probation for 5 years.

United States v. Whealton et al. -- After a trial lasting more than 2 months, M. F. Whealton, Philip L. Coffin, Jr., Whealton Company, Inc., and Commonwealth Trust Company were convicted in the United States District Court for New Jersey of using the mails to defraud in the sale of oil royalty trust certificates. The defendants formed a trust, put oil properties into it at large secret profits to themselves, and supplied the trustee with funds not earned by the trust so as to permit payment by the trustee of monthly dividends, reports of which were disseminated to certificate holders. Sentences were imposed as follows: Whealton, 2.5 years; Coffin, 1 year and a day; Whealton Company, Inc., \$10,000 fine; and Commonwealth Trust Company, \$4,000 fine. An appeal has been taken from these sentences.

United States v. Rogers et al. -- On March 23, 1939, Nathan Rogers, William W. Rogers, Landry P. Locke, and Ralph A. Buchele pleaded guilty, and Albert G. Kleinschmidt pleaded *nolo contendere* to an indictment charging them with violations of the Securities Act of 1933 and of the Mail Fraud Statute in the conduct of the business of N. L. Rogers and Company, Inc., a brokerage company of Peoria, Illinois. The indictment charged them with “bucketing” customers orders and the conversion of customers’ securities to their own benefit. Rogers was sentenced to a 5-year term and the other defendants were placed on probation for 3 years.

United States v. Jefferson et al. -- On December 10, 1938, Robert J. Jefferson, Perry R. Smith, Kenneth C. Neierdiercks, and Skyring Thorne Smith were sentenced in the United States District Court for the Southern District of New York following their pleas of guilty to an indictment charging them with violations of the fraud section of the Securities Act of 1933 and the Mail Fraud Statute. The indictment charged them with the fraudulent sale of the stock of the Carnation Gold Mining Company, Ltd. Jefferson was sentenced to serve 1 year and 1 day and placed on probation for 3 years; Perry R. Smith was sentenced to serve 1 year and 1 day and placed on probation for 5 years; Neierdiercks was sentenced to serve 6 months and placed on probation for 5 years; and Skyring Thorne Smith was sentenced to

serve 6 months, which sentence was suspended, and he was placed on probation for 3 years.

United States v. John G. Anderson et al. -- On March 4, 1939, Elias Stone and Harold F. Stone, of New York City, and John G. Anderson, E. T. Shaw, and Sam G. Kennedy, of Knoxville, Tenn., were convicted of violations of the Securities Act of 1933, after 7 weeks of trial in the United States District Court for the Eastern District of Tennessee. All defendants were sentenced to 7 years imprisonment. The defendants were charged with making false representations in connection with the sale of stock of Television and Electric Corporation of America and Television and Projector Corporation. The Stones were underwriters for the stock and the other three defendants were dealers or sub-distributors. The dealers sold the stock to a large number of investors in 26 states. The indictment charged that the defendants falsely represented that the Company was on an earning basis, had developed a receiving set for general home use, and that the stock was to be listed on the New York Stock Exchange. The defendants have filed a notice of appeal.

United States v. Buckner et al. -- William P. Buckner, Jr., Felipe Buencamino, and William J. Gillespie were found guilty in New York of fraud and conspiracy in connection with the operations of a committee for the protection of holders of Philippine Railway Company bonds. [Footnote: On July 6, 1939, Buckner was sentenced to a term of imprisonment of 2 years and fined \$2,500. Buencamino and Gillespie were sentenced to 18 months imprisonment and fined \$5,000 and \$2,500, respectively.] Two other defendants, C. Wesley Turner and John Stewart Hyde, were acquitted. The indictment charged that the defendants represented to the public that they would negotiate for the redemption of the bonds at or about their face value, and received contributions from holders of the bonds which were to be used for the payment of the necessary committee expenses, when, in fact, it was planned on the part of the defendants to convert these contributions, and to conceal from the holders of the bonds the true status of the negotiations for the redemption of the securities. At the trial it was shown that Buckner had spent large sums of money, contributed by the bondholders, in lobbying activities and in attempts improperly to influence action by the Philippine Government.

United States v. Roubay et al. -- Seven officers and employees of Acceptance and Exchange Corporation and Comanche Mining and Reduction Company were convicted in the United States District Court for the Southern District of California on September 26, 1938, for fraud in connection with the sale of securities of Acceptance and Exchange Corporation. Paul B. Roubay, Treasurer, was sentenced to a total of 634 years imprisonment, and M. E. Waggoner was given a term of 4 years imprisonment. The other defendants found guilty were placed on probation for 2 years. The indictment charged that the defendants falsely represented that the Comanche Mining and Reduction Company had on deposit gold and silver bullion of great value available as collateral for trade acceptances, which had been issued by the defendants in the face amount of \$1,160,000, that the trade acceptances were amply secured by the indemnity bonds, that Acceptance and Exchange Corporation had a net worth of over \$19,000,000, and that Comanche

Mining had a net worth of over \$9,000,000. It was further charged that defendants would pretend to make loans to members of the public which they never intended to fulfill, and that they procured and misappropriated an advance fee of 10 percent of the loans. Roubay and Waggoner have taken appeals.

United States v. Platt et al. -- On June 1, 1939, the United States District Court for the Eastern District of New York dismissed a writ of habeas corpus sued out by Moe Platt. The petition alleged that he was improperly held by the United States Commissioner for removal and trial under an indictment in the District Court for the Western District of Pennsylvania. The writ was accompanied by a petition for a writ of *certiorari* to review the removal proceedings. The Government contended that Platt had waived his right to review the ruling of the Commissioner by electing to give bail for his appearance and trial in the Pennsylvania District Court, which position was sustained by the court. The court went on to consider the evidence submitted to the Commissioner and held that such proof justified the order of removal.

The indictment, returned February 22, 1938, charged Platt and six others with violations of the Securities Act of 1933, in connection with the sale of the stock of the Backbone Gold Mining Company -by means of representation with respect to the rising price of that stock in the over-the-counter market and omissions to state the extent of the influence of the defendants on the market price of that stock.

On June 15, 1939, Platt, together with John J. McKee, former accountant-investigator with the Securities and Exchange Commission, were indicted for conspiracy to defraud the United States of and concerning its governmental function of administering the Securities Act of 1933 and the Securities Exchange Act of 1934. The indictment charged that the conspiracy involved the acceptance by McKee from Platt of sums of money and other presents, rewards, and loans during the period of McKee's employment with the Commission, and that, in return, McKee would counsel and advise Platt with respect to ways and means of defeating an investigation to determine whether Platt and others had violated the provisions of the Securities Act of 1933.

Criminal Cases in Which Certiorari was Denied by the United States Supreme Court During the Past Fiscal Year.

In *United States v. Benjamin A. Bogy et al.*, four defendants were convicted of violation of the Securities Act of 1933 in connection with the sale of trust agreements and securities of a group of corporations and investment trusts by means of false representations. Bogy and Spaulding appealed. On May 9, 1938, the Circuit Court of Appeals for the Sixth Circuit sustained their convictions. Bogy filed a petition for writ of certiorari, which was denied on October 10, 1938.

In *United States v. J. E. Freeman et al.*, three defendants were convicted of violation of the Securities Act of 1933 in connection with the sale of stock of an oil royalty company by

means of fraudulent representations. On appeal, their convictions were sustained by the Circuit Court of Appeals for the Fifth Circuit On April 14, 1937. Taylor and Freeman filed petitions for writs of *certiorari*. The petitions were denied October 10, 1938.

In *United States v. Kopald-Quinn & Company et al.*, six defendants were convicted of violation of the fraud provisions of the Securities Act of 1933 and conspiracy in connection with the sale -of securities through various investment firms and corporations by means of false representations and manipulative activities. On February 16, 1939, the Circuit Court of Appeals for the Fifth Circuit affirmed the convictions of four of the defendants, but reversed the sentences of the other two defendants as to one count, and sustained them as to the conspiracy count. Petitions for *certiorari* were denied May 15, 1939.

In *United States v. Irwin Kott et al.*, four defendants were convicted of violation of the Securities Act of 1933 in connection with the sale of forged bonds. One defendant, Seeman, appealed. On May 26, 1937, the Circuit Court of Appeals for the Fifth Circuit reversed the holding of the lower court and remanded the cause for a new trial. Seeman was again convicted. His sentence was affirmed by the Circuit Court of Appeals for the Fifth Circuit on May 10, 1938. Petition for *certiorari* was denied October 10, 1938.

In *United States v. C. J. Morley et al*, five defendants were convicted of fraud in connection with the operation of a “bucket shop” C. J. Morley appealed. His conviction was sustained by the Circuit Court of Appeals for the Seventh Circuit on October 20, 1938. Petition for *certiorari* was denied February 3, 1939.

In *United States v. W. W. Porter*, the defendant was convicted of fraud in connection with the operation of a pretended investment concern. He appealed and the conviction was affirmed by the Circuit Court of Appeals for the Seventh Circuit on April 6, 1938. Petition for *certiorari* was denied October 10, 1938.

In *United States v. Percival H. Troutman et al.*, two defendants were convicted of violation of the Securities Act of 1933 in connection with the sale of stock agreements by means of fraudulent representations. Both defendants appealed and their convictions were affirmed by the Circuit Court of Appeals for the Tenth Circuit on December 8, 1938. Petitions for *certiorari* were denied March 13, 1939.

In *United States v. Woolley*, Ernest R. Woolley was convicted of perjury before an Examiner of the Securities and Exchange Commission. Woolley appealed and his conviction was sustained by the Circuit Court of Appeals for the Ninth Circuit on May 31, 1938. Petition for *certiorari* was denied October 10, 1938.

RULES AND REGULATIONS

During the fiscal year ended June 30, 1939, the Commission continued work on the revision of its rules, regulations, and forms pertaining to the registration of securities and periodic reports by issuers under the Securities Act of 1933 and the Securities Exchange Act of 1934. During the fiscal year, the Commission adopted 3 new rules and 4 amendments to 3 existing rules under the Securities Act of 1933 and adopted 11 new rules and 7 amendments to 6 existing rules under the Securities Exchange Act of 1934.

The new accounting handbook, referred to in the Commission's Fourth Annual Report, governing the form and content of financial statements filed with registration statements, applications and reports under both Acts, was virtually completed. Substantial progress also was made in the revision of the forms for registration and reporting. Drafts of three forms for registration of securities under the Securities Act of 1933 were transmitted to a considerable number of accountants, lawyers, investment bankers, security analysts, and other interested persons for criticism. One of these forms is designed for registration of oil or gas interests or rights, one for securities of fixed investment trusts, and one for securities of recently organized issuers. These proposed forms were being re-examined at the end of the fiscal year in the light of the criticisms received thereon.

It might be well to recall that the first registration form employed under the Securities Act of 1933 was devised in consultation with some of the country's most experienced lawyers and accountants who for years had been counsel to issuers and underwriters. Since it was early recognized that attention had to be given to the specialized requirements of different classes of issuers inasmuch as, for example, questions designed to elicit useful information from a long-established manufacturing company would scarcely be adaptable to a new promotional mining enterprise, experts in particular industries were likewise drafted to assist in the preparation of initial forms and rules which would be suited to the special needs of their respective fields. The continuation of this practice of utilizing the assistance of all such experts in the Commission's work on the substantial revision of the whole schedule of forms is calculated to make the prospective revisions most serviceable both to investors and registrants, and in the end it will sharpen questions used therein to the conditions of particular types of investors. The entire structure of forms and related rules and regulations is designed to secure a fair and, at the same time, business-like presentation of material information required under the statutes.

On November 21, 1938, the Commission adopted a new rule (Rule 522) authorizing the omission from registration statements filed under the Securities Act of 1933, and from prospectuses relating to securities so registered, of the details of any tentative plan relating to Section 11 (b) of the Public Utility Holding Company Act of 1935 which was submitted informally to the Commission by the registrant or any of its parents or subsidiaries prior to December 1, 1938, pursuant to the Commission's request of August 3, 1938. The purpose of the rule is to relieve registrants of the additional burden of thus setting forth the details of such tentative plans, permitting them in such cases instead to make merely an appropriate reference in the registration statement and the prospectus to the provisions of

Section 11 (b) and a statement to the effect that such tentative plan has been, or was to be, so submitted.

On February 9, 1939, the Commission adopted a new rule (Rule 827) under the Securities Act of 1933, requiring prospectuses relating to securities registered for public sale to contain a statement of intention to stabilize the price of the securities, where the issuer or any of the underwriters has grounds to believe that stabilization is contemplated. This rule was adopted concurrently with Rule X-17A-2, under the Securities Exchange Act of 1934, which requires certain daily reports regarding stabilizing activities, and which is discussed elsewhere in this report. [Footnote: It is important to note that these two particular rules require only the filing of additional information in prospectuses and the filing of reports, and do not purport to regulate transactions effected (or the purpose of pegging, fixing, or stabilizing security prices. Thus they are not a substitute for regulation pursuant to Section 9 (a) (6) of the Securities Exchange Act of 1934, and the disclosure and reporting requirements of these rules in no wise limit the applicability or operation of the statutes administered by the Commission which prohibit manipulative or fraudulent practices. It is anticipated that the disclosures required will facilitate the Commission's enforcement of the statutes and assist in its continuing study of the many problems incident to stabilization.]

During the fiscal year, a few other changes were made in the existing rules and regulations under the Securities Exchange Act of 1934 relating to the registration of securities on exchanges and reports by issuers of such securities. One of these changes resulted from the necessity of prescribing the appropriate form for registration of securities of motor carriers making annual reports to the Interstate Commerce Commission pursuant to Section 220 of the Motor Carrier Act of 1935.

ACTIVITIES OF THE COMMISSION IN THE FIELD OF ACCOUNTING AND AUDITING

Events during the past fiscal year, such as the McKesson & Robbins scandal and the Transamerica investigation, have added materially to the problems confronting the Commission on matters pertaining to accounting and auditing.

Until recently, the Commission's interest in accounting has been directed toward the improvement of corporate reporting of financial data and the standardization of accounting principles. At the time when the Securities Act of 1933 and the Securities Exchange Act of 1934 became law, accounting had developed to such a point that it was believed feasible to prescribe forms that in large part asked only for disclosure of some of the more significant principles upon which the financial statements were based and for disclosure of a certain amount of information believed to be of particular importance to investors. The form of presentation, the method of description, the inclusion of information beyond the minimum, and the fundamental responsibility for the quality of the statements were problems left on the shoulders of the issuer and its officers. In addition, it was required that independent

accountants make a review and express their opinion of the accounting principles followed and the statements presented. However, at the same time the Commission established a policy of administrative review of financial statements filed which led to discussions of accounting problems with issuers and their accountants, to the preparation of memoranda of deficiencies observed, and in some cases to the issuance of stop order, delisting, or accounting opinions. Experience gained in this way has demonstrated a considerable diversity of views on matters of accounting principle. The Commission first endeavored to overcome this situation by enlisting the cooperation of numerous organizations interested in accounting, by conducting research, and by consulting with registrants. In addition, on some accounting matters the Commission has taken a positive position in published opinions or in its rules governing financial statements required to be filed. More recently, steps have been taken to enforce the observance of generally accepted accounting principles by adopting a policy of presuming financial statements to be misleading in cases in which such statements are prepared in accordance with accounting principles for which there is no substantial authoritative support despite disclosure of the matters involved in the accountant's certificate or in footnotes to the statements.

While the policy of the Commission with respect to accounting principles has developed in this manner through an evolutionary period, reliance has continued to be placed upon independent accountants for assuring the adequacy of audits. It was believed that professional accounting organizations had developed high standards in auditing practices and techniques and that dependence could be placed upon financial facts developed through the application of such auditing methods even though the principles followed in reporting such facts were in some instances unsatisfactory. However, recent events have cast doubt upon the adequacy of the methods and techniques employed in auditing.

In the matter of Monroe Loan Society, a case in which a defalcation, which apparently amounted to \$458,000, was discovered some time after a registration statement upon Form A-2 had become effective under the Securities Act of 1933, a stop order hearing was held under Section 8 (d) of that Act and it was determined that during all of the years between the registrant's inception in 1927 and November 30, 1937, no representative of the auditors visited any branch office of the registrant for audit purposes; no notes or applications pertaining thereto held at the branch offices were examined by the auditors; and that no branch office loans were verified by direct confirmation with the borrowers by the auditors. In its formal opinion the Commission held that the omission of an adequate examination constituted so complete a disregard of recognized auditing practice as to invalidate the accountant's original audit certificate and to impugn the integrity of the financial statements contained in the registration statement as it became effective.

In the matter of Interstate Hosiery Mills, Inc., a case in which the registrant filed false financial statements, overstating its earnings and its assets approximately \$900,000, a hearing was held under Section 10 (a) (2) of the Securities Exchange Act of 1934 to determine whether the registrant's securities, should be delisted. At the hearing it was determined that the author of these falsifications was an employee of the certifying firm of

accountants. Since there was no evidence of complicity with this employee by any of the officers, directors, or employees of the registrant, or by any partners or employees of Homes & Davis, the issues developed at the hearing were principally whether Homes & Davis exercised due care in employing this accountant and in reviewing his work. The record in this case, including testimony of expert witnesses for the registrant, failed to show that the review made by Homes & Davis was less extensive than that ordinarily made by accounting firms. In its opinion the Commission indicated that it was satisfied that an adequate review would have exposed the irregularities in this case and that if the views of the registrant's expert witnesses be accepted as to the usual practice followed by independent public accountants in reviewing the work of those responsible for the actual carrying out of the audit procedures, such practice required thorough revision.

While the foregoing cases evidenced some inadequacy in the procedures and practices followed in auditing, they hardly foreshadowed the McKesson & Robbins scandal. The first intimation of these irregularities was received on December 5, 1938, when the appointment of a receiver for the company was sought. It was subsequently determined by representatives of the Commission that the company's inventories and accounts receivable were overstated in amounts aggregating approximately; \$20,000,000. In view of the false and misleading information set forth in the financial statements certified by Price, Waterhouse & Co, and included in the application for registration and annual reports filed by McKesson & Robbins with the Commission and the New York Stock Exchange, and on the basis of its preliminary investigation into the auditing phases of the case, the Commission, on December 29, 1938, entered an order directing that public hearings be held to determine (1) the character, detail, and scope of the audit procedure followed by Price, Waterhouse & Co, in the preparation of the said financial statements; (2) the extent to which prevailing and generally accepted standards and requirements of audit procedure were adhered to, and applied in the preparation of the said financial statements; and (3) the adequacy of the safeguards inhering in the said generally accepted practices and principles of audit procedure to assure reliability and accuracy of financial statements.

Since the discovery of the falsification of McKesson & Robbins financial statements, various organizations interested in accounting matters have sponsored or participated in forums on auditing theory and practice. The American Institute of Accountants has published a report entitled "Extensions of Auditing Procedure" which contains recommendations relating to the examination of inventories and receivables by auditors, the appointment of independent certified public accountants, and the form of independent certified public accountants report. Numerous State societies of certified public accountants, the Controllers Institute of America, and the National Association of Manufacturers have expressed their approval of the principles outlined in this report.

The Commission nevertheless continued its hearings in the matter of McKesson & Robbins, Incorporated, and its inquiry into the adequacy of present day auditing methods. In connection with these hearings, which have now been completed, the Commission examined 43 witnesses, including representatives of Price, Waterhouse & Co, employees

and directors of the company, members of 12 representative accounting firms and several other expert witnesses. The transcript of testimony of the expert witnesses is to be published in the near future since it is felt to be of immediate general interest to the public as well as of permanent value to practitioners and students of auditing and since it may assist in the further development of auditing procedures. It is also planned that a report covering the entire investigation will be published in the near future.

Hearings have also been held under Section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether the registration of the securities of the Associated Gas and Electric Company, Missouri Pacific Railroad Company, and Transamerica Corporation should be suspended or withdrawn, there being reasons to suspect that the applications for registration, the annual reports, and the amendments thereto, including financial statements, filed by such registrants contain false and misleading statements of material facts. At this time, no decision on these charges has been made and opinions in these cases have not been issued. [Footnote: Findings and opinion of the Commission in *In The matter of Missouri Pacific Railroad Company* issued December 5, 1939 (Securities Exchange Act Release No. 2325).]

In connection with the hearings *In the matter of Transamerica Corporation*; the Commission has caused an examination to be made of the books and accounts of the registrant at its Offices in San Francisco. While numerous auditing investigations have been made of brokers and dealers charged with violating the Securities Exchange Act of 1934, this is the first case of any magnitude in which the Commission has made an independent investigation of the affairs of a company having securities listed on a national securities exchange. It has entailed the audit of approximately 40 companies for a period of several years and has required the services of a number of members of the Commission's staff for more than 6 months. This, together with the protracted litigation described later in this volume, has necessarily delayed the progress of the case.

During the fiscal year conferences and consultations with registrants, their representatives, and others on accounting and auditing matters have increased greatly in volume. Research work completed during the past year has resulted in the publication of two accounting opinions and several internal releases on accounting questions of major importance.

In continuing the program of accounting research it has come to be recognized that one of the underlying problems stems from the fact that accounting has grown up with the needs of management in mind and with relatively little consideration given to the needs of investors. For this reason, it becomes increasingly clear that it is imperative to reexamine practically every accounting assumption and practice in the light of its meaning to investors and of its effect upon the action of investors. The philosophy of the Commission's present and prospective activities in accounting matters may be recapitulated by quoting from a statement issued by Jerome N. Frank at the time he took office as Chairman: .

“One of the most important function’s of the Commission is to maintain and improve the standards of accounting practices. Recent events make it clear that we face a pressing problem in this field. Accounting is the language in which the corporation talks to its existing stockholders and to prospective investors. We want to be sure that the public never has reason to lose faith in the reports of public accountants. To this end, the independence of the public accountant must be preserved and strengthened and standards of thoroughness and accuracy protected. I understand that certain groups in the profession are moving ahead in good stride. They will get all the help we can give them so long as they conscientiously attempt that task. That’s definite. But if we find that they are unwilling or unable, perhaps, because of the influence of some of their clients, to do the job thoroughly, we won’t hesitate to step in to the full extent of our statutory powers.”

STUDY OF INVESTMENT TRUSTS AND INVESTMENT COMPANIES

During the past fiscal year, the Commission continued the transmittal of the various chapters of its report on the results of its study of investment trusts and investment companies (conducted pursuant to Section 30 of the Public Utility Holding Company Act of 1935) to the Congress. This study and the preparation of the reports have been under the general supervision of Commissioner Robert E. 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. Mr. Spratt, who died on June 20, 1938, and Mr. Gourrich, whose resignation from the Commission was submitted on March 31, 1939, did not participate in the preparation or consideration of those parts of the report which were submitted to the Congress subsequent to those dates. The current functions of the study are under the direct supervision of Mr. Schenker.

Part Two of the over-all report (Statistical Survey of Investment Trusts and Investment Companies) was submitted to the Congress during the past fiscal year. This part, consisting of eight chapters, contains detailed statistical analyses of various aspects and activities of investment trusts and investment companies and covers the following items: (1) A preface to the statistics; (2) data on the growth of total assets and a survey of the financial statements of investment trusts and investment companies in this country from 1927 to 1936; (3) sales and repurchases of their own security issues; (4) trading in their own security issues; (5) the ownership and control of investment trusts and investment companies; (6) the performance of large management investment companies proper from 1927 to 1937; (7) the investors experience in investment trusts and investment companies; and (8) the portfolio investments of investment trusts and investment companies.

On May 3, 1939, the Commission transmitted to the Congress the first portion of Part Three of its report on investment trusts and investment companies, which treats with the abuses and deficiencies in the organization and operation of investment trusts and investment companies. Chapter I of Part Three discusses the background of the investment

companies in relation to these abuses and deficiencies. Those portions of Chapter II which were transmitted set forth in detail the history of the following investment companies: Iroquois Share Corporation; Seaboard Utilities Shares Corporation, Railroad Shares Corporation, and Utilities Hydro & Rails Shares Corporation; Oils & Industries, Inc., formerly known as Oil Shares Incorporated; Chatham Phoenix Allied Corporation, later known as Securities Allied Corporation; Central-Illinois Securities Corporation; Petroleum Corporation of America; First Income Trading Corporation, Continental Securities Corporation, Corporate Administration, Inc., Reynolds Investing Company, Inc., Insuranshares Corporation of Delaware, Bond and Share Trading Corporation, and Burco, Inc.; and General Investment Corporation, formerly known as The Public Utility Holding Corporation of America. In addition, this chapter covers a group of companies of which control was acquired by Wallace Groves, including Yosemite Holding Corporation, Chain & General Equities, Inc., Interstate Equities Corporation, and Granger Trading Corporation, and the so-called Donald P. Kenyon group of investment trusts and investment companies, which included, among others, Alpha Shares, Inc., Investors Fund of America, Inc., Monthly Income Shares, Inc.. (New York), Monthly Income Shares, Inc.. (New Jersey), Harriman Investors Fund, Inc., United Standard Oilfund of America Inc, Universal Shares, Ltd, and a number of fixed and semi-fixed trusts.

On June 26, 1939, the Commission sent to the Congress the first of its supplemental reports, which deals with investment trusts in Great Britain.

MONOPOLY STUDY CONDUCTED FOR THE TEMPORARY NATIONAL ECONOMIC COMMITTEE

Organization of Study.

The Temporary National Economic Committee was established by Public Resolution No. 113, 75th Congress (approved by the President on June 16, 1938), for the purpose of (1) making a full and complete study and investigation with respect to the matters referred to in the President's message of April 29, 1938, to the Congress, on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services, and (2) making recommendations to the Congress with respect to legislation upon the foregoing subjects.

This resolution provided that the Committee be composed of six members of the Congress and one representative from each of six specified executive departments and independent agencies, among which was included the Securities and Exchange Commission. Former Chairman Douglas served on the Committee as the Commission's representative until his resignation as Chairman and member of the Commission, and Commissioner Frank served as alternate. On May 23, 1939, Chairman Frank was named as the Commission's representative on the Committee, and Commissioner Henderson was designated as alternate.

The Commission was instructed by the Committee to carry on investigations and studies concerning the functioning of the capital and securities markets and the significance of the present financial organization in relation to the control of industry. In carrying out the duties assigned to it, the Commission established a separate division, which was named the S. E. C. Monopoly Study Division.

The investigations and studies assigned to the Commission were divided into three major parts, viz, insurance, investment banking, and corporate practices.

Insurance.

The study of insurance has been confined during the year to legal reserve life insurance companies. The scope of this study becomes apparent when it is recognized that over 300 legal reserve companies are operating in the United States. These companies are estimated to have assets in excess of \$27,000,000,000, and have approximately 64,000,000 policyholders.

Materials secured by a study of the public records, questionnaires to the companies, and field interviews have been presented in public hearings held before the Temporary National Economic Committee. These materials showed, first, the size, and scope of the business, with particular reference to the accumulation and concentration of insurance assets. Testimony was then presented to demonstrate the extent to which the large mutual life insurance companies are in fact controlled by their policyholders. It was demonstrated that the directors of such companies are practically self-perpetuating groups, and that it was virtually impossible for the policyholders to elect a director who had not been selected by the existing management.

Testimony with respect to interlocking directorships was also presented and it was shown that, in some cases, directors of insurance companies used their influence to bring the patronage of the insurance companies, of which they were directors, to law firms, banks, and other business enterprises with which they were connected.

The extent and character of systematic efforts of large insurance companies to control State legislation was demonstrated by testimony. It was shown that one of the Nation-wide organizations of life insurance companies, the Association of Life Insurance Presidents, has been an effective instrument in influencing State legislation of interest to the companies.

Testimony demonstrated that insurance companies have entered into anti-competitive agreements and understandings. Efforts of companies to fix group insurance rates, non-participating rates for ordinary insurance, uniform annuity rates, and to establish uniform settlement option agreements and uniform surrender value programs, were explored.

Testimony was also presented to show the character and amount of terminations of life insurance policies. During the 10-year period from 1928 to 1937, over \$133,000,000,000 of insurance was terminated, of which \$65,388,000,000 was terminated by lapse. Lapse is of particular consequence in the field of industrial insurance (small policies sold on a weekly or monthly payment plan). During the period from 1928 to 1937, over 168,000,000 new industrial policies were issued. Over 70 percent of the policies terminating during this same period terminated by lapse. At the end of the 10-year period, there was a gain of only 6,500,000 policies in force although there were the issuance and renewal of over 193,000,000 policies. In the case of one company selling industrial insurance, it was shown that over 97 percent of the terminations experienced during the period from 1924 to 1938 were terminations by lapse. Most striking of all is the fact that only 4.45 percent of the industrial policies terminating during this period terminated by death. The experience in ordinary life insurance was shown to be but slightly better.

Investment Ranking.

Materials dealing with the problems of savings and investment, and the financing of small businesses, were also presented in public hearing before the Temporary National Economic Committee.

The testimony showed relative importance of expenditures for capital goods in producing the national income. While the well-being of the public is represented primarily by expenditures for consumers goods, in order to maintain a high level of production of these goods it is necessary to maintain the plant, equipment, and organization of private business enterprises and government activities. Certain major changes were shown to have taken place during the last decade which indicate that probably a smaller proportion of the national production must be in the form of capital equipment than was true prior to the last decade.

The analysis of the railroads, public utilities, manufacturing and mining industries, and the construction industry (residential, commercial, and public) showed where capital funds have been used, where expansion and contraction took place, and the fields in which there are apparent continuing needs for expansion. The most important gap in expenditures was found in the residential and commercial, segments of the construction industry. The railroads also were shown to have failed to maintain their previous rates of expenditures.

The principal source of savings for use by industry was shown to be the savings of individuals and savings of corporations. These savings were used to a minor extent by individuals and to a major extent by corporations and governments, Federal, State, and local. It was demonstrated that corporations to a great extent secure a large percentage of their funds from depreciation and depletion accounts, as well as from retained earnings. Many large businesses were shown to have become independent of the securities markets and public sources for capital funds.

The voluntary savings of millions of individuals are made available largely through the instrumentality of the great savings institutions, such as life insurance companies, savings banks, savings deposits in commercial banks, building and loan associations, trust funds, postal savings, and government pension retirement, and trust funds. Heavy concentration of the control of the investment of these funds was shown to reside on the Eastern seaboard.

While both private enterprise and government undertakings provide outlets for the use of these savings, private enterprise is the more important of the two. However, the necessity of continuing study of these government outlets for public works was shown to be great.

The field investigation brought together materials, concerning the problems of financing small businesses, from cities as widely separated as Fall River, Mass.; Scranton, Pa.; Dallas, Tex.; Denver, Colo.; Omaha, Nebr.; and Seattle, Wash. The necessity of distinguishing between the short-time credit needs of small businesses and the longer time capital requirements of small businesses was emphasized. Weaknesses of commercial banking organization for supplying short-time credit needs of small businesses were demonstrated.

Corporate Practices.

The study of corporate practices has involved problems related generally to the broad subjects of the control of corporations and the protection of investors.

A comparative study was made of the provisions of the Securities Act, the Securities Exchange Act, the Public Utility Holding Company Act, the Cole-Barkley Bill for the regulation of trust indentures (enacted into law on August 3, 1939 as the Trust Indenture Act of 1939), the Lea Bill for the regulation of proxy solicitations, the Glass Bank Holding Company Bill, and other proposed legislation, to determine their effect on a number of specific corporate problems classified under the following general categories: registration and reporting requirements; the ability of a majority of equity security holders to have a voice in the management; financial devices, like holding companies and strategic minority interests; banker control of industry; the rights of security holders to receive dividends and their rights on liquidation; mergers, consolidations, acquisitions, reorganizations, recapitalizations, and liquidations; the control of capital structure; and the preferential treatment of insiders.

Preliminary studies were made concerning legislation requiring Federal incorporation and suggesting corporate problems that might be dealt with by such legislation.

An investigation was undertaken of the extent of holdings by officers and directors of equity securities of the companies with which they were affiliated. For this purpose, the relevant data concerning the 200 largest non-financial corporations are being analyzed.

The certificates of incorporation and the by-laws of these 200 corporations are being studied, particular attention being given to the provisions affecting the calling of meetings and their conduct, the issuance of securities, alterations in the capital structure, directors and their contracts with the corporation, the power to write and alter by-laws, voting rights, the rights of stockholders to inspect books, preemptive rights, and several types of corporate action.

REPORTS OF OFFICERS, DIRECTORS, AND PRINCIPAL STOCKHOLDERS

General Purpose and Scope of Reporting Requirements.

In order to make available information as to the amount of securities owned by persons closely identified with the management or control of enterprises, and changes occurring in their holdings, every person who is an officer, director, or principal stockholder (i. e, a person who beneficially owns, directly or indirectly, more than 10% of any class of registered equity security) of an issuer having any class of equity security listed and registered on any national securities exchange is required, under Section 16 (a) of the Securities Exchange Act of 1934, to file with the Commission and the exchange an initial report showing his direct and indirect beneficial ownership of, and a report for each month thereafter in which any change in such ownership occurs disclosing his transactions in, all classes of equity security of the issuer. Similarly, under Section 17 (a) of the Public Utility Holding Company Act of 1935, every person who is an officer or a director of a registered holding company is required to file reports disclosing his holdings of, and transactions in, all securities of the registered holding company and its subsidiary companies.

Volume of Reports.

The number of reports filed under these requirements and examined by the Commission during each of the past two fiscal years is presented on a comparative basis below [first number is for FY1938, the second number is for FY1939]:

Original Reports -- Securities Exchange Act: 19,200; 16,075

Amended Reports -- Securities Exchange Act: 2,610; 2,248

Original Reports -- Holding Company Act: 839; 867

Amended Reports -- Holding Company Act: 90; 176

Where any report shows upon examination any material incompleteness, inconsistency, or inaccuracy, an amended report is required to be filed and is examined in the same manner as the original report.

Filing of Initial Reports.

Most of those reports are filed on Form 4 which reflects purchases and sales and other changes in beneficial ownership of securities. Such monthly reports of transactions on the part of persons who had previously established active files of reports accounted for 13,681 of the so-called original, as distinct from amended, reports filed during the year under the Securities Exchange Act of 1934. The remaining 2,394 were initial reports required either on Form 6 from persons (2,008) who, during the year, became officers, directors, or principal stockholders, or on Form 5 from persons (386) who had any such relationship to an issuer whose equity security first became registered during the year. A majority of the persons required for either of these reasons to commence the filing of reports do so without any action on the part of the Commission. Thus, 1,344 of these initial reports were so filed during the year. However, it was necessary to call the reporting requirements to the attention of the remaining 1,050 persons who filed initial reports, principally on Form 6, during the same period. Information as to the identity of additional persons who become subject to the duty to file these reports is currently obtained from various sources, including not only annual reports filed by, and correspondence with, issuers but also the publications of certain financial services.

Publication of Security Ownership Reports.

The actual reports made by officers, directors, and principal stockholders on Forms 4, 5, 6, U-17-1, and U-17-2, are available for public inspection at the offices of the Commission in Washington, D. C., and the reports on Forms 4, 5, and 6 may also be inspected at the particular exchange with which an additional copy of reports relating to the issuer concerned must be filed. In order to make the information contained in these reports more readily available to the public, the Commission compiles and publishes such information in a semimonthly Official Summary of Security Transactions and Holdings which is widely distributed among individual investors, newspaper correspondents, and other interested persons. Copies of these summaries are also available at each regional office of the Commission and each national securities exchange. The demand for this summary, particularly on the part of investors, is so great that its circulation has increased more than 600 percent from the close of the 1935 fiscal year to the close of the past fiscal year.

To facilitate the use of the summary, the Commission added, commencing with the calendar year 1938, an index in each separate number, and inaugurated an annual index covering all numbers of the summary released during the calendar year.

CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

The Commission is empowered by Section 24 (h) of the Securities Exchange Act of 1934, to grant or deny applications for the confidential treatment of information contained in applications, reports, and documents filed with it pursuant to various provisions of that Act. Under the provisions of Rule X-24B-2 of the Commission's General Rules and

Regulations under the Act, persons who object to the public disclosure of information contained in such applications, reports, or documents filed by them, may submit the portion of such material considered confidential to the Chairman of the Commission, together with an application stating the grounds upon which the objection to public disclosure is based. The courts have ruled that, disposition of these matters by the Commission is a quasi-judicial function and that the decisions of the Commissions may be reviewed.

During the past fiscal year, 101 applications were submitted for the confidential treatment of information, filed pursuant to the provisions of the Securities Exchange Act of 1934, involving a total of 133 separate items of information, principally in connection with the annual reports of issuers filed with the Commission pursuant to Section 13 of that Act. Material filed by 57 issuers, involving 104 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 X-24B-2, 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. During the year, 75 items of information confidentially filed by 41 issuers (including several pending from the previous year) were granted confidential treatment by the Commission. Pursuant to the requests of various applicants, 16 private hearings (on applications for confidential treatment) were held during the year.

The Securities Act of 1933, as amended (paragraph (30) of Schedule A) authorizes confidential treatment by the Commission of material contracts filed in connection with registration statements, if disclosure of such contracts would impair their value and would not be necessary for the protection of investors. During the year, 21 applications for confidential treatment of material contracts, or portions thereof, were filed pursuant to Rule 580 under that Act. Of these applications, together with 2 pending at the beginning of the year, 19 were granted, 1 was withdrawn, and 3 were pending as of June 30, 1939.

The Commission is also empowered to act on applications for confidential treatment of information contained in registration statements, applications, declarations, reports, or other documents filed pursuant to the Public Utility Holding Company Act of 1935, under authority granted by Section 22 (b) of that statute. During the year, 16 applications were received, of which 1 was granted, and 15 were pending on June 30, 1939.

At the beginning of the past fiscal year, there were pending in the several United States Circuit Courts of Appeal or the United States Court of Appeals for the District of Columbia, 10 petitions filed by issuers seeking to review determinations by the Commission denying applications for confidential treatment, filed pursuant to Section 24 (b) of the Securities Exchange Act of 1934. During the year, four of these petitions were dismissed by stipulation, and one was so dismissed a few days after the end of the fiscal year, the material involved being made available for public inspection. The only new petitions for judicial review of such determinations filed during the fiscal year, were filed

by issuers which had petitions for judicial review of similar matters covering earlier years pending before the particular Circuit Courts of Appeal.

STATISTICS ON SECURITIES AND ON EXCHANGE MARKETS

Between May and July 1939, the Commission released a series of reports entitled "Selected Statistics on Securities and on Exchange Markets" submitted to it by the Research and Statistics Section of the Trading and Exchange Division. In general, these reports covered the period from 1933 or 1935 to June 30, 1938, and dealt mainly with new issues and retirements of securities; changes in ownership of outstanding securities; the number and rough size distribution of common stock holdings of a group of 1,509 corporations; sales of small and unseasoned issues registered under the Securities Act of 1933; brokers and dealers registered under Section 15 of the Securities Exchange Act of 1934; the participation of investment banking firms in the underwriting of issues registered under the Securities Act of 1933; private placings of securities; the classified volume and estimated value of trading on securities exchanges; and the flow of stock trading on the New York Stock Exchange and New York Curb Exchange as reflected in the trading of exchange members, odd and full lot customers, foreign customers, investment companies and the so-called corporate insiders reporting under Section 16 (a) of the Securities Exchange Act of 1934. These reports consist of 70 statistical tables and an accompanying explanatory text of approximately 100 pages.

SURVEY OF AMERICAN LISTED CORPORATIONS

Since 1936, certain data contained in applications for permanent registration of securities on national securities exchanges and annual reports supplemental thereto filed under the Securities Exchange Act of 1934 have been abstracted and summarized in a series of reports by a Works Progress Administration project known as "Survey (formerly Census) of American Listed Corporations," which is sponsored and supervised by this Commission. During the fiscal year ended June 30, 1939, 18 reports were made public. Those reports generally covered the fiscal years 1934 through 1937, and dealt with the following industries: Steel Producers with assets of over \$100,000,000 each; Meat Packers, with assets, of over \$50,000,000 each; Chain Variety Stores; Automobile Manufacturers; Manufacturers of Tires and Other Rubber Products; Manufacturers of Agricultural Machinery and Implements; Cigarette Manufacturers with assets of over \$10,000,000 each; Sugar Refiners; Mail Order Houses; Oil Refiners with Producing Facilities having assets of over \$50,000,000 each; Manufacturers of Office Machinery and Equipment; Cement Manufacturers; Department Stores with annual sales of over \$10,000,000 each; Manufacturers of Containers & Closures Other than Paper or Wood; Chain Grocery & Food Stores; Manufacturers of Chemicals & Fertilizers having assets of over \$10,000,000 each; Motion Picture Producers & Distributors; and Manufacturers of Automobile Parts and Accessories.

Although funds will not be available to cover the costs of publishing similar reports for the approximately 130 other industrial groups in which registrants have been classified, copies of the reports as completed are now made available for inspection by interested parties in the Public Reference Room of the Commission in Washington and at all of its regional offices. Photocopies of the last-mentioned reports may be obtained from the offices of the Commission in Washington in accordance with the provisions of the Commission's rule regarding the sale of copies of registered information. A comprehensive statistical summary report covering about 2,000 registrants is in the process of preparation.

PUBLIC HEARINGS

[statistical table omitted, with public hearing totals as follows:

Securities Act of 1933: 320

Securities Exchange Act of 1934: 395

Public Utility Holding Company Act of 1935 (exclusive of Investment Trust Study): 790

Total: 1,505]

FORMAL OPINIONS AND REPORTS

The Commission, during the past year, issued 266 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. In addition, the Commission adopted six formal reports on plans of reorganization under the provisions of Section 11 of the Public Utility Holding Company Act of 1935 and four advisory reports on plans of reorganization under the provisions of Chapter X of the amended Bankruptcy Act. These opinions and reports were issued and adopted in the following named cases:

Securities Act of 1933, as Amended.

Fixing Effective Date of Amendments to Registration Statements:

In the Matter of Frye Investment Company and Charles H. Frye -- Apr. 19, 1939

Permanent Suspension Order:

In the Matter of John W. Westbrook Company and John W. Westbrook, Trustee -- May 8, 1939

Stop Orders:

In the Matter of American Credit Corporation -- Sept. 21, 1938

In the Matter of Austin Silver Mining Company -- July 13, 1938

In the Matter of Breeze Corporations, Inc. -- Aug. 5, 1938

In the Matter of Doris Ruby Mining Company -- Jan. 26, 1939

In the Matter of Gold hunter Extension, Inc. -- Sept. 26, 1938

In the Matter of Monitor Gold Mining Company -- Jan, 4, 1939

In the Matter of Oklahoma Hotel Building Company -- Feb. 24, 1939

In the Matter of Platoro Gold Mines, Inc. -- Sept. 19, 1938

In the Matter of Sweet's Steel Company -- Feb. 24, 1939

In the Matter of Thomas Bond, Inc. -- June 9, 1939

In the Matter of United Combustion Corporation -- Oct. 19, 1938

In the Matter of Unity Gold Corporation -- July 19, 1938

In the Matter of West Park Apartments Corporation -- Sept. 26, 1938

Securities Exchange Act of 1934, as Amended.

Broker and Dealer:

In the Matter of L. P. Atwater, doing business as L. P. Atwater & Company and Continental Royalties Corporation -- Aug. 12, 1938

In the Matter of Merrit M. Bacon -- Feb. 11, 1939

In the Matter of Millard H. Bard -- Nov. 1, 1938

In the Matter of Malcolm C. Brook & Co -- Mar. 13, 1939

In the Matter of Duncan Collins & Company, Inc. -- Nov. 17, 1938

In the Matter of Fort Dearborn Securities Corporation -- Feb. 11, 1939

In the Matter of Ralph Gibbins, doing business as Gibbins Brokerage Company -- Nov. 17, 1938

In the Matter of J. Albert Haines -- Nov. 17, 1938

In the Matter of Ralph C. Kent, doing business as Ralph C. Kent & Co -- Dec. 17, 1938

In the Matter of Robert E. Lancaster, an alias used by Martin A. Leach and Robert E. Lancaster & Company, Inc. -- Mar. 27, 1939

In the Matter of Herman Lucas -- Nov. 17, 1938

In the Matter of Oil Royalties Investment Trust, Ltd -- Feb. 10, 1939

In the Matter of Reinhardt & Co -- Mar. 27, 1939

In the Matter of Charles B. Rogers, doing business as J. T. Register & Company -- July 8, 1938

In the Matter of William Reid Taylor, doing business as W. R. Taylor & Company -- Oct. 20, 1938

In the Matter of Walston & Co, Vernon C. Walston, William Sherman Hoelscher, Charles De Y. Elkus, and Clifford P. Hoffman -- June 14, 1939

In the Matter of Walston & Co, Vernon C. Walston, William Sherman Hoelscher, Charles De Y. Elkus, and Clifford P. Hoffman -- June 14, 1939

Manipulation:

In the Matter of Junius A. Richards -- June 14, 1939

In the Matter of Junius A. Richards -- June 14, 1939

Unlisted Trading:

In the Matter of Adams Express Company -- Aug. 4, 1938

In the Matter of American Home Products Corporation -- May 1, 1939

In the Matter of Boston Stock Exchange (Applications for Unlisted Trading Privileges in 15 Securities) -- Aug. 4, 1938

In the Matter of Curtiss Wright Corporation -- July 16, 1938

In the Matter of Detroit Stock Exchange (Applications for Unlisted Trading Privileges in 4 Securities) -- June 6, 1939

In the Matter of The Equity Corporation -- Feb. 20,

In the Matter of Market Street Railway Company -- Aug. 11, 1938

In the Matter of Market Street Railway Company -- Nov. 28, 1938

In the Matter of New York Curb Exchange (Applications for Unlisted Trading Privileges in 3 Securities) -- Feb. 20, 1939

In the Matter of New York Curb Exchange (Application for Unlisted Trading Privileges in 4 Securities) -- May 1, 1939

In the Matter of Philadelphia Stock Exchange (Applications for Unlisted Trading Privileges in 2 Securities) -- Jan. 5, 1939

In the Matter of Philadelphia Stock Exchange (Applications for Unlisted Trading Privileges in 25 Securities) -- June 6, 1939

In the Matter of Pittsburgh Stock Exchange (Applications for Unlisted Trading Privileges in 33 Securities) -- June 6, 1939

In the Matter of Providence Gas Company -- Jan. 19, 1939

Withdrawal From Registration and Striking From Listing:

In the matter of Continental Securities Corporation -- Oct. 18, 1938

In the Matter of Dominion Stores, Ltd -- Mar. 18, 1939

In the Matter of Interstate Hosiery Mills, Inc. -- Mar. 18, 1939

In the Matter of The Lima Cord Sole and Heel Corporation -- Sept. 29, 1938

In the Matter of Mills Alloys, Inc -- Feb. 17, 1939

In the Matter of Minneapolis, St. Paul and Sault Ste. Marie Railway Company -- Mar. 29, 1939

In the Matter of Missouri Pacific Railroad Company -- Sept. 14, 1938

In the Matter of The Mother Lode Gold Mines -- Feb. 17, 1939

In the Matter of National Oats Company -- Mar. 28, 1939

In the Matter of Norfolk Southern Railroad Company -- Nov. 2, 1938

In the Matter of Phoenix Oil Company -- Feb. 20, 1939

In the Matter of Pittsburgh Terminal Coal Corporation -- Nov. 2, 1938

In the Matter of Rainbow Luminous Products, Inc -- Oct. 6, 1938

In the Matter of Standard Investing Corporation --Mar. 18, 1939

Public Utility Holding Company Act of 1935.

Acquisition of Securities, Assets, Business, or Other Interests:

In the Matter of American Light & Traction Company, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company -- Sept. 19, 1938

In the Matter of Columbia Gas & Electric Corporation -- Oct. 28, 1938

In the Matter of Commonwealths Distribution, Inc -- Dec 27, 1938

In the Matter of Community Power and Light Company, Southwestern Electric Company, The Kansas Utilities Company, Missouri Utilities Company, Texas-New Mexico Utilities Company -- May 12, 1939

In the Matter of Consumers Power Company, Cities Service Power and Light Company -- Dec. 21, 1938

In the Matter of Consumers Power Company, The Commonwealth and Southern Corporation -- Dec. 21, 1938

In the Matter of Coppers District Power Company, The Middle West Corporation -- Aug. 11, 1938

In the Matter of Louis R. Gates, II. W. Samuelson, Ira C. Snyder, Donald L. Pettis, and A. Z. Patterson, as Reorganization Managers of The United Telephone and Electric Company -- July 28, 1938

In the Matter of General Public Utilities, Inc -- Aug. 12, 1938

In the Matter of Halsey, Stuart & Co, Inc -- Dec. 5, 1938

In the Matter of Hoosier Gas Corporation -- May 3, 1939

In the Matter of International Utilities Corporation -- Dec. 27, 1938

In the Matter of International Utilities Corporation -- May 24, 1939

In the Matter of Engineers Public Service Company, Gulf States Utilities Company -- July 8, 1938

In the Matter of Kentucky Securities Company -- Nov. 30, 1938

In the Matter of Lone Star Gas Corporation -- Aug. 24, 1938

In the Matter of Massachusetts Utilities Associates, New England Power Association, New England Gas & Electric Association, Electric Associates, Inc -- June 10, 1939

In the Matter of Memphis Power & Light Company, Memphis Generating Company -- June 13, 1939

In the Matter of Michigan Public Service Company, Leonard S. Florsheim Trustee of Inland Power & Light Corporation, Michigan Public Service Company -- May 13, 1939

In the Matter of Monongahela West Penn Public Service Company and American Water Works and Electric Company, Incorporated -- Dec. 21, 1938

In the Matter of Montaup Electric Company, Blackstone Valley Gas and Electric Company, Eastern Utilities Associates -- Apr. 25, 1939

In the Matter of North American Edison Company, The Milwaukee Electric Railway and Light Company -- Oct. 20, 1938

In the Matter of Northeastern Water and Electric Corporation -- Aug. 31, 1938

In the Matter of Northern States Power Company, a Delaware Corporation, Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation -- Dec. 27, 1938

In the Matter of Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation, Chippewa Power Company -- Mar. 21, 1939

In the Matter of Northwestern Illinois Utilities, American Utilities Service Corporation Pennsylvania Power Company, The Commonwealth & Southern Corporation -- June 30, 1939

In the Matter of Peoples Light Company, The United Light and Power Company, Clinton, Davenport & Muscatine Railway Company -- Dec. 20, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 11, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 28, 1938

In the Matter of Stonewall Electric Company, Trinidad Electric Transmission Railway and Gas Company -- June 19, 1939

In the Matter of United Public Utilities Corporation -- May 26, 1939

In the Matter of Utilities Power & Light Corporation, Limited, et al -- Dec. 8, 1938

In the Matter of Utilities Power & Light Corporation, Limited, et al -- May 20, 1939

In the Matter of Utilities Power & Light Corporation, Limited, et al -- June 5, 1939

Acquisitions of Securities by the Issuer:

In the Matter of American Gas and Power Company and Birmingham Gas Company -- Sept. 29, 1938

In the Matter of American Light & Traction Company, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company -- Sept. 19, 1938

In the Matter of American States Utilities Corporation -- Dec. 15, 1938

In the Matter of Arkansas Western Gas Company and Southern Union Gas Company -- Dec. 22, 1938

In the Matter of William A. Baehr Organization, Inc -- Dec. 27, 1938

In the Matter of William A. Baehr Organization, Inc -- Jan. 24, 1939

In the Matter of Engineers Public Service Company -- Feb. 27, 1939

In the Matter of Huntington Gas Company -- Dec. 17, 1938

In the Matter of Indiana & Michigan Electric Company, American Gas and Electric Company -- June 24, 1939

In the Matter of Lone Star Gas Company, Texas Cities Gas Company, Council Bluffs Gas Company, The Dallas Gas Company, County Gas Company, Community Natural Gas Company, Guthrie, Gas Service Company -- Dec. 22, 1938

In the Matter of Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation, Chippewa Power Company -- Mar. 21, 1939

In the Matter of Ohio Power Company, American Gas & Electric Company -- Oct. 19, 1938

In the Matter of Texas Cities Gas Company, Council Bluffs Gas Company, The Dallas Gas Company -- Aug. 24, 1938

Allowance of Fees, Expenses, and Remuneration:

In the Matter of Adams, Nelson & Williamson -- June 7, 1939

In the Matter of Henry A. Gardner, John A. Dawson and Robert W. Hotchkiss, Acting as Bondholders Protective Committee for Utilities Elkhorn Coal Company -- Jan. 7, 1939

In the Matter of Jay Samuel Hartt, Trustee of the Estate of Midland Utilities Company -- Feb. 25, 1939

In the Matter of Jay Samuel Hartt -- Dec. 6, 1933

In the Matter of Melvin M. Hawley -- June 8, 1939

In the Matter of Leonard S. Florsheim, Trustee of Inland Power & Light Corporation -- May 18, 1939

In the Matter of Hugh M. Morris and John N. Shannahan, Trustees of Midland United Company and Millard B. Kennedy -- Sept. 13, 1938

In the Matter of Paul V. Shields, Joseph S. Maxwell and Charlton B. Hibbard, Protective Committee Preferred Stockholders of Utilities Power and Light Corporation -- May 5, 1939

In the Matter of Utilities Elkhorn Coal Company and James G. Culbertson -- Sept. 22, 1938

In the Matter of Walling, William English, II, Executor of Willoughby G. Walling, Deceased -- Dec. 22, 1938

In the Matter of West Ohio Gas Company -- May 11, 1939

Declaring Applicant Not to Be an Electric Utility Company:

In the Matter of Interlake Iron Corporation -- July 1, 1938

Declaring Applicant Not to Be a Holding Company:

In the Matter of Allied Chemical & Dye Corporation -- June 22, 1939

In the Matter of Citizens Public Service Company by William W. Battles, Winthrop H. Battles, Joseph B. Keen, and William H. Reynolds, Jr., as liquidating directors or trustees - - Jan. 24, 1939

In the Matter of Frank D. Comerford, Sidney St. F. Thaxter and Robert H. Montgomery, Trustees, under Agreement dated November 29, 1935, between International Hydro-Electric System, New England Power Association, Old Colony Trust Company, and said Trustees -- Apr. 7, 1939

In the Matter of Foster Petroleum Corporation -- May 27, 1939

In the Matter of Arthur H. Gilbert, Marcus L. Baxter, and Edward G. Bicker, Voting Trustees under Voting Trust Agreement dated April 15, 1935 between National Gas & Electric Corporation and said Voting Trustees -- Sept. 30, 1938

In the Matter of William C. A. Henry, Trustee for The United Telephone and Electric Company -- June 5, 1939

In the Matter of International Paper and Power Company and International Paper Company -- Apr. 26, 1939

In the Matter of Keystone Utilities, Inc -- May 16, 1939

In the Matter of National Light, Heat and Power Company -- Apr. 19, 1939

In the Matter of Public Service of Pennsylvania, Inc -- Dec. 9, 1938

In the Matter of Sandar Corporation -- Oct. 13, 1938

In the Matter of Union Electric Power Corporation -- Feb. 16, 1939

Declaring Applicant Not To Be a Subsidiary Company of a Specified Holding Company:

In the Matter of Federal Light & Traction Company and Cities Service Power & Light Company -- June 19, 1939

In the Matter of Federal Light & Traction Company and Cities Service Power & Light Company -- June 19, 1939

In the Matter of Genessee Valley Gas Company, Inc -- Aug. 2, 1938

In the Matter of Lehigh Power Securities Corporation -- June 19, 1939

In the Matter of Northern Natural Gas Company -- June 30, 1939

In the Matter of Utilities Employees Securities Company, New England Capital Corporation, Utilities Employees Securities Company, New England Capital Corporation -
- Sept. 15, 1938

In the Matter of Utilities Employees Securities Company, New England Capital Corporation, Utilities Employees Securities Company, New England Capital Corporation -
- Oct. 3, 1938

In the Matter of Utilities Employees Securities Company, New England Capital Corporation, Utilities Employees Securities Company, New England Capital Corporation -
- Oct. 20, 1938

Declaring Applicant To Be a Subsidiary Company of a Specified Holding Company:

In the Matter of Associated General Utilities Company -- Feb. 10, 1939

In the Matter of Employees Welfare Association, Inc (Del.); Employees Welfare Association, Inc. (N. J); Trustees under Pension Trust Agreement dated Dec. 14, 1937 -- Apr. 14, 1939

In the Matter of Utilities Employees Securities Company, New England Capital Corporation -- Apr. 18, 1939

Dividend Declarations and Payments:

In the Matter of American Light & Traction Co, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company -- Sept. 19, 1938

In the Matter of Baton Rouge Electric Company, Louisiana Steam Generating Corporation -- July 8, 1938

In the Matter of Columbia Gas & Electric Corporation -- July 2, 1938

In the Matter of Columbia Gas & Electric Corporation -- Oct. 5, 1938

In the Matter of Columbia Gas & Electric Corporation -- Jan. 23, 1939

In the Matter of The Connecticut Light & Power Company -- Nov. 26, 1938

In the Matter of Penn Western Gas & Electric Company -- Dec. 9, 1938

In the Matter of Public Utility Engineering and Service Corporation -- May 27, 1939

Exemption from Provisions of the Act:

In the Matter of Consolidated Electric and Gas Company -- Feb. 2, 1939

In the Matter of Consolidated Electric and Gas Company -- May 24, 1939

In the Matter of Consolidated Cities Light, Power and Traction Company -- May 12, 1939

In the Matter of Community Power and Light Company, Southwestern Electric Company, The Kansas Utilities Company, Missouri Utilities Company, Texas-New Mexico Utilities Company -- May 12, 1939

In the Matter of Genesee Valley Gas Company, Inc -- Aug. 2, 1939

In the Matter of Great Northern Gas Company, Limited -- Dec. 2, 1939

In the Matter of Houston Natural Gas Corporation -- Aug. 1, 1938

In the Matter of Illinois Iowa Power Company -- Apr. 18, 1939

In the Matter of International Utilities Corporation and Dominion Gas and Electric Company -- Apr. 13, 1939

In the Matter of Manufacturers Trust Company, Utility Service Company, Eastern Minnesota Power Corporation -- Apr. 20, 1939

In the Matter of Middle West Utilities Company of Canada, Limited -- May 24, 1939

In the Matter of New Brunswick Power Company -- Oct. 18, 1938

In the Matter of Southern Utilities Company, Limited -- Dec. 2, 1938

In the Matter of Standard Oil Company of California -- Feb. 27, 1939

In the Matter of Washington Railway and Electric Company -- Dec. 15, 1938

Exemption of Security Transactions From Provisions of Section 6 (a) of the Act:

In the Matter of Allentown-Bethlehem Gas Company -- Mar. 13, 1939

In the Matter of American Light & Traction Company, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company -- Oct. 5, 1939

In the Matter of Arkansas Western Gas Company and Southern Union Gas Company -- Dec. 22, 1938

In the Matter of Blackstone Valley Gas and Electric Company -- Nov. 29, 1938

In the Matter of Central Illinois Electric and Gas Co -- June 19, 1939

In the Matter of Central Illinois Electric and Gas Co -- Feb. 27, 1939

In the Matter of Central Illinois Public Service Company -- Dec. 7, 1938

In the Matter of Central Indiana Power Company -- Mar. 14, 1939

In the Matter of Central Maine Power Company -- Feb. 23, 1939

In the Matter of Central Ohio Light & Power Company -- Dec. 30, 1938

In the Matter of Columbus and Southern Ohio Electric Company -- Dec. 23, 1938

In the Matter of Connecticut Light & Power Company -- Nov. 26, 1938

In the Matter of The Dayton Power and Light Company, Columbia Gas & Electric Corporation -- Oct. 28, 1938

In the Matter of East Tennessee Light & Power Company -- June 24, 1939

In the Matter of Green Mountain Power Corporation -- Dec. 10, 1938

In the Matter of Hoosier Gas Corporation -- May 3, 1939

In the Matter of Indiana General Service Company -- Oct. 3, 1938

In the Matter of Indiana General Service Company -- Nov. 25, 1938

In the Matter of Indiana & Michigan Electric Company, American Gas and Electric Company -- June 24, 1939

In the Matter of Indianapolis Power & Light Company -- Aug. 4, 1938

In the Matter of The Laclede Gas Light Company -- Dec. 9, 1938

In the Matter of Lawrence Gas and Electric Company -- July 22, 1938

In the Matter of Madison Gas and Electric Company -- Nov. 23, 1938

In the Matter of Memphis Power & Light Company, Memphis Generating Company Michigan Consolidated Gas Company -- June 13, 1939

In the Matter of Michigan Public Service Company, Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Michigan Public Service Company -- May 13, 1939

In the Matter of Montaup Electric Company, Blackstone Valley Gas and Electric Company, Eastern Utilities Associates -- Apr. 25, 1939

In the Matter of Newport Electric Corporation -- May 22, 1939

In the Matter of New York State Electric & Gas Corporation -- July 27, 1938

In the Matter of New York State Electric & Gas Corporation -- Nov. 19, 1938

In the Matter of New York State Electric & Gas Corporation -- Feb. 25, 1939

In the Matter of New York State Electric & Gas Corporation -- June 28, 1939

In the Matter of North American Edison Company, the Milwaukee Electric Railway and Light Company, The Milwaukee Electric Railway & Transport Company -- Oct. 20, 1938

In the Matter of Northern States Power Company, a Delaware Corporation, Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation -- Dec. 27, 1938

In the Matter of Northern States Power Company (A Wisconsin Corporation), Northern States Power Company (A Minnesota Corporation), Chippewa Power Company -- Mar. 21, 1939

In the Matter of Northwestern Illinois Utilities, American Utilities Service Corporation -- June 30, 1939

In the Matter of The Ohio Power Company, American Gas and Electric Company -- Oct. 19, 1938

In the Matter of Page Power Company -- Aug. 19, 1938

In the Matter of Pennsylvania Power Company, The Commonwealth & Southern Corporation -- Dec. 20, 1938

In the Matter of Portland General Electric Company -- May 29, 1939

In the Matter of South Carolina Utilities Company -- July 15, 1938

In the Matter of The Toledo Edison Company -- Aug. 9, 1938

In the Matter of Union Electric Company of Missouri -- Nov. 26, 1938

In the Matter of Virginia Electric and Power Company -- Oct. 4, 1938

In the Matter of Virginia Public Service Company -- Oct. 28, 1938

In the Matter of Washington Gas Light Company -- Oct. 29, 1938

In the Matter of Wisconsin Public Service Corporation -- Aug. 30, 1938

Exemption of Acquisition of Securities From Provisions of Section 9 (a) of the Act:

In the Matter of The Middle West Corporation -- Oct. 12, 1938

Issue and Sale of Securities:

In the Matter of Amarillo Gas Company -- Apr. 19, 1939

American Gas and Power Company and Birmingham Gas Company -- Sept. 29, 1938

In the Matter of American Light & Traction Company, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company --Sept. 19, 1938

In the Matter of American Water Works and Electric Company, Incorporated -- Apr. 24, 1939

In the Matter of Arkansas Western Gas Company and Southern Union Gas Company -- Dec. 22, 1938

In the Matter of The Associated Corporation Beverly Gas and Electric Company, Gloucester Electric Company, Haverhill Electric Company, Maiden Electric Company, Salem Gas Light Company, Suburban Gas and Electric Company -- Aug. 26, 1938

In the Matter of Bradford Electric Company -- July 26, 1938

In the Matter of Bradford Electric Company -- June 28, 1939

In the Matter of The Cincinnati Gas & Electric Company -- Sept. 15, 1938

In the Matter of Colorado Central Power Company -- Mar. 31, 1939

In the Matter of Columbia Gas & Electric Corporation -- Jan. 25, 1939

In the Matter of Community Power and Light Company, Southwestern Electric Company, The Kansas Utilities Company, Missouri Utilities Company, Texas-New Mexico Utilities Company -- May 12, 1939

In the Matter of Consumers Power Company, The Commonwealth & Southern Corporation -- Dec. 21, 1938

In the Matter of Copper District Power Company, The Middle West Corporation -- Aug. 11, 1938

In the Matter of Cumberland County Power and Light Company -- Jan. 13, 1939

In the Matter of The Dakota Power Company -- Aug. 12, 1938

In the Matter of Eastern Utilities Associates -- Aug. 23, 1938

In the Matter of Empire Southern Gas Company -- Apr. 18, 1939

In the Matter of Engineers Public Service Company, Gulf States Utilities Company, Eaton Rouge Electric Company, Louisiana Steam Generating Corporation -- July 8, 1938

In the Matter of Federal Light & Traction Company -- Dec. 14, 1938

In the Matter of General Public Utilities, Inc -- Dec. 17, 1938

In the Matter of Green Mountain Power Corporation, New England Power Association -- Dec. 6, 1938

In the Matter of Gulf States Utilities Company -- Aug. 30, 1938

Gulf States Utilities Company -- Feb. 18, 1939

In the Matter of Gulf States Utilities Company -- June 27, 1939

In the Matter of Iowa Public Service Company -- Oct. 18, 1938

In the Matter of Kentucky-Tennessee Light and Power Company and Associated Electric Company and Central U. S. Utilities Company -- Dec. 17, 1938

In the Matter of Lone Star Gas Corporation, Lone Star Gas Company, Texas Cities Gas Company, Council Bluffs Gas Company, The Dallas Gas Company, County Gas Company -- Aug. 24, 1938

In the Matter of Lone Star Gas Company, Texas Cities Gas Company, Council Bluffs Gas Company, The Dallas Gas Company, County Gas Company, Community Natural Gas Company, Guthrie Gas Service Company -- Dec. 22, 1938

In the Matter of Louisiana Public Service Corporation -- Nov. 5, 1938

In the Matter of Massachusetts Utilities Associates -- July 23, 1938

In the Matter of Massachusetts Utilities Associates -- Feb. 27, 1939

In the Matter of Minnesota Utilities Company -- Nov. 5, 1938

In the Matter of Missouri Service Company -- Aug. 27, 1938

In the Matter of Monongahela West Penn Public Service Company -- Dec. 21, 1938

In the Matter of Mountain States Power Company -- June 2, 1939

In the Matter of Nepsco Appliance Finance Corporation -- Nov. 17, 1938

In the Matter of Newport Electric Corporation and Charles True Adams, Trustee of the Estate of Utilities Power & Light Corporation, Debtor -- May 22, 1939

In the Matter of New York and Richmond Gas Company -- Feb. 16, 1939

In the Matter of The North American Company, North American Edison Company -- Jan. 30, 1939

In the Matter of The North American Company, North American Edison Company -- Jan. 31, 1939

In the Matter of North American Edison Company, The Milwaukee Electric Railway and Light Company, The Milwaukee Electric Railway & Transport Company -- Oct. 20, 1938

In the Matter of North Dakota Power & Light Company, Northern Power and Light Company, United Public Utilities Corporation -- May 26, 1939

In the Matter of Northern States Power Company, a Delaware Corporation, Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation -- Dec. 27, 1938

In the Matter of Oklahoma Power and Water Company -- May 31, 1939

In the Matter of Pennsylvania Power Company, The Commonwealth & Southern Corporation -- Dec. 20, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 11, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 28, 1938

In the Matter of Safety Engineering and Management Company -- Nov. 20, 1938

In the Matter of Safety Engineering and Management Company -- Sept. 30, 1938

In the Matter of Southern Colorado Power Company -- Sept. 13, 1938

In the Matter of Southern Natural Gas Company -- Mar. 9, 1939

In the Matter of Southern Natural Gas Company -- May 22, 1939

In the Matter of Southern Utah Power Company -- Apr. 29, 1939

In the Matter of Southwestern Development Company -- May 13, 1939

In the Matter of Southwestern Gas and Theatric Company -- Mar. 29, 1939

In the Matter of Stonewall Electric Company, Trinidad Electric Transmission Railway and Gas Company -- June 19, 1939

In the Matter of Suburban Gas and Electric Company, Gloucester Electric Company, Haverhill Electric Company, Beverly Gas and Electric Company, Salem Gas Light Company, North Boston Lighting Properties, New England Power Association -- June 28, 1939

In the Matter of Union Electric Company of Missouri -- Nov. 26, 1938

In the Matter of United Fuel Gas Company -- Dec. 9, 1938

In the Matter of The Washington Water Power Company -- June 27, 1939

In the Matter of West Penn Power Company -- Aug. 12, 1938

In the Matter of West Texas Utilities Company -- June 6, 1939

In the Matter of Worcester Suburban Electric Company -- July 2, 1938

In the Matter of Public Service Company of New Hampshire -- Dec. 5, 1938

Investment Program for Current Funds:

In the Matter of The United Corporation -- Mar. 13, 1939

Mutual Service Company:

In the Matter of The Commonwealth & Southern Corporation -- Dec. 27, 1938

In the Matter of Electric Advisers, Inc -- Jan. 5, 1939

In the Matter of Engineers Public Service Company, Inc -- Dec. 27, 1938

In the Matter of Gas Advisers, Inc -- Jan. 5, 1939

In the Matter of Public Utilities Management Corporation -- Nov. 19, 1938

In the Matter of Public Utility Engineering and Service Corporation -- May 27, 1939

Reorganization and Recapitalization Plans:

In the Matter of American Gas and Power Company and Birmingham Gas Company -- Sept. 29, 1938

In the Matter of Engineers Public Service Company, Gulf States Utilities Company, Baton Rouge Electric Company, Louisiana Steam Generating Corporation -- July 8, 1938

In the Matter of Louis R. Gates, R. W. Samuelson, Ira C. Snyder, Donald L. Pettis, and A. Z. Patterson, as Reorganization Managers of The United Telephone and Electric Company -- July 28, 1938

In the Matter of Louis R. Gates, R. W. Samuelson, Ira C. Snyder, Donald L. Pettis, and A. Z. Patterson, as Reorganization Managers of The United Telephone and Electric Company -- Aug. 3, 1938

In the Matter of Gulf States Utilities Company -- Aug. 10, 1938

In the Matter of Mountain States Power Company -- June 2, 1939

In the Matter of Northern States Power Company, a Delaware Corporation -- Dec. 8, 1938

In the Matter of Northern States Power Company, a Delaware Corporation, Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation -- Dec. 27, 1938

In the Matter of The North American Company, North American Edison Company -- Jan. 30, 1939

In the Matter of The North American Company, North American Edison Company -- Jan. 31, 1939

In the Matter of David C. Patterson, Max J. Mauermann and David Copland, as a committee for holders of 1st and Refunding Mortgage 6% Bonds Series A, due Dec. 1, 1954 of West Ohio Gas Company -- Oct. 14, 1938

In the Matter of In the Matter of David C. Patterson, Max J. Mauermann and David Copland, as a committee for holders of 1st and Refunding Mortgage 6% Bonds Series A, due Dec. 1, 1954 of West Ohio Gas Company -- Jan. 9, 1939

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 11, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 28, 1938

In the Matter of Southern Natural Gas Company -- April 11, 1939

In the Matter of Southern Natural Gas Company -- May 22, 1939

Sale of Public Utility Securities and Utility Assets by Registered Holding Companies:

In the Matter of Charles True Adams, Trustee of the Estate of the Utilities Power & Light Corporation, Debtor -- May 2, 1939

In the Matter of American Gas and Power Company and Birmingham Gas Company -- Sept. 29, 1938

In the Matter of American Light & Traction Company, Michigan Consolidated Gas Company, Grand Rapids Gas Light Company, Washtenaw Gas Company, Muskegon Gas Company -- Sept. 19, 1938

In the Matter of American States Utilities Corporation, Dearborn-Ripley Light & Power Company -- Dec. 15, 1938

In the Matter of Arkansas Western Gas Company & Southern Union Gas Company -- Dec. 22, 1938

In the Matter of Associated Electric Company and Central U. S. Utilities Company -- Dec. 17, 1938

In the Matter of Community Power and Light Company and Southwestern Electric Company -- Aug. 12, 1938

In the Matter of Consumers Power Company, Cities Service Power and Light Company -- Dec. 21, 1938

In the Matter of Engineers Public Service Company -- July 8, 1938

In the Matter of Engineers Public Service Company -- Feb. 27, 1939

In the Matter of Green Mountain Power Corporation, New England Power Association -- Dec. 6, 1938

In the Matter of Huntington Gas Company -- Dec. 17, 1938

In the Matter of Indiana & Michigan Electric Company, American Gas and Electric Company -- June 24, 1939

In the Matter of Lone Star Gas Corporation -- Aug. 24, 1938

In the Matter of Lone Star Gas Corporation -- Dec. 22, 1938

In the Matter of Massachusetts Utilities Associates, New England Power Association, New England Gas and Electric Association, Electric Associates, Inc -- June 10, 1939

In the Matter of Michigan Public Service Company, Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Michigan Public Service Company -- May 13, 1939

In the Matter of Michigan Consolidated Gas Company -- Oct. 5, 1938

In the Matter of The Middle West Corporation -- Apr. 4, 1939

In the Matter of Montaup Electric Company, Blackstone Valley Gas and Electric Company, Eastern Utilities Associates -- Apr. 25, 1939

In the Matter of The Northern States Power Company, a Delaware corporation, Northern States Power Company, a Wisconsin Corporation, Northern States Power Company, a Minnesota Corporation -- Dec. 27, 1938

In the Matter of Northern States Power Company (A Wisconsin Corporation), Northern States Power Company (A Minnesota Corporation), Chippewa Power Company -- Mar. 21, 1939

In the Matter of The North American Company, North American Edison Company -- Jan. 30, 1939

In the Matter of The North American Company, North American Edison Company -- Jan. 31, 1939

In the Matter of North American Edison Company, The Milwaukee Electric Railway and Light Company, The Milwaukee Electric Railway & Transport Company -- Oct. 20, 1938

In the Matter of Northwestern Illinois Utilities, American Utilities Service Corporation -- June 30, 1939

In the Matter of The Ohio Power Company, American Gas and Electric Company -- Oct. 19, 1938

In the Matter of Peoples Light Company, The United Light and Power Company, Clinton, Davenport & Muscatine Railway Company -- Nov. 14, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 11, 1938

In the Matter of Republic Electric Power Corporation, Southern Oregon Gas Corporation, California Utilities Company, Needles Gas and Electric Company, Weaverville Electric Company, Apache Gas Company, Gas Transport Company -- Oct. 11, 1938

In the Matter of Suburban Gas and Electric Company, Gloucester Electric Company, Haverhill Electric Company, Beverly Gas and Electric Company, Salem Gas Light Company, North Boston Lighting Properties, New England Power Association -- June 25, 1939

In the Matter of Walnut Electric & Gas Corporation -- Dec. 9, 1938

Sale of Public Utility Securities and Utility Assets to Associate Companies or Affiliates:

In the Matter of Engineers Public Service Company -- Feb. 27, 1939

In the Matter of Indiana & Michigan Electric Company, American Gas and Electric Company -- June 24, 1939

In the Matter of Massachusetts Utilities Associates, New England Power Association, New England Gas and Electric Association, Electric Associates, Inc -- June 10, 1939

In the Matter of Merrimac Valley Power and Buildings Company -- Apr. 24, 1939

In the Matter of Northern States Power Company (a Wisconsin Corporation), Northern States Power Company (a Minnesota Corporation), Chippewa Power Company -- Mar. 21, 1939

In the Matter of Pennsylvania Investing Corporation -- Jan. 14, 1939

In the Matter of Pennsylvania Investing Corporation -- Apr. 26, 1939

In the Matter of Memphis Power & Light Company, Memphis Generating Company -- June 13, 1939

In the Matter of Stonewall Electric Company, Trinidad Electric Transmission Railway and Gas Company -- June 19, 1939

In the Matter of United Public Utilities Corporation, North Dakota Power & Light Company and Northern Power and Light Company -- May 26, 1939

Solicitation of Authorization in Connection with Reorganizations:

In the Matter of American Gas and Power Company and Birmingham Gas Company -- Sept. 29, 1938

John A. Dawson, Clayton J. Bowel, George F. Manselman, and Avery Brundage, Acting as Protective Committee For the Holders of 6 Percent First Mortgage Gold Bonds of Utilities Elkhorn Coal Company -- Aug. 5, 1938

Henry A. Gardner, John A. Dawson and Robert W. Hotchkiss, Acting as Bondholders Protective Committee for Utilities Elkhorn Coal Company -- Jan. 7, 1939

Northern States Power Company, a Delaware Corporation -- Dec. 8, 1938

David C. Patterson, Max J. Mauermann and David Copland, as a committee for holders of First and Refunding Mortgage 6 Percent Bonds, Series A, due Dec. 1, 1954, of West Ohio Gas Company -- Jan. 9, 1939

Southern Natural Gas Company -- Apr. 11, 1939

Utilities Power & Light Corporation, Utilities Power & Light Corporation and Charles True Adams, Trustee -- Sept. 20, 1938

Utilities Power & Light Corporation, Utilities Power & Light Corporation and Charles True Adams, Trustee -- Oct. 20, 1938

Utilities Power & Light Corporation, Utilities Power & Light Corporation and Charles True Adams, Trustee -- Nov. 2, 1938

Subsidiary Service Company:

In the Matter of American Gas and Electric Service Corporation -- May 11, 1939

In the Matter of William A. Baehr Organization, Inc -- Dec. 27, 1938

In the Matter of Federal Advisers, Inc -- Dec. 27, 1938

In the Matter of Northeastern Water & Electric Service Corporation -- Dec. 27, 1938

In the Matter of Public Utility Engineering and Service Corporation -- May 27, 1939

In the Matter of The United Light and Power Engineering and Construction Company -- Sept. 26, 1938

Bankruptcy Act, as Amended.

Advisory Reports on Plans of Reorganization:

In the Matter of Detroit International Bridge Company -- Mar. 14, 1939

In the Matter of Griess-Pfleger Tanning Company -- June 7, 1939

In the Matter of National Radiator Corporation -- Mar. 14, 1939

In the Matter of Penn Timber Company -- Mar, 6, 1939

PUBLIC REFERENCE ROOMS

Copies of all public information on file with the Commission, appearing in registration statements, applications, reports, declarations, and other public documents, are available for inspection in the Public Reference Room of the Commission at Washington, D. C. During the past fiscal year more than 10,800 members of the public visited this Public Reference Room seeking such information. Also, during this period 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 3,330 orders for photocopies of material, involving 208,780 pages.

Insofar as practicable, the Commission has sought to make some of the public registered information filed with it available in its regional offices. Thus, in the Public Reference Room which is maintained in the New York Regional Office at 120 Broadway, facilities are provided for the inspection of a great deal of the public information on file with the Commission. This material includes copies of (1) 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, (2) 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 (3) prospectuses filed under the rules exempting small issues of securities from the registration requirements of the Securities Act of 1933, as amended, and prospectuses used in public offerings of securities effectively registered under that Act. The fact that during the past fiscal year more than 12,780 members of the public visited the New York Office Public Reference Room seeking registered public information, forms, releases, and other material is evidence of the concentrated demand for such information in this zone.

Likewise, in the Public Reference Room of the Chicago Regional Office which is located at 105 West Adams Street, 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. During the fiscal year ended June 30, 1939, more than 3,600 members of the public requested registered information, forms, releases, and other material.

In each regional office having jurisdiction over the zone in which the principal office of the broker or dealer is located, there are available for public inspection duplicate copies of

applications for registration of brokers or dealers transacting business on over-the-counter markets, together with supplemental statements thereto, filed with the Commission under the Securities Exchange Act of 1934.

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

PUBLICATIONS

Information Releases.

The Commission keeps the public informed of its activities through information releases which are issued currently. These releases include such matters as the announcement of rules, regulations, findings, opinions, and orders of the Commission; the announcement of filings of registration statements, applications, declarations, and reports; notices of public hearings, etc. The Commission's releases are issued to the press and are mailed free to any person requesting them. Mailing lists are maintained for the benefit of those who wish to receive currently releases dealing with various phases of the Commission's activities.

In addition to members of the investing public, the Commission's mailing lists include banks, insurance companies, brokerage firms, security dealers, investment services, statistical organizations, financial services, stock exchanges, industrial corporations, public utility companies, law firms, accounting firms, engineering firms, schools, libraries, and others.

Among the releases issued by the Commission during the fiscal year ended June 30, 1939, were 236 releases dealing with its activities under the Securities Act of 1933, 394 releases relating to the Securities Exchange Act of 1934, and 469 releases under the Public Utility Holding Company Act of 1935. There were also issued 14 releases relating to the Commission's new duties under Chapter X of the Bankruptcy Act, as amended.

There is given below a classification, according to subject matter of the total of 1,648 information releases issued by the Commission during the past fiscal year:

Orders of the Commission -- 493

Filing of registration statement, applications, and other public documents -- 423

Daily figures on odd-lot trading -- 299

Financial statistics -- 161

Reports of court actions -- 103

Rules, regulations, and interpretations -- 55

Personnel changes -- 20

Announcements of the Commission's activities for the Temporary National Economic Committee -- 18

Investment Trust Study -- 11

Accounting opinions -- 2

Miscellaneous -- 63

Total releases issued -- 1,648

Other Publications.

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

Report to the Congress on the Study of Investment Trusts and Investment Companies:

Part Two -- Statistical Survey of Investment Trusts and Investment Companies.

Part Three -- -Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies.

Chapter I -- Background of Investment Company Industry in Relation to Abuses. Chapter II -- Detailed Histories of Various Investment Trusts and Investment Companies.

Supplemental Report on Investment Trusts in Great Britain.

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

An alphabetical list of Over-the-Counter Brokers and Dealers registered with the Commission as of April 30, 1938, together with supplements thereto.

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

Decisions of the Commission:

Volume 2, Part 1 -- -- January 1, 1937 to June 30, 1937.

Volume 2, Part 2- -- July 1, 1937 to December 31, 1937.

Volume 3, Part 1 -- January 1, 1935 to June 30, 1938.

Investigation In the Matter of Richard Whitney et al:

Volume 1 -- Report of the Commission.

Volume 2 -- Transcript of Hearing.

Volume 3 -- Exhibits.

PERSONNEL

At the close of the fiscal year ended June 30, 1939, the personnel of the Commission comprised 5 Commissioners and 1,571 employees. Of these 1,571 employees, 1,033 were men, and 538 were women.

Statistics:

Commissioners -- 5

Departmental:

Permanent -- 1,226

Temporary -- 18

Regional Offices:

Permanent -- 319

Temporary -- 8

Total -- 1,576

Subject to retirement act -- 931

FISCAL AFFAIRS

Appropriations for fiscal year 1939:

Salaries and expenses -- \$4,796,000

Printing and binding -- \$76,000

Total appropriated -- \$4,872,000

Obligations for fiscal year 1939:

Salaries:

Departmental -- \$3,078,700

Field -- \$832,751

Expenses:

Mileage and witness fees -- \$25,024

Supplies and material -- \$155,404

Communications services -- \$79,308

Travel expense -- \$253,727

Transportation of things -- \$4,367

Reporting hearings -- \$50,689

Light and power -- \$5,196

Rents -- \$93,757

Repairs and alterations -- \$14,483

Special and miscellaneous expenses -- \$2,882

Purchase of equipment -- \$129,275

Total obligations for salaries and expenses -- \$4,775,572

Obligations for printing and binding -- \$75,832

Grand total obligations -- \$4,851,404

Unobligated balance -- \$20,596

Appropriations -- \$4,872,000

Part VI
APPENDIXES

APPENDIX I
RULES OF PRACTICE (as amended to December 1, 1939)

RULE I
BUSINESS HOURS -- REGIONAL OFFICES

The principal office of the Commission at Washington, D. C. is open on each business day, excepting Saturdays, fro. 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, Cleveland, 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 Sections 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 fifteen-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 report 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, upon final determination, of such proceeding, or pursuant to an order of the Commission, 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 after it is made available to the public 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 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 5 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, ending 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 X-24B-2 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, X-24B-2 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, X-24B-2, 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), X-24B-2 (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 exception, which are filed in connection with any hearing shall, unless otherwise ordered by the Commission, 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 final determination of the proceeding by the Commission, and prior thereto shall be for the confidential use only of the Commission, the respondent or respondents and counsel.

(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 III (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 10.5 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

(a) Any interested representative, agency, authority, or instrumentality of the United States, and any interested State, State commission, State securities commission,

municipality, or other political subdivision of a State, shall be permitted to intervene in any proceeding upon written request. Any other person may be permitted to intervene in any proceeding upon written application to the Commission showing that he possesses or represents a legitimate interest which is or may be inadequately represented in such proceeding, but no person will be permitted to intervene if after examination the Commission finds that, for any reason (including the existence of undesirable conflicts in the interests possessed or represented by the applicant), his participation in the proceeding would not be in the public interest, or for the protection of investors, or, in a proceeding under the Public Utility Holding Company Act of 1935, for the protection of consumers. Intervention shall be subject to such terms and conditions as the Commission may prescribe, which may include a requirement that the applicant divest himself of specified interests which might conflict with the interests upon which his intervention is based.

(b) Any person filing an application, to intervene shall file therewith an affidavit setting forth in detail his interest or the interest to be represented by him in the proceedings, and stating whether the position which he may propose to take with respect to the pending matter is one already taken by any other party to the proceedings. In the case of a person desiring to intervene in a representative capacity, his affidavit in addition (1) shall state all relevant material facts bearing upon the existence of any interest of the applicant or of any person represented by him which may conflict with the interests of any other person represented by him, including all affiliations of the applicant or of any person represented by him with any other party to the proceedings; (2) if requested by the Commission shall state the names and addresses of the persons represented; and (3) shall be accompanied by copies of all circulars, other general literature, and forms of authorization used or intended to be used by the applicant.

(c) Upon request by any party or by counsel for the Commission, the trial examiner or the Commission may for good cause shown order the applicant to submit himself for examination with respect to his application.

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.

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 depositary;
- (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 depositary 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 depositary (whether physically held by such depositary 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:

Attention 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

[Footnote: The Commission adopted Form S-10, effective November 27, 1939, to be used for registration of all types of oil or gas interests and repealed forms G-1 and G-2.

However, any registration statement filed with the Commission prior to January 15, 1940, may be filed on such form as would have been appropriate for use prior to the adoption of form S-10.]

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 [Footnote: The Commission adopted Form S-10, effective November 27, 1939, to be used for registration of all types of oil or gas interests and repealed forms G-1 and G-2. However, any registration statement filed with the Commission prior to January 15, 1940, may be filed on such form as would have been appropriate for use prior to the adoption of form S-10.]

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.

GUIDE TO FORMS ADOPTED UNDER THE SECURITIES EXCHANGE ACT OF 1934

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.

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 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. [Footnote: Rule X-13A-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 ha 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 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 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.

FOR APPLICATIONS FOR REGISTRATION OF NATIONAL SECURITIES ASSOCIATIONS AND AFFILIATED SECURITIES ASSOCIATIONS [Footnote: The forms for applications for registration of national securities associations and affiliated securities associations became effective July 13, 1939.]

Form X-15AA-1. Application for registration as a national securities association or affiliated securities association. -- This form is to be used for applications for registration as national securities associations or affiliated securities associations.

Form X-15AJ-1. Amendatory and/or supplementary statement to registration statement of national securities association or affiliated securities association. -- This form is to be used for filing amendatory and/or supplementary statements to registration statements of national securities associations or affiliated securities associations.

Form X-15AJ-2. Annual consolidated supplement to registration statement of national securities association or affiliated securities association. -- This form is to be used for filing annual consolidated supplements to registration statements of national securities associations or affiliated securities associations.

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 REPORTING STABILIZTNG TRANSACTIONS

Form X-17A-1. For reporting stabilizing transactions. -- This form is to be used for reporting stabilizing transactions pursuant to Rule X-17A-2 (a) (1) or (3).

Form X-17A-2. For reporting stabilizing transactions. -- This form is to be used for reporting stabilizing transactions pursuant to Rule X-17A-2 (a) (2).

Form X-17A-3. For reporting stabilizing transactions. -- This form is to be used for reporting stabilizing transactions pursuant to Rule X-17A-2 (a) (4).

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-3D-13. Notification of acquisition of utility assets. -- This form is to be filed by the acquiring company in the event of an acquisition of utility assets exempted by Rule U-3D-13.

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-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-6B7-1. Application pursuant to Section 6 (b) and declaration pursuant to Section 7. -- This form consolidates two old forms into one, and may be used either for an application for exemption from Section 6 (a), pursuant to Section 6 (b), or for a declaration under Section 7.

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, to any person, or for the approval of the sale by a registered holding company or a subsidiary company thereof to an associate or affiliate.

Form U-12 (I)-A. Statement pursuant to Section 12 (i). -- This is a form of statement to be made by a person employed or retained by a registered holding company or a subsidiary thereof.

Form U-12 (I)-B. Statement pursuant to Section 12 (i). -- This is a form of an annual statement to be made by a person regularly employed or retained by a registered holding company or subsidiary company thereof. This annual form relieves persons, who are regularly employed or retained by holding companies or their subsidiaries and who frequently represents such companies, from the necessity of filing numerous reports on Form U-12 (I)-A.

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-13E-1. Report by affiliate service company. -- This form is to be filed pursuant to Rule U-13E-1 by an affiliate service company or by a company principally engaged in the performance of services.

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.