LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Philadelphia 3, Pa., January 28, 1944.

Sir:

I have the honor to transmit to you the Ninth Annual Report of the Securities and Exchange Commission, required by the provisions of Section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934, Section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935, Section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940 and Section 216 of the Investment Advisers Act of 1940, approved August 22, 1940.

We have followed the war-time policy that we initiated last year of presenting our report as concisely and economically as possible.

Respectfully,
Ganson Purcell
Chairman

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

SECURITIES AND EXCHANGE COMMISSION
Central Office
18th and Locust Streets
Philadelphia 3, Pa.

COMMISSIONERS
Ganson Purcell, Chairman
Robert E. Healy
Sumner T. Pike
Edmund Burke, Jr. [Footnote: Resigned October 1, 1943.]
Orval L. DuBois, Secretary

LOCATION OF REGIONAL OFFICES

Atlanta, Georgia/ Palmer Building (Room 415)
Baltimore, Maryland/ Baltimore Trust Building (Room 2410)
Boston, Massachusetts/ Shawmut Bank Building (Room 426)
Chicago, Illinois/ Bankers Building (Room 630)
Cleveland, Ohio/ Standard Building (Room 1608)

Denver, Colorado/ Midland Savings Building (Room 822)
Fort Worth, Texas/ United States Courthouse (Room 103)
New York, New York/ Equitable Building (Room 2006)
San Francisco, California/ 625 Market Street (Room 1301)
Seattle, Washington/ 1411 Fourth Avenue Building (Room 810)

PART I
ADMINISTRATION OF THE SECURITIES ACT OF 1933

GENERAL SCOPE OF REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT OF 1933

The Securities Act of 1933 provides for full disclosure of pertinent information regarding securities publicly offered for sale in interstate commerce or through the mails, but does not confer upon the Commission the power to approve or pass upon the merits of any security. The Act is also designed to prevent misrepresentation, deceit and other fraudulent practices in the sale of securities. Issuers of securities to be publicly offered and sold interstate commerce are required to file registration statements with the Commission. These registration statements must contain specified information on the proposed offering and are available for public inspection. An integral part of the requirements of each statement is a prospectus setting forth in condensed or summarized form the more essential information contained in the registration statement. The Act provides that the prospectus must be made available to all prospective purchasers of the security. The Commission's registration and examination procedures, and its power to issue stop-order proceedings to suspend the effectiveness of the registration statement have been described in previous annual reports.

NEW RULES, REGULATIONS AND FORMS FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933

A material simplification of forms and reporting requirements under the Securities Act of 1933 was effected during the past fiscal year in connection with a general program which is discussed in the following section.

General simplification of registration and reporting requirements under various Acts. – The Commission announced on December 18, 1942 [Footnote: Securities Act of 1933 Release No. 2887] a comprehensive simplification of a number of registration and reporting requirements under various Acts which it administers, particularly the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940. These changes incorporated many of the suggestions received from representatives of the securities industry which had been under consideration for

some time. The Commission's study leading to these changes was accelerated by the proposed revision of its proxy rules, announced at the same time, and discussed elsewhere in this report. Subsequent experience shows that this general streamlining and coordination of registration and reporting forms has resulted in considerable savings of paper work without material lessening of the protection to investors afforded by the statutes. The principal revisions are:

1. A new general form has been adopted for registration of commercial and industrial companies under the Securities Act of 1933, permitting the filing of the prospectus as a principal part of the registration statement, thus eliminating much duplication between the prospectus and the registration statement proper.

2. A registration statement filed under the Securities Act of 1933 becomes a basic document under the simplification program so that securities covered by the statement may be listed on a stock exchange by filing copies of the registration statement. If a company is required to file annual reports with the Commission, these reports may consist principally of copies of its registration statement under the Securities Act of 1933, its annual report to stockholders, or a thirteen-months' prospectus. One result is that a company's annual report to stockholders, its proxy statement and its annual report to the Commission may, if the company so elects, be substantially the same document.

3. A number of changes have been effected in the requirements for financial statements designed to simplify the presentation of such data. [Footnote: Securities Act of 1933 Release No. 2889] These changes are discussed in more detail infra.

4. Under the Securities Exchange Act of 1934, the procedure for registration of additional securities on an exchange and for registration on an additional exchange has been simplified by the revision of Forms 8-A and 8-C.

5. The Annual Supplement Form U5S for registered holding companies has been revised to eliminate 23 out of a total of 42 items or sub-items and 6 out of a total of 13 exhibits or sub-exhibits. In addition, many of the remaining items and instructions thereto have been amended to decrease the quantity of information required.

6. Two skeleton forms have been adopted for the use of public utility holding companies registered under the Public Utility Holding Company Act of 1935 in filing annual reports under Sections 13 and 15 (d) of the Securities Exchange Act of 1934. These forms permit such companies to file copies

of their annual supplements in lieu of furnishing the information required in the forms heretofore used by such corporations. However, such companies must file the financial statements required by Form 10-K and the financial statements must be prepared in accordance with Regulation S-X.

The new program also includes simplified forms for the registration of securities of closed-end and open-end management investment companies and unit investment trusts which permit such companies to file a registration statement consisting of little more than a prospectus.

The use of the new forms included in the simplification program is entirely permissive, except that the new Form U5S under the Public Utility Holding Company Act of 1935 is intended to supplant the existing form until further notice. Any company may use them or may follow the procedure heretofore in effect. The Commission pointed out in its announcement that it will give careful consideration to any criticisms or suggestions with regard to the use of the new forms.

Amendments of rules under the Securities Act of 1933 resulting from simplification program. – A number of amendments were announced on December 22, 1942, [Footnote: Securities Act of 1933 Release No. 2888] to the rules under the Securities Act of 1933 as a part of the comprehensive revision of the reporting requirements. These are described later in this report.

Rules governing exempt issues amended. -- Regulation A was amended to clarify the circumstances under which it is available for the exemption from the Securities Act of 1933 of an issue of securities which had once been effectively registered under that Act. Schedules A to F prescribed by Rule 330 of Regulation B were amended by eliminating the requirement that information regarding the maximum offering price be disclosed, and by substituting in the appropriate schedules the requirement of statements of the aggregate number of oil and gas interests offered for sale, and of the percentage of production which will be owned by the operating lessee or lessees, unencumbered, upon completion of the sale of the issue offered.

The Commission eliminated the requirement of a statement of the maximum offering price from the schedules because it had been informed that salesmen have sometimes used such statement as a representation to investors of a value approved by the Commission. The only function of this requirement was to disclose to the Commission that the aggregate offering price did not exceed $100,000. The action taken makes no change in the Rules, and all the conditions upon which the exemption is based, including the $100,000 limitation, remain unchanged.

DISCLOSURES RESULTING FROM EXAMINATION

As in previous years, through its examination procedure the Commission secured fair and accurate disclosure of material information required in registration statements and prevented the use in many of these documents of information which was misleading and inaccurate.

STOP-ORDER POWER NOT USED DURING YEAR

For the first time in the 10-year history of the administration of the Securities Act of 1933, during the entire fiscal year there occurred no instance wherein the sale of securities was prohibited by the Commission through the issuance of a stop or refusal order. [Footnote: During the succeeding 4-1/2 months of the current fiscal year, through November 15, 1943, likewise no stop or refusal order has been issued.]

STATISTICS OF SECURITIES REGISTERED UNDER THE SECURITIES ACT OF 1933

[table omitted]

A total of 471 amendments [Footnote: These amendments include 308 classed as “pre-effective” and 163 as “post-effective,” and do not take into account 345 others of a purely formal nature classed as “delaying” amendments.]

Certain registrants under the Securities Act of 1933 also filed during the year pursuant to Section 15 (d) of the Securities Exchange Act of 1934, 327 [Footnote: 61 of the above annual reports and the 241 quarterly reports were filed pursuant to Section 30 of the Investment Company Act of 1940 also.] annual reports and 129 amendments thereto, and 241 quarterly reports and 10 amendments thereto, all of which required examination.

In addition, the following supplemental prospectus material was filed during the past fiscal year under the Securities Act of l933:

116 prospectuses were filed pursuant to Rule 800 (b) which required the filing of such information within 5 days after the commencement of the public offering.

115 sets of supplemental prospectus material were filed by registrants to show material changes occurring after the commencement of the offering.

314 sets of so-called 13-months prospectuses were filed pursuant to Section 10 (b) (1) of the Act.

Thus during the past fiscal year there were filed in the aggregate 545 additional prospectuses of these 3 classes.

At the same time, 113 supplementary statements of actual offering price were filed as required by Rule 970; and there were 20 instances where registrants voluntarily filed supplemental financial data.

SECURITIES EFFECTIVELY REGISTERED

During the fiscal year ended June 30, 1943, 123 statements covering 189 issues of securities of an aggregate value of $659,480,000 were effectively registered under the Securities Act of 1933. Registrations were heaviest toward the end of the period, with the final six months accounting for about 68 percent of the number of issues and 72 percent of the value. Those registered for sale for accounts of the issuers (primary distributions) amounted to $485,928,000, of which 3.8 percent was to be paid for cost of flotation. The major element in reported cost of flotation was compensation to distributors, amounting to 3.2 percent of gross proceeds. Other expenses amounted to only 0.6 percent.

A breakdown of the major component of compensation to distributors and a comparison with preceding years for comparable categories of securities indicates that there has been a gradual diminution in this major item of cost. Compensation to investment bankers on the issues handled by them, excluding issues of investment trusts on which costs are not reported in comparable manner, were as follows in terms of percent of gross proceeds:

[table omitted]

Although the rate of compensation rose in 1943 for the aggregate of bonds registered for sale to the public through investment bankers, this was due to an increase in the proportion of lower quality bonds. Compensation was generally lower for those of comparable quality, as shown by the following breakdown:

[table omitted]

The Commission’s encouragement of competitive bidding apparently was responsible for some of the decline in this element of cost of flotation. Compensation on competitively bid bond issues ran less than the avenge compensation of their respective quality groups. Below are shown average rates of compensation to distributors in terms of percentage of gross proceeds for bond issues sold through competitive bidding compared with the average rates for the other issues in their respective quality groups.

[table omitted]

Publicity given to rates of compensation on issues registered under the Act may also have contributed to the general decline in the major component of cost of flotation.

A breakdown of the minor component of other expenses of flotation is shown below, based on those registration statements in which expenses were reported in sufficient detail to enable classification according to the possible effect of registration requirements. It may be noted that the types of expenses which would have been incurred in any event but which might have been partially affected by the Act -- printing and engraving; legal, accounting, and engineering fees; and miscellaneous expenses -- amounted to little more than half of one percent of gross proceeds. The SEC registration fee, which of course is entirely attributable to the Act, amounted to but one one-hundredth of one percent of gross proceeds.

[table omitted]

The minor component of other expenses than compensation varied considerably from the average as affected by the size of issue. The tabulation below of these expenses in percent of gross proceeds is based on the statements of all bonds registered for sale by investment bankers to the public (exclusive of investment trust issues).

[table omitted]

The net proceeds accruing to the issuers after payment of cost of flotation aggregated $467,609,000. The principal applications of these net proceeds were planned as follows: 61 percent for the retirement of indebtedness and preferred stock; 23 percent for purchase of securities for investment and affiliation, mostly the former; 9 percent for increase of working capital; and 5 percent for expansion of plant and equipment.

Electric light, power, heat, gas, and water utilities accounted for $173,189,000 or 36 percent of the new issues of securities registered for sale. Registrations by financial and investment companies amounted to $117,072,000 or 24 percent of the total. This was the highest proportion accounted for by this group in any fiscal year except one. Manufacturing companies and transportation and communication companies accounted for unusually low proportions, 18 percent and 2 percent respectively. Nearly two-thirds of the new issues registered for sale during the year were in the form of bonds, and all except 3 percent were planned for sale through investment bankers.

EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933

The Commission's statutory power to exempt from the registration requirements of the Securities Act of 1933 security issues up to and including $100,000, and its procedures and rules established thereunder, were described in its Seventh Annual Report, pages 175-179. In connection with such exempt issues, there were filed with the Commission during the past fiscal year a total of 353 Letters of Notification, pursuant to Regulation A, and 74 amendments thereto, representing an aggregate offering price of $17,986,987. That part of these offerings which related to oil and gas leases and securities of companies engaged in various phases of the oil and gas business accounted for 54 of these Letters of Notification with an aggregate offering price of $1,062,724. At the same time there were received and examined 532 Offering Sheets, pursuant to a Regulation B, and 504 amendments to such Offering Sheets, relating to fractional undivided interests in oil and gas rights with an aggregate offering price of $12,866,457.72. The following table indicates the action taken with respect to these Offering Sheets:

Various Actions on Filings under Regulation B

Temporary suspension orders (Rule 340 (a))/ 92
Orders terminating proceeding after amendment/ 67
Orders consenting to withdrawal of offering sheet and terminating proceeding/ 13
Orders terminating effectiveness of offering sheet (no proceeding pending)/ 49
Orders consenting to amendment of offering sheet (no proceeding pending)/ 366
Orders consenting to withdrawal of offering sheet (no proceeding pending)/ 39
Total orders/ 626

In addition, the Commission received and examined during the year confidential written reports pursuant to Rules 320 (e) and 322 (d) of Regulation B in the total amounts of 3,627 on Form 1-G and 1,361 on Form 2—G.

INVESTIGATION OF OIL AND GAS SECURITIES TRANSACTIONS

During the year investigations were conducted with respect to a total of 187 oil and gas properties or proposed securities offerings. Where these investigations show evidence of a violation of the criminal provisions of the Securities Act of 1933, the results are transmitted by the Commission to the Department of Justice, and criminal proceedings are instituted in the discretion of the Attorney General of the United States. In the event such proceedings are instituted, the Commission's attorneys and engineers who participated in the investigation leading up to the proceedings assist the United States attorneys in the preparation of the cases for presentation to the grand jury and for trial.

[table omitted]

CIVIL ACTIONS INSTITUTED BY THE COMMISSION [Footnote: Also see infra Part VIII, Litigation, Civil Proceedings]

The Commission during the past fiscal year brought a number of actions, either to enjoin violations of the registration or fraud provisions of the Securities Act of 1933 or to enforce compliance with subpoenas, where attempts were made to camouflage the real nature of the transactions by making it appear that the subject matter of the sale was real or personal property and hence not a security subject to the Act.

Typical of these cases was that involving ***Ocean Crab Pot Operators Inc.*** [Footnote: ***Securities and Exchange Commission v. Ocean Crab Pot Operators, Inc***., U.S.D.C. Wash. Defendants consented to entry of judgment.], in which the Commission obtained an injunction restraining the sale of crab pots coupled with a profit sharing agreement.

In another case, ***Securities and Exchange Commission v. Bourbon Sales Company*** [Footnote: U.S.D.C.W. D. Ky.], the Commission filed an application with the United States District Count for the enforcement of a subpoena duces tecum issued by the Commission and directed to Bourbon Sales Company. In its opinion ordering compliance with the Commission's subpoena, the court determined that whiskey warehouse receipts coupled with bottling contracts were securities. Another subpoena enforcement case with similar facts was that involving The Penfield Company of California [Footnote: U.S.D.C. S.D. Cal.]

Pending during the past year was an action involving C. M. Joiner, where both the District Court and the Circuit Court of Appeals upheld the contention of the defendants that they were selling merely real estate leases. They rejected the Commission's contention that the defendants were selling an investment contract by virtue of the representation that a test well would be drilled which might greatly enhance the value of the assignments. [Footnote: On November 22, 1943, the Supreme Court upheld the Commission's contention that the defendants were selling securities within the meaning of the Act and reversed the lower courts. ***Securities and Exchange Commission v. C.M. Joiner Leasing Corporation***, 320 U.S. , 64 S. Ct. 120, 88 L. ed. 62.]

PROPOSED AMENDMENTS TO THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934

Reference was made in the Commission's Eighth Annual Report, pages 4 and 5, to various proposals to amend the Securities Act of 1933 and the Securities

Exchange Act of 1934. There were no hearings on these proposals during the past fiscal year.

PART II
ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

REGISTRATION OF SECURITIES ON EXCHANGES

Reference is made to the Sixth Annual Report, pages 100-102, and previous annual reports, for a description of the general purpose and nature of the statutory provisions for the registration of securities on exchanges and the Commission's procedure in examining applications and reports for compliance with the requirements of Sections 12 and F 13 of the Securities Exchange Act of 1934. It may be noted that those provisions in general seek to make available to the public information regarding the condition of companies whose securities are traded on any national securities exchange and to keep such information up-to-date.

NEW RULES, REGULATIONS, AND FORMS FOR REGISTRATION OF SECURITIES ON EXCHANGES

Revisions of proxy rules. -- When the Commission announced on December 18, 1942, a comprehensive simplification of registration and reporting requirements under various Acts administered by it, which is discussed above, it also announced a revision of certain of its rules applicable to all solicitations of proxies, pursuant to Regulation X-l4, after January 15, 1943. The principal changes are summarized below:

1. More extensive information must be given on the compensation and dealings of corporate managers, as well as a brief statement of the principal occupation of all directors and a resume of the business experience of new candidates.

2. Regular annual reports to stockholders must accompany or precede proxy statements. These annual reports to stockholders are not considered part of the proxy material and need not be officially filed with the Commission.

3. Stockholders making proposals for action which are opposed by management must be given not more than 100 words in the proxy in which to state their position, provided the security holder gives the management reasonable notice of his intention.

4. The exemption previously granted corporations making proxy solicitations without use of the mails or interstate commerce was abolished.

5. An exemption from the rules was provided for certain types of solicitations through newspaper advertisements.

The additional information required about management includes a list of all directors and officers, except officers (not directors) receiving less than $20,000 a year, together with a statement of the amounts received in cash as well as under pension or Option plans. Information must also be given under the revised rules showing all loans to officers and directors not made in the ordinary course of business, together with a brief description of all material transactions of officers and directors and their associates with the company or its subsidiaries.

The Commission had previously authorized its staff to circulate the proposed revisions to its proxy rules for comments and suggests. The revisions made by the commission take into consideration the comments thus received. On the other hand, a number of the suggestions proposed by the staff were not adopted. They were: (1) that information of the type submitted in an annual report to stockholders including financial statements be included in the proxy statement; (2) that minority stockholders be given an opportunity to use the management's proxy material in support of their own nominees for directorships; (3) that persons soliciting proxies be denied the right to obtain discretionary authority where security holders have not marked ballots -- while this proposal was not adopted, a requirement of a clearer statement concerning the solicitation of discretionary authority was included in the new rules; and (4) that compensation of officers who are not directors and who receive $20,000 or less be reported.

The Commission subsequently made public excerpts from letters of the Director of the Corporation Finance Division to officers of corporations who had asked for interpretations of certain provisions of the amended proxy rules. These interpretations are available in Securities Exchange Act of 1934 Release No. 3385, February 17, 1943.

The amendments of the Commission's proxy rules caused considerable discussion. Bills were introduced by Representatives Wolverton and Boren designed to reinstate the rules as they had existed before the revision. Hearings on these bills were commenced in June of 1943 before the House Committee on Interstate and Foreign Commerce. The hearings are presently in adjournment.

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS

The Commission's Regulation X-l4, adopted pursuant to the provisions of three of the statutes administered by it, [Footnote: See Sections 14 (a) of the Securities Exchange Act of 1934, 12 (e) of the Public Utility Act of 1935, and 20 (a) of the

Investment Company Act of 1940.] requires that certain information be made available by companies to their security holders whose proxies, consents, or authorizations are solicited.

During the year the Commission received and examined both the preliminary and definitive material thus required with respect to 1,427 such solicitations. In addition, 307 items of amendatory or supplemental soliciting material were received and examined. The Commission also continued its practice of furnishing every assistance to persons who desired to obtain in advance of the filing late informal opinions or suggestions as to the preparation of required material.

Rule requiring report upon settlement of war contract negotiations. -- Rule X-13A-6, which requires the filing of a current report on Form 8 upon the occurrence of specified events, was amended in relation to companies having war contracts subject to renegotiation proceedings under Section 403 of the Sixth Supplemental National Defense Appropriation Act, as amended, so as to require a report upon the settlement of any such proceedings. No report is required, however, if effect was given to the settlement in the most recently filed financial statements or if financial statements for the period covered by the settlement have not been filed. In the latter case, it is assumed, of course, that effect will be given to the settlement when financial statements for the period are filed,

The financial instructions for a number of the annual report forms were amended where necessary to clarify the applicability of Regulation S-X thereto; and Rule X-3A12-l, no longer having practical application to the situation it was designed to relieve, was repealed.

STATISTICS OF SECURITIES REGISTERED ON EXCHANGES

Up to and including June 30, 1943, 2,965 issuers had filed a total of 5,651 applications for registration of securities under Section 12 of the Securities Exchange Act of 1934 and a total of 33,122 annual and current reports under Section 13 of the Act. As of June 30, l943, the registration of the securities of 2,244 of the issuers was in effect, and the registration of the securities of the remaining 721 issuers had ceased to be effective

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

TERMINATION OF REGISTRATION UNDER SECTION 19 (a) (2)

There were pending at the beginning of the year 3 proceedings instituted under Section 19 (a) (2) of the Securities Exchange Act of 1934 which empowers the

Commission, after appropriate notice and opportunity for hearing, to deny, to suspend the effective date of, to suspend for a period of not exceeding 12 months, or to withdraw the registration of a security, if it finds that the issuer has failed to comply with any provision of the Act or the rules and regulations thereunder; and 16 proceedings were instituted during the year. The Commission ordered the securities of 11 of these issuers withdrawn and the proceedings with respect to securities of two issuers dismissed; and six proceedings were pending at the close of the year.

The withdrawal of registration was ordered in 10 of these cases because of the company's failure to file the annual report required under the Act, and, in one case, involving Class "A" stock of Associated Gas and Electric Company, [Footnote: Securities Exchange Act Release No. 3285.] because of "false and misleading" statements found by the Commission in the application for registration and certain annual reports filed by the company. With that exception and one other involving a medium-sized brewery concern, the companies whose securities were thus withdrawn from registration were small organizations consisting for the most part of inactive mining companies.

WITHDRAWAL OR STRIKING OF SECURITIES FROM LISTING AND REGISTRATION ON NATIONAL SECURITIES EXCHANGES

During the year ended June 30, 1943 there were filed with the Commission under Section 12 (d), by issuers or exchanges, applications for the withdrawal or striking of 56 issues from listing and registration on national securities exchanges. At the beginning of the year applications for the removal of 10 issues were pending. During the year the Commission granted applications involving 41 issues, dismissed without prejudice an application involving 1 issue, and permitted an application involving 1 issue to be withdrawn. Applications for the removal of 23 issues were pending as of June 30, 1943.

During the year the Commission received from national securities exchanges certifications of removal involving 105 issues stricken from listing and registration because of payment, redemption, or retirement.

AMENDMENT OF RULE X-12D2-2 (a)

Rule X-12D2-2 (a) was amended during the year to permit an exchange to remove, by certification without the necessity of application and hearing, the entire class of a registered security when the instruments representing the security come to evidence other securities, as for example in an exchange or substitution resulting from a stock split-up, recapitalization or merger.

UNLISTED TRADING PRIVILEGES ON NATIONAL SECURITIES EXCHANGES

On June 30, 1943, 1,560 stock and 217 bond issues had unlisted trading privileges on the registered exchanges, counting each issue once if it enjoyed the privilege on one such exchange, twice if on two such exchanges, etc. The distribution of this count among exchanges is shown under Column U of Appendix Table 13.

These totals included 1,295 stock and 186 bond issues under Clause (1), 260 stock issues and 1 bond issue under Clause (2), and 5 stock and 30 bond issues under Clause (3), of Section 12 (f) of the Securities Exchange Act of 1934. [Footnote: Clause (1) covers continuance of privileges enjoyed prior to March 1, 1934; Clause (2) covers extension of the privileges to issues listed on some other registered exchange; Clause (3) covers extension of the privileges to issues in respect of which there is available from a registration statement and periodic reports filed pursuant to the rules and regulations prescribed under the Securities Act of 1933 or the Securities Exchange Act of 1934 information substantially equivalent to that available on listed issues. In Clause (3) cases the statute requires the imposition of such terms and conditions as will subject the issuer, its officers, directors and principal stockholders to duties substantially equivalent to those which would arise in the security were fully listed and registered, except where the public interest and the protection of investors would nevertheless best be served by extension of the privileges. In addition, under Clauses (2) and (3), certain conditions as to public distribution and public trading activity in the vicinity of the exchange must be satisfied.] The distribution of this count of issues under Clauses (2) and (3) among exchanges is shown in Appendix Table 14.

The total under Clause (1) shows a reduction of 46 stock and 6 bond issues since June 30, 1942, and a reduction of 379 stock and 406 bond issues (including 100 stock and 199 bond issues formerly on the New York Real Estate Exchange) since June 30, 1937, following upon the substantial reduction prior to that date discussed on pages 17-18 of the Third Annual Report Of the Commission. This reduction is in line with original expectations [Footnote: See “Report on Trading in Unlisted Securities upon Exchanges” and “Hearing before the Senate Committee on Banking and Currency,” January 3 and February 11, 1936 respectively.] as to this type of issue on exchanges.

Counting each issue but once, regardless of the number of registered exchanges upon which it has unlisted trading privileges, the total is 1,027 stock and 217 bond issues, as shown in Appendix Table 10. In particular, the exclusion of this duplication among exchanges reduces the count of 260 stock issues under Clause (2) to 155, the latter figure being the precise number of issues currently admitted to unlisted trading under that Clause. Many of the net 160 stock and 31 bond issues admitted to unlisted trading privileges under Clauses (2) and (3) are

of companies whose issues, or whose predecessors' issues, were admitted to trading upon the applicant exchanges in the past.

Many of the issues under Clause (1) and all of those under Clause (2), are listed and registered on some registered exchange other than that upon which they enjoy unlisted trading privileges. Exclusion of such listed issues leaves a residue of issues which have only an unlisted exchange status. This residue includes 474 stock and 163 bond issues under Clause (1), and 5 stock (all preferred stocks) and 30 bond issues under Clause (3), representing a total of 479 stock and 193 bond issues, as shown in Columns (2) and (4) of Appendix Table 10. This total shows a reduction of 258 stock and 357 bond issues since June 30, 1937.

An application by the Chicago Rivet and Machine Company for the termination of unlisted trading privileges in its Common Stock, $4 Par Value, on the New York Curb Exchange [Footnote: Seventh Annual Report, p. 148] was denied by the Commission during the past fiscal year. [Footnote: Securities Exchange Act Release Nos. 3083, 3088 and 3395.] The Exchange upon the suggestion of the Commission reduced the unit of trading in the security and conducted a six-month test of the character of trading with the reduced unit. Upon the expiration of this period the Commission found that the character of trading had improved and was not of such nature as to require the termination of unlisted trading privileges on that Exchange.

During the past fiscal year there were filed with the Commission by exchanges 17 applications under Rule X-12F-2 (b) seeking a determination that an altered or substituted security was substantially equivalent to a security theretofore admitted to unlisted trading privileges. Of these applications, 12 were granted, 3 were denied, and 2 were pending at the close of the year.

After the close of the fiscal year the National Association of Securities Dealers, Inc., in the first appeal to the courts from an order of the Commission in an unlisted trading case, filed a petition with the United States Circuit Court of Appeals for the Third Circuit for review of the Commission's order granting unlisted trading privileges to two bond issues upon application of the New York Curb Exchange. [Footnote: Securities Exchange Act Release No. 3452, July 5, 1943.]

UNLISTED TRADING -- EXEMPTED EXCHANGES

The Seattle Stock Exchange suspended operations on October 1, 1942. The total stock and bond issues admitted to unlisted trading on the 3 remaining exempted exchanges which permit unlisted trading were 56 and 4 respectively,

on June 30, 1943. The stock issues included 53 under Clause (1) and 3 under Clause (2) of Section 12 (f) of the Securities Exchange Act of 1934.

AMENDMENT OF RULE X-10A-l

Rule X-10A-l, dealing with short sales effected on a national securities exchange, was revised to provide that in determining the price at which a short sale may be effected in a security that has gone ex-dividend, ex-right, or ex-any other distribution, all relevant sale prices for the security prior to the "ex" date may be reduced by the value of such distribution.

SPECIAL OFFERING PLANS

On February 6, 1942, the Commission amended its Rule X-10B-2 to permit special offerings of blocks of stock on national securities exchanges where such offerings are effected pursuant to a plan filed with and declared effective by the Commission, as related on page 9 of the Eighth Annual Report.

Pursuant to the amendment, three exchanges adopted special offering plans: the New York Stock Exchange, the New York Curb Exchange, and the San Francisco Stock Exchange. Briefly, these plans are exchange rules permitting the special offering of a block of stock through the facilities of the exchange and during the regular trading session when the regular market on the floor is believed incapable of assuring absorption of the block within a reasonable period of time and within a reasonable range of prices. The offering is made at a fixed price which is set within the framework of the existing auction market. Members acting as brokers for public buyers are paid a special Commission by the seller which ordinarily exceeds the regular commission. Buyers obtain stock without paying any commission.

Special offerings on national securities exchanges numbered 105 in the year ended June 30, 1943. Of these, the New York Stock Exchange accounted for 93, with a total of 1,402,612 shares offered and 1,376,418 shares sold, the latter having a market value of $38,342,000 and affording revenue to buyers' brokers which totaled $717,000. On the N York Curb Exchange there were 10 special offerings totaling 50,661 shares, while the 42,311 shares sold were valued at $693,000 and carried total commissions for buyers' brokers of nearly $18,000. The San Francisco Stock Exchange had two special offerings totaling 6,172 shares, with sales of the same amount having a value of $58,600, and carrying special commissions of $2,420.

The special offering plans of the three exchanges compete to some degree with secondary distributions of exchange stocks effected over the counter after the close of the exchange session – so-called "twilight offerings." Secondary

distributions approved by the exchanges numbered 101 in the year ended June 30, 1943. They covered 4,830,698 shares of stock with a value of $129,370,000. Those approved by the New York Stock Exchange totaled 39, with a total of 2,480,236 shares valued at $61,995,000. New York Curb Exchange approvals numbered 40, comprising 2,227,778 shares valued at $65,252,000. Other exchanges approved 22, covering 122,684 shares valued at $2,123,000.

SPECIAL STUDIES

The Commission's staff continued its study of the problems of the regional exchanges which it undertook in the preceding fiscal year, and continued its study of characteristics of over-the-counter markets in exchange stocks, both, however, on a somewhat curtailed basis owing to loss of much of the personnel originally engaged in this work.

SAVING STUDY

The Commission in the fiscal year ended June 30, 1943 continued its series of quarterly releases on the volume and composition of saving by individuals in the United States. These releases show the aggregate volume of individuals' savings; i.e., the increase in their assets less the increase in their liabilities, exclusive of gains or losses from revaluation of assets: they show also the components contributing to this total, such as bank balances and currency holdings, insurance, securities, consumers' indebtedness, and consumers' durable goods.

In addition to the estimates of saving by individuals, after the close of the fiscal year, the Commission also made public for the first time estimates of a few selected components of corporate saving. In subsequent reports it is planned to present estimates of corporate saving inconsiderably more detail. It is intended in this manner to give a picture of the financial condition of corporations. In this way the volume and most significant components of all important segments of the national economy will be available.

MARKET SURVEILLANCE AND TRADING INVESTIGATIONS

The Commission's aim in its administration of the statutory prohibitions of the Securities Exchange Act of 1934 against stock market manipulation is a sufficient policing of the markets in order to accomplish the extinction of manipulation without interfering with the legitimate functioning of those markets. Its methods of market surveillance and its investigatory procedure are set forth at pages 91 et seq. of the Sixth Annual Report of the Commission.

[table omitted]

PEGGING, FIXING, AND STABILIZING OF SECURITIES PRICES

During the fiscal year ended June 30, 1943, the Commission continued the administration of (a) Rule X-17A-2, which requires the filing of detailed reports of all transactions incident to offerings in respect of which a registration statement has been filed under the Securities Act of 1933 where any stabilizing operation is undertaken to facilitate the offering; and (b) Regulation X—9A6—l, governing stabilizing transactions in securities registered on national securities exchanges effected to facilitate offerings of securities so registered in which the offering prices are represented to be “at the market” or at prices related to market prices.

Out of a total of 150 registration statements filed under the Securities Act of 1933 during the past fiscal year, 69 contained a statement of intention to stabilize to facilitate the offerings covered by such registration statements. Because of the fact that a registration statement in some cases covers more than one offering, there were a total of 77 offerings of securities in respect of which the statement required by Rule 827 of the Rules and Regulations under the Securities Act of 1933 was made to the effect that a stabilizing operation was intended to be undertaken. Stabilizing operations were actually conducted to facilitate 42 of these offerings. In the case of bonds, public offerings of $142,750,000 principal amount were stabilized. Offerings of stock issues aggregating 2,658,344 shares and having an aggregate estimated public offering price of $67,703,875 were also stabilized. Of the 42 stabilizing operations commenced during the past fiscal year, 35 had been completed and notices of termination of stabilization filed with the Commission and the remaining 7 were still in progress as of the close of the fiscal year.

Also during the past fiscal year, 7 notices of intention to stabilize were filed with the Commission on Form X-9A6-l pursuant to the provisions of Rule X-9A6-3. The offerings described in these notices, to facilitate which stabilizing operations were conducted, involved stock issues aggregating $1,873,309 shares having an aggregate initial public offering price of $25,826,310.

EXCHANGES REGISTERED AND EXEMPTED FROM REGISTRATION

During the past fiscal year there was no change in the number (19) of exchanges registered with the Commission as national securities exchanges. The Seattle Stock Exchange suspended operations as of October 1, 1942, for an indefinite period, or until the members should feel that the facilities of said exchange would again be needed; this reduced the number of active exempted exchanges to five of these firms from further violations of our Acts and subsequently revoked the firm’s registration as broker and dealer and as investment adviser and expelled the firm [Footnote: ***In the Matter of Frances J. Lubbe,*** Securities Exchange Act,

Release No. 3456, Investment Advisers Act, Release No. 37.] from membership in National Association of Securities Dealers, Inc. [Footnote: The activities of this Association, which is the only national securities association registered pursuant to Section 15A of the Securities Exchange Act, are described ***infra***.] Against thirteen other firms of the 53 which required investigation, proceedings on the question of revocation of registration were ordered; seven of these were members of the National Association of Securities Dealers, Inc. and accordingly our proceedings in these cases included the question of suspension and expulsion from membership in that association.

ADMINISTRATIVE PROCEEDINGS

The following table contains statistics relating to administration proceedings under Section 15 (b) of the Securities Exchange Act:

July 1, 1942 - June 30, 1943

Revocation proceedings pending July 1, 1942/ 15
Denial proceedings pending July 1, 1942/ 1
Revocation proceedings ordered during year/ 35
Denial proceedings ordered during year/ 6
Total/ 57

Revocation proceedings dismissed on withdrawal/ 3

Revocation proceedings dismissed and not revoked/ 1

Denial proceedings dismissed on withdrawal/ 2

Denial proceedings dismissed and registration permitted/ 0

Registrations denied/ 4 [Footnote: ***In the Matter of Jack Lewis Baker, doing business as J.L. Baker***, Securities Exchange Act-Release No. 3311. ***In the Matter of William K. Archer and Edward G. Mader, doing business as Archer, Mader & Co.*** Securities Exchange Act-Release No. 3440. ***In the Matter of Foelber-Patterson, Inc.,*** Securities Exchange Act-Release No. 3324. ***In the Matter of George Lewis Ohrstrom, doing business as G.L. Orhstrom & Co***., Securities Exchange Act-Release No. 3433. George L. Orhstrom, doing business as G.L. Orhstrom & Co., was later admitted to registration. See ***In the Matter of George L. Ohrstrom, doing business as G.L. Orhstrom & Co.,*** Securities Exchange Act-Release No. 3438.]

Registrations revoked/ 24 [Footnote: ***In the Matter of H. Vaughan Clarke & Co., doing business as H. Vaughan Clarke & Co.,*** Securities Exchange Act-Release

No. 3422. ***In the Matter of Herbert L. Honohan, doing business as Larson, Honohan & Co.*** (Not Inc.), Securities Exchange Act-Release No. 3476. Since the close of the fiscal year this case has been re-opened and the matter is pending. ***In the Matter of Lawrence R. Leeby, doing business as Lawrence R. Leeby & Co.,*** Securities Exchange Act-Release No. 3450. ***In the Matter of Daniel E. Knowles***, Securities Exchange Act-Release No. 3400. ***In the Matter of Ernest S. Price, doing business as E. S. Price and Company***, Securities Exchange Act-Release No. 3451. ***In the Matter of Kimball, Ware & Co.,*** Securities Exchange Act-Release No. 3401. ***In the Matter of Samuel S. Alexander***, Securities Exchange Act-Release No. 3398. ***In the Matter of Brentlinger &Hosea, Inc.,*** Securities Exchange Act-Release No. 3460. ***In the Matter of Morris Lawrence Jacobs, doing business as M. L. Jacobs***, Securities Exchange Act-Release No. 3437. ***In the Matter of Arthur F. Bernstein, doing business as A. F. Bernstein &Co.***, Securities Exchange Act-Release No. 3357. ***In the Matter of Duncan John MacGillivray Jr., doing business as MacGillivray and Company***, Securities Exchange Act-Release No. 3353. ***In the Matter of Seybolt & Seybolt Inc.,*** Securities Exchange Act-Release No. 3335. ***In the Matter of Wight and Company***, Securities Exchange Act-Release No. 3336. ***In the Matter of Superior Investment Co.,*** Securities Exchange Act-Release No. 3307. ***In the Matter of Blanchard Securities Company***, Securities Exchange Act-Release No. 3312. ***In the Matter of John L. McDaniel***, Securities Exchange Act-Release No. 3448. ***In the Matter of William T. Maloney***, Securities Exchange Act-Release No. 3148. ***In the Matter of Fischer & Company***, Securities Exchange Act-Release No, 3277. ***In the Matter of Sam B. Raitman***, Securities Exchange Act- Release No. 3316. ***In the Matter of Theodore T. Golden***, Securities Exchange Act-Release No. 3404. ***In the Matter of J. Morton Steiner, doing business as J. Morton Steiner Company***, Securities Exchange Act-Release No. 3350. ***In the Matter of Trost & Company, Inc.,*** Securities Exchange Act-Release No. 3345. ***In the Matter of Richard Mahony Company, Incorporated***, Securities Exchange Act -Release No. 3180. ***In the Matter of Emmet R. Nawn, doing business as E.R. Nawn Company***, Securities Exchange Act-Release No. 3286.]

Revocation proceedings pending June 30, 1943/ 22 [Footnote: In the Matter of Charles Hughes & Co., Inc., one of the proceedings pending at the close of the fiscal year, involved the sale of securities by that firm to customers at prices far in excess of prevailing market prices. In its findings and opinion issued on July 19, 1943 (Securities Exchange Act, Release No. 3464), the Commission held that the firm's sales of securities to certain customers at prices bearing no reasonable relation to current market prices, without disclosure of information with respect to the market prices, were fraudulent under 17 (a) of the Securities Act and Section 15 (c) (1) of the Securities Exchange Act, and ordered that its registration under Section 15 (b) be revoked. On petition for review the Circuit Court of Appeals, Second Circuit, in a sweeping opinion sustained the Commission's findings and affirmed the order, and also sustained the constitutionality of Section 15 (c) (1) of

the Securities Exchange Act and the validity of Rule X-l5 (c) (1). (Fed. (C.C.A. 2) December 10, 1943.]

Denial proceedings pending June 30, 1943/ 1

Total/ 57

In the Matter of Lawrence R. Leeby & Co.

One of the more significant proceedings involving revocation of registration as a broker and dealer related to dealing in oil royalties by Lawrence R. Leeby, doing business as Lawrence A. Leeby & Co. [Footnote: ***In the Matter of Lawrence R. Leeby & Co., Securities Exchange Act***-Release No. 3450.] Leeby had engaged in the practice of selling oil royalties to customers at prices as high as 150% over his concurrent cost, The two principal customers were women who were not well versed in investment matters and who depended exclusively upon Leeby's advice in all their securities transactions and relied upon him to act in their best interests at all times.

This is the first proceeding involving pricing practices in oil royalties, While the Commission's order revoking registration was based on the finding that Leeby, in his transactions with two women customers, was charged with the high fiduciary duties of an agent and that he violated these obligations repeatedly in taking secret profits at the expense of these customers and in acting in his own interest which was clearly in conflict with theirs, the Commission also determined that the duty of fair dealing rests on a dealer in oil royalties as it does on dealers in the more conventional types of securities. In long series of cases the Commission has held that a dealer in securities impliedly represents that he will treat all customers fairly, that he will not exploit their inexperience in securities matters or their reliance upon his integrity and that the price at which he sells a security to a customer is a fair one in relation to the prevailing market. A finding that any such representation is false is a finding of fraud. Since with respect to oil royalties there is no market such as exists for corporate securities, it was necessary to resort to other tests to determine the fairness of retail prices charged for oil royalties and the Commission concluded, with certain reservations, that "the least required of a dealer by the standards of fair dealing is that, unless special circumstances appear, he must charge a price bearing a fair relationship to the current wholesale price". The Commission held that in charging retail prices having no fair relation to the current wholesale prices, without disclosing the magnitude of his mark-ups, Leeby omitted to disclose material facts necessary to make his general representation as a dealer not misleading and that his conduct operated as a fraud on his customers.

The proceeding is also noteworthy because of related action by the Commission eliminating the disclosure of the maximum offering price from the offering sheets required under Regulation B. [Footnote: Regulation B of the Commission's Rules and Regulations under the Securities Act.] It was Leeby's practice to charge the maximum offering price in sales to customers, his defense being that this was the common practice among oil royalty dealers. He dealt with his customers as though the maximum offering price were an established price to the public. Such practice is obviously in disregard of the purpose of the maximum offering price, for its sole intended function is to determine whether the offering price of the entire issue is within the $100,000 exemption from the registration requirements of the Securities Act. In order, therefore, to prevent misuse of the maximum offering price in the future, the Commission amended Rule 330 of Regulation B, striking the statement of the maximum offering price from the disclosures required. [Footnote: Securities Act-Release No. 2925.]

In the Matter of W. K. Archer and Co.

After extended hearings ***In the Matter of W. K. Archer and Co.***, the Commission on June 13, 1942 issued its findings and opinion and ordered revocation of the registration of this firm. The Commission held that certain of the firm's activities were fraudulent under Section 17 (a) of the Securities Act and Section 15 (c) (1) of the Securities Exchange Act, and that it had also violated Sections 7 (c) (2) and 15 (b) of the Securities Exchange Act. On petition for review the United States Circuit Court of Appeals, Eighth Circuit, on February 15, 1943, sustained the Commission's findings and affirmed the order. [Footnote: 133 Fed. (2d) 795 (C.C.A. 8) (1943).] On June 7, 1943, the United States Supreme Court denied a petition for a writ of certiorari.

In the Matter of Guaranty Underwriters, Inc.

On August 7, 1942, the Commission ordered that proceedings be held on the question of revocation of the broker-dealer registration of Guaranty Underwriters, Inc. and on the question of suspension and expulsion of this firm from membership in the National Association of Securities Dealers, Inc. Hearings were commenced on August 20, 1942, and on the following day the company purported to withdraw its registration and consented to revocation of its registration. {Footnote: At the same time the company sent to the National Association of Securities Dealers, Inc. its written resignation from membership in that association.] The Commission took the consent under advisement and moved to proceed with the hearing. The Company then made several attempts by court action to stop the hearing.

1. The first action, before Judge Waller of the United States District Court for the Southern District of Florida, sought to enjoin Edward C. Johnson, the

Commission's trial examiner from holding further hearings under the Commission's order. The action was dismissed on the ground that the Circuit Court of Appeals had exclusive jurisdiction to review orders of the Commission. [Footnote: Guaranty Underwriters, Inc. v. Johnson, unreported (S.D. Fla., Sept. 4, 1942.] The company appealed to the Circuit Court of Appeals, Fifth Circuit, but later withdrew the appeal after stay of the hearing pending appeal had been denied both by Judge Waller and by one of the Circuit Court judges.

2. On the day the Commission's hearing was to be resumed the company, without notice to the Commission or the trial examiner, obtained an ***ex parte*** order from Judge McNeill of the Circuit Court of the Fourth Judicial Circuit of the State of Florida which purported to restrain the examiner and the individual Commissioners of the Securities and Exchange Commission from proceeding with the hearing. The Commission then brought suit, before Judge Waller of the United States District Court, to enjoin the enforcement of Judge McNeill's order; this was dismissed on the ground that Section 265 of the Judicial Code prohibits federal courts from enjoining state court proceedings. [Footnote: Guaranty Underwriters, Inc. v. Johnson, unreported (S.D. Fla., Sept. 19, 1942.] However, a writ of prohibition was obtained in the Supreme Court of Florida against Judge McNeill on the ground that he was without jurisdiction. [Footnote: Johnson v. McNeill, ***Fla.***, 10 So. (2d) 143 (Oct. 23, 1942.]

3. The company then petitioned the Circuit Court of Appeals, Fifth Circuit, to review the Commission's refusal to terminate its proceedings. This action was dismissed on the ground that the Commission had not yet issued a renewable order. [Footnote: ***Guaranty Underwriters, Inc. v. Securities and Exchange Commission***, 131 F. (2d) (C.C.A. 5, Nov. 7, 1942.]

4. The next action was before Judge Akerman, United States District Court for the Southern District of Florida, from whom the company obtained, without notice to the Commission or the examiner, a second ***ex parte*** order restraining the trial examiner from proceeding with the hearing. Judge Akerman subsequently vacated this order on the holding that Judge Waller's order (1, ***supra***) was ***res judicata*** and dismissed the complaint. [Footnote: Guaranty Underwriters Inc. v. Johnson, unreported (S.D. Fla., Nov. 12, 1942.] The company appealed from the order dismissing the complaint and Judge Akerman ordered the Commission's hearing to be stayed pending appeal. The company also filed a new appeal from Judge Waller's order dismissing its original suit for injunction (1, ***supra***). The Circuit Court of Appeals, Fifth Circuit, affirmed both orders, holding that there was no legal basis for the actions and that there was no proper venue since the examiner was not an inhabitant of Florida. [Footnote: ***Guaranty Underwriters, Inc. v. Johnson***, 133 F. (2d) 54 (C.C.A. 5, Jan. 15, 1943.] Subsequently, the Circuit Court denied petition for rehearing. [Footnote: Hearings were resumed following denial of petition for rehearing and on September 11, 1943, the Commission

issued an order revoking the company's registration on the basis of detailed findings of fraud. Securities Exchange Act, Release No. 3481. The company did not appeal from this order.]

RULE X-17A-5

During the summer of 1942, at the request of representatives of the industry, the Commission undertook to assist in formulating a form of uniform financial statement to be used by all brokers engaged in the securities industry for reporting their financial condition to regulatory bodies such as the Commission, the various state securities commissions, national securities exchanges, and the National Association of Securities Dealers, Inc. The demand for such a uniform statement came from the industry because regulatory bodies used different forms and different approaches for the purpose of obtaining financial information concerning brokers and dealers coming under their jurisdiction. It was the consensus of everyone who worked on the subject that the most feasible way to get a uniform statement would be for the Commission to promulgate a rule and adopt a form which others might also adopt. The Commission's representatives engaged in extended conferences with representatives of the various state securities commissioners, the National Association of Securities Dealers, Inc., the national securities exchanges and the Investment Bankers Association, and succeeded in clearing a form of financial report which was satisfactory to these agencies and organizations.

In November, 1942, the Commission announced the adoption of Rule X-17A-5 pursuant to which registered brokers and dealers, members of national securities exchanges and brokers and dealers who transact a business through the medium of a member are required to file each year, beginning in 1943, a report of financial condition. About 1,000 reports were filed from January 1 to June 30, 1943.

RULE X-1503-1

On October 29, 1942, in announcing its decision not to approve the proposal of the National Association of Securities Dealers for an amendment to its by-laws which would have established certain minimum net capital requirements for members of that association, the Commission announced the adoption of its own rule, X-1503-1, requiring every registered broker and dealer to maintain net capital of not less than 5% of its aggregate indebtedness. However, the effective date of this rule was deferred pending the adoption of appropriate definitions of net capital and aggregate indebtedness. [Footnote: Securities Exchange Act Release 3322.]

In November 1942, the Commission's staff drafted proposed definitions of aggregate indebtedness and net capital which, in accordance with established policy, were submitted to the stock exchanges, state regulatory bodies, accounting societies and members of the industry for their comment. Following comments received from these various groups, it was decided that no definitive action should be taken until the subject had been studied in the light of the financial statements filed pursuant to Rule X-17A-5. [Footnote: The analysis of financial reports filed during the calendar year 1943 indicates that further conferences with the industry and state agencies will be necessary before a solution to the problem can be found.]

NATIONAL SECURITIES ASSOCIATIONS

The National. Association of Securities Dealers, Inc. (NASD) continued, during the year under review, as the only national securities association registered as such with the Commission under the Maloney Act. Membership declined from approximately 2,593 on June 30, 1942 to approximately 2,227 on June 30, 1943.

ENFORCEMENT AND DISCIPLINARY ACTIVITIES

During 1943 the NASD examined the business practices of its entire membership by a uniform questionnaire system. Each member was required to submit, at a date chosen by the Association, a transcript of fifty consecutive retail sales to customers, certain types of transactions and transactions in certain types of securities being specifically excluded. The returns were used for research purposes and were also individually considered by the appropriate District Business Conduct Committee to determine whether they supplied any basis for disciplinary action against the unidentified member.

The installation of this new method of inspection resulted in a temporary lag in the Association's enforcement program. Nevertheless, in the year ended June 30, 1943, fifty-three formal complaints against members were disposed of. These dispositions included sixteen expulsions, five suspensions, sixteen fines, various lesser penalties, and six withdrawals and eight dismissals of complaints. Included in these disciplinary actions were nine complaints which had their origin in facts disclosed in the course of broker-dealer inspections by the Commission's staff, which facts had been referred to the Association for appropriate action. Fifteen of the fifty-three cases had been passed on by the National Business Conduct Committee of the Board of Governors acting as an appellate body.

APPEALS TO AND REVIEWS BY THE SECURITIES AND EXCHANGE COMMISSION

During the fiscal year hearings were completed and briefs were filed on the so-called “PSI” cases which had their origin in a public offering on December 7, 1939 of $38,000,000 First Mortgage, 4% bonds due September 1, 1969 issued by Public Service Company of Indiana. After disciplinary decisions by the NASD against some seventy members, for alleged violations of the resale price maintenance provisions embodied in the syndicate agreement, the Commission on its own motion called certain of these cases for review. [Footnote: On December 30, 1943 the Commission, on application of the Attorney General of the United States, permitted the Department of Justice to intervene in this matter.]

The Commission had under advisement as of June 30, 1943 the record of a private hearing in the first case of its kind, that of a member who had appealed to the Commission for review of an adverse disciplinary decision by the NASD. Another such appeal was pending before the Commission on June 30, 1943 but was subsequently withdrawn, without being perfected.

AMENDMENTS TO RULES

Substantial revision of existing By-Laws, Rules of Fair Practice and Code of Procedure became effective August 21, 1942, after the membership had voted approval and the Commission had not disapproved. These amendments, with one exception, were non-controversial in substance, and made changes for simplicity or to clarify ambiguities. One such proposal, however, which also had membership approval, would have established as a condition to membership a minimum capital requirement of $5,000 for firms handling customers’ funds or securities and $2,500 for other firms. Because of its obligations under Section 15A of the Securities Exchange Act of 1934, the Commission held a public hearing on the questions raised by this proposal. In its opinion [Footnote: Securities Exchange Act Release 3322.] the Commission disapproved of this proposal as not conforming to the statutory standards, although it admitted that when it had been presented for informal consideration no objection had been raised by the Commission or its staff. The Commission at the same time adopted Rule X-1503-1, discussed earlier in this report. [Footnote: Securities Exchange Act Release 3323.]

The Association also made a substantial revision in the method used to compute dues and assessments. In lieu of a classification system based on the number of employees and the assessment of a number of units corresponding to the classification, a three-factor method was substituted. All firms, regardless of size or activity, were assessed a basic membership fee of $30 plus $3 for each full time employee. In addition, underwriters were assessed .01% of underwriting participations in excess of $100,000. A maximum fee of $5,000 per member

remained effective as did a fee of $10 for each branch office outside the NASD district in which a member's principal office was maintained.

CIVIL ACTIONS INSTITUTED BY THE COMMISSION

In ***Securities and Exchange Commission v. Edwin Paul Woodman***, ***individually and d.b.a. Woodman &Co.***, [Footnote: D. Mass. Preliminary injunction entered February 23, 1943; decree appointing permanent receiver entered March 15, 1943.] and ***Securities and Exchange Commission v. Frances J. Lubbe***, [Footnote: S.D. Ill., So. Div. Decree of permanent injunction and order appointing receiver entered March 15, 1943.] two actions brought by the Commission to enjoin further violations of the fraud provisions of the Securities Act of 1933 and of the Securities Exchange Act of 1934, the defendants, both registered broker-dealers, were charged, inter alia, with doing business while insolvent, and with failure to reveal this fact to their customers. In its complaints the Commission, in order to do everything possible to insure that the assets received as a result of fraudulent practices would ultimately be distributed to investors, asked for the appointment of receivers which the court in each case granted.

During the year the Commission for the first time filed complaints for mandatory injunctions against registered broker-dealers who refused to permit representatives of the Commission to examine the books and other records which they are required to keep pursuant to Rule X-17A-3 under the Securities Exchange Act of 1934. In each of these cases, ***Securities and Exchange Commission v. Harlow, Kays & Co., Inc***. [Footnote: F. Mass. Comment judgment entered March 15, 1943.] and ***Securities and Exchange Commission v. James W. Moonan, d.b.a. J.W. Moonan & Co.*** [Footnote: D. Mass. Consent judgment entered March 15, 1943.] consent judgments in favor of the Commission were entered.

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

INTEGRATION AND CORPORATE SIMPLIFICATION OF PUBLIC UTILITY HOLDING COMPANY SYSTEMS

New and significant advances were made, during the past fiscal year, in the enforcement of the integration and corporate simplification provisions of the Public Utility Holding Company Act (Sections 11 (b) (1) and 11 (b) (2) respectively). The pattern of enforcement has now reached the stage where the completion of the task of conforming the various public utility holding company systems to the standards of Section 11 is in sight. An encouraging development has been the apparent recognition by holding company executives of the

practical business advantages of compliance with the Act and the increasing cooperation that has developed in the formulation and filing of plans for carrying out the requirements of the Act.

In the year ended June 30, 1943, the Commission instituted eight additional Section 11 (b) (1) and 19 Section 11 (b) (2) proceedings and at the close of the year 80 such proceedings were pending, 29 under Section 11 (b) (1) and 51 under Section 11 (b) (2). These 80 proceedings involve practically all of the 52 public utility holding company systems registered under the Act, although they do not necessarily cover all of the Section 11 problems existing in such systems. Hearings have been completed in 21 of the pending Section 11 (b) (1) cases and in 35 pending Section 11 (b) (2) cases. The records in nearly all of the remaining cases are approaching completion. As of November 1, 1943, final orders have been entered covering all or a major part of the issues involved in 21 Section 11 (b) (1) cases and in 26 Section 11 (b) (2) cases.

In steadily increasing numbers, the holding companies are filing applications and plans under Section 11 (e) and other appropriate sections of the Act to comply with Section 11 (b) and a large number of applications and plans for complete or partial compliance with Section 11 have been or are being consummated. The consummation of each such case is usually the culmination of many months of detailed analysis and fact-finding, generally involving complex issues. The momentum of bringing these proceedings to a successful conclusion will increase at an accelerated rate because both the industry and the Commission are now in a position to realize upon the time and effort already expended.

The filing, approval and consummation of these plans are major achievements in the financial and structural reorganization of the American utility industry. In the years to come, a financially sound utility industry will be a source of strength and a stabilizing influence for the whole economy. While there has been a steady improvement in the financial condition of a substantial part of the operating utility industry since enactment of the statute, a great many companies continue to be handicapped either by their own corporate structures or by the existence above them of uneconomic and unwieldy superstructures. The Commission has progressed so far in the task of unraveling burdensome complexities in holding company systems that there is a reasonable prospect of substantially completing the task in the near future. The experience of the Commission shows that the problem of undoing the speculative excesses of the 1920’s can be solved only by constructive and forward-looking action. Steps already taken and yet to be undertaken to achieve corporate simplification and integration will result in a healthy utility industry, will protect investors, and will encourage the flow of new money into the industry, thus strengthening this important segment of our national economy.

In considering the progress that has been made in the financial and corporate reorganization of holding company systems, it is helpful to recall the poor financial condition of a large portion of the industry when the Commission commenced its duties under the Act. From September 1, 1929 to April 15, 1936, 53 holding companies went into receivership or bankruptcy. These companies had a funded debt of $600,000,000, unfunded debt of $230,000,000 and preferred and common stocks of $860,000,000. An additional 23 holding companies were forced to default on interest or offer readjustment or extension plans. These companies had a total funded debt of $320,000,000, unfunded debt of $15,000,000, and preferred and common stocks of $200,000,000. Thirty-six operating public utility companies (all of them subsidiaries of holding companies) went into receivership or bankruptcy, with total funded debt of $220,000,000, unfunded debt of $17,000,000, and preferred and common stocks of $180,000,000. In addition, 16 operating companies defaulted on interest or offered readjustment or extension plans; these companies had debt of $120,000,000, and $32,000,000 of stocks. Thus the holding and utility companies whose poor financial condition had reached the breaking point had approximately $2,750,000,000 of securities in the hands of the public.

As of December 31, 1938, holding companies registered under the Holding Company Act had outstanding $2,450,000,000 of preferred stocks. Of this total, more than half, or $1,400,000,000, was in arrears in dividends, the total accumulated arrearages being some $363,000,000. Even many utility operating companies were so overcapitalized that they could not meet their preferred dividends. Of $1,750,000,000 of preferred stocks of operating companies, approximately $500,000,000 were in default, the arrearages aggregating $148,000,000. Of course both the industry and the Commission have been working actively to correct this situation. Substantial progress has been made in cleaning up the problem of arrearages and unsound capital structures. Not only have many companies been reorganized under the procedures made possible only by Section 11, but, as indicated above, the Commission and the companies are now in a position, through the vast amount of work that has been done, to bring to a successful conclusion pending reorganization proceedings involving some of the worst situations in the industry.

Status of Section 11 Proceedings Involving Major Holding Company Systems

The sixteen largest holding company systems registered under the Act have total assets of $14,729,000,000 or nearly 88% of the total assets of all registered holding company systems. A brief summary of the status of the more important aspects of the Section 11 proceedings involving each of these major holding company systems at the close of the past fiscal year follows.

1. Electric Bond and Share Company

Electric Bond and Share is the largest system registered under the Holding Company Act. The parent, Electric Bond and Share Company (Bond and Share), controls five major sub-holding companies: American & Foreign Power Company, Inc. (American Foreign), American Gas and Electric Company (American Gas), American Power and Light Company (American), Electric Power & Light Corporation (Electric), and National Power & Light Company (National).

On May 9, 1940, the Commission instituted Section 11 (b) (2) proceedings with regard to Bond and Share and certain of its subsidiaries. [Footnote: Holding Company Act Release No. 2051.] The order outlined a series of complex issues to be resolved including the question of the necessity of continuing the existence of one or more of the main sub-holding companies. On August 23, 1941, the Commission found that National served no useful function, that it served as the central tier in a pyramid that enabled Bond and Share to control the National system with practically no investment, and that it violated Section 11 (b) (2) because it constituted an undue and unnecessary complexity in the Bond and Share system. As a result, National was ordered to dissolve. [Footnote: Holding Company Act Release No. 2962 (9 S.E.C. 978.] Considerable progress has been made in getting National's affairs in shape for liquidation. As a preliminary step, cash on hand was used to retire all bonds. The next step was to eliminate the preferred stock. The major part of this stock was retired by a voluntary exchange of common stock of Houston Lighting & Power Company for it and by sale of the remainder of Houston stock and the use of the proceeds to retire the National preferred stock at $100 per share, plus accumulated dividends. [Footnote: On January 4, 1944, the Commission authorized the retirement of the last 12,000 shared of preferred. Holding Company Act Release No. 4811.] The principal assets remaining for disposition are the common stock of three operating companies: Birmingham Electric Company, Carolina Power & Light Company and Pennsylvania Power & Light Company.

The Commission instituted a Section 11 (b) (2) proceeding directed to Pennsylvania Power & Light Company on July 25, 1941 [Footnote: Holding Company Act Release No. 2906.] but agreed to hold it in abeyance after National's president testified that the ultimate objectives sought by the Commission could best be accomplished, after National had disposed of its various portfolio assets, by a large contribution of cash from National to Pennsylvania. [Footnote: Holding Company Act Release No. 3107, November 3, 1941.] On August 5, 1942 [Footnote: Holding Company Act Release No. 3832.], the Commission, acting under Section 11 (c), granted National an extension of one year from August 22, 1942 for compliance with the order of dissolution but conditioned its action upon National's filing plans for resolution of the voting power and accounting problems of its subsidiaries. National filed such plans which were later amended. Subsequent to the end of the fiscal year the plan for

Carolina Power & Light Company was approved by the Commission. [Footnote: Holding Company Act Release No. 4746, December 11, 1943.]

On August 22, 1942, American and Electric were ordered dissolved. [Footnote: Holding Company Act Release No. 3750. On September 1, 1943, the Commission approved the sale by Electric of its entire common stock interest in Idaho Power Company to underwriters for resale to the public. Electric received $10,361,250 for the stock. Holding Company Act Release No. 4527.] These two companies appealed to the United States Court of Appeals for the First Circuit which heard argument on the petitions on June 1, 1943.

The Commission instituted proceedings under Section 11 (b) (2) and various other sections of the Act directed to American and its subsidiary, Florida Power & Light Company (Florida), on July 10, 1941. Issues were raised as to the distribution of voting power among the security holders of Florida, the existence of large amounts of write-ups in its accounts, and the validity and rank of the $22,000,000 of its debentures held by American. On September 17, 1941 respondents filed a refinancing plan, in part to meet the allegations in the Commission's order for hearing. The matters were consolidated and hearings were held. After the end of the fiscal year the record was closed and briefs and requested findings of fact were submitted. Prior to the final determination of the matter by the Commission, however, American and Florida submitted amendments to their previous proposal. The proposal as so amended, which provided for substantial adjustments to the accounts of Florida, the surrender by American to Florida as a capital contribution of $17,000,000 of the debentures held by it and certain other securities, and the retirement of all publicly-held securities at their contract prices from treasury cash and the proceeds of issuance of new securities, was approved by the Commission on December 28, 1943.

In November 1942, American filed for permission to expend $10,000,000 of treasury cash for the purchase of a portion of its outstanding debenture bonds at not to exceed $100. While the plan was not filed under Section 11 or in purported compliance with the order of dissolution, since American was contesting the constitutionality of the former and the validity of the latter, it stated that the proposal would facilitate compliance with Section 11 and with the order of dissolution, if upheld by the courts. On February 24, 1943 the Commission gave its permission to such purchases if limited to the open market. [Footnote: Holding Company Release Act No. 4133. In June 1943, American asked that the order be modified to allow it to make purchases at up to $106 on the ground that such purchases would result in a net saving to it. Such permission was granted. Holding Company Act Release No. 4483.]

United Gas Corporation, a subsidiary of Electric, filed an application on May 5, 1941 for permission to sell $75,000,000 principal amount of 3-1/4% first mortgage bonds and to use $52,925,000 of the proceeds to pay off its obligations to Bond and Share. On May 31, 1941, the Commission ordered hearings on this application and instituted proceedings pursuant to Section 11 (b) (2). [Footnote: Holding Company Act Release No. 2790.] The Section 11 (b) (2) proceedings raised issues as to the validity and rank of the $52,925,000 debt claim held by Bond and Share, the resolution of which was vital to the determination of whether the application for refunding should be granted. [Footnote: Holding Company Act Release No. 3301, January 31, 1942.] Accordingly, a consolidated hearing was ordered in which testimony has been introduced bearing on all factors relevant to the status of the debt claim. The record was closed on this issue after the fiscal year-end and the matter is pending.

On March 8, 1943, Utah Power & Light Company, a subsidiary of Electric, filed a refinancing plan and the Commission instituted Section 11 (b) (2) proceedings and consolidated the two matters. [Footnote: Holding Company Act Release No. 4157. The Commission's opinion approving the refinancing and providing for the recapitalization of Utah was issued on November 29, 1943. Holding Company Act Release No. 4716.]

2. The North American Company

The Commission instituted proceedings pursuant to Section 11 (b) (1) with regard to The North American Company (North American) and its subsidiaries on March 8, 1940. [Footnote: Holding Company Act Release No. 1960.] Section 11 (b) (2) proceedings were ordered on December 2, 1941, regarding North American Light & Power Company (Light & Power), a subsidiary of North American, and on December 30, 1941, the Commission ordered the liquidation and dissolution of Light & Power on the ground that its continued existence unnecessarily complicated the structure of the North American system. [Footnote: Holding Company Act Release No. 3233.]

On April 14, 1942, the Commission rendered a comprehensive opinion and order in the North American Section 11 (b) (1) proceedings. [Footnote: Holding Company Act Release No. 3405.] This order dealt not only with the holding company system of North American but also with the status under Section 11 (b) (1) of the properties of each registered holding company in the system, including the holding company subsidiaries of Light & Power but excluding Light & Power itself because its liquidation had been previously ordered. The Commission's order required North American to divest itself of substantially all its assets other than securities of one integrated electric system, namely, that of Union Electric Company of Missouri. North American was allowed fifteen days within which to state the choice of another principal system but it did not do so. Instead it filed a

petition requesting a modification of the order. This petition was denied on June 25, 1942. [Footnote: Holding Company Act Release No. 3630.] North American appealed to the United States Circuit Court of Appeals for the Second Circuit which affirmed the Commission's orders on January 12, 1943. [Footnote: 133 F. (2d) 148.] On March 1, 1943, the Supreme Court agreed to review the constitutional aspects of the decision [Footnote: 63 S. Ct. 764.] but on April 15, 1943 it indefinitely deferred hearing the case because of the lack of a quorum. [Footnote: On August 4, 1943, North American submitted to the Commission a plan of reorganization, the purpose of which was stated to be the immediate divestment by North American of the major part of its utility investments and its subsequent liquidation and dissolution. Holding Company Act Release No. 4486.]

North American has disposed of substantially all its holdings of Detroit Edison Company common stock and a portion of its holdings of Washington Railway and Electric Company (which controls Potomac Electric Power Company) and in Pacific Gas and Electric Company by paying shares of stock of those companies as regular dividends to North American's common stockholders. This policy enabled North American to use its cash earnings to reduce its outstanding debt from $70,000,000 to about $34,000,000. As a result, North American has been enabled to refund its entire debt with a 2% bank loan maturing serially over a five-year period, thus effecting important interest savings.

The formulation and effectuation of a fair plan of liquidation for Light & Power is dependent upon the disposition of certain claims asserted against it by Illinois Iowa Power Company, one of its indirect subsidiaries (through Illinois Traction Company). [Footnote: On August 22, 1941, the Commission instituted proceedings with respect to Illinois Iowa Power Company pursuant to Section 11 (b) (2). (Holding Company Act Release No. 2953). This proceeding has been retarded in view of the asserted claims of Illinois Iowa against Illinois Traction, Light & Power and North American.] In the interim, however, steps have been taken toward the liquidation of Light & Power. On July 10, 1942, the Commission approved an application providing for the retirement of the $3,376,500 publicly-held debentures of Light & Power at the principal amount thereof plus accrued interest, without the payment of a redemption premium. [Footnote: Holding Company Act Release No. 3658.] The City National Bank and Trust Company of Chicago, as Successor Trustee, appealed to the United States Circuit Court of Appeals for the Seventh Circuit contending that the debenture holders were entitled to the redemption premium. The court upheld the order of the Commission on March 5., 1943. [Footnote: 134 F. (2d) 65.]

The United Gas Improvement Company

The Commission instituted proceedings with regard to The United Gas Improvement Company (U.G.I.) and its subsidiaries pursuant to Section 11 (b)

(1), on March 4, 1940. [Footnote: Holding Company Release Act No. 1953.] Pursuant to a request by U.G.I., the Commission issued, on January 18, 1941, a statement of tentative conclusions as to the application of the provisions of Section 11 (b) (1) to the holding company system of U.G.I. in which it stated tentatively that the system's single integrated public utility system was composed of the electric properties of its subsidiaries in the Pennsylvania-Delaware-Maryland area. [Footnote: Holding Company Release Act No. 2500.] Divestiture orders were issued on July 30,1941 and May 7, 1942 [[Footnote: Holding Company Release Act Nos. 2913 and 3511.] based upon this interpretation. U.G.I. appealed these orders to the United States Circuit Court of Appeals for the Third Circuit. The Court sustained the orders in a unanimous decision on November 17, 1943.

After argument before the Court but before its decision, U.G.I. and its subsidiary, Philadelphia Electric Company, filed applications under Section 11 (e) for the purpose of enabling the U.G.I. holding company system to effect partial compliance with Section 11 (b). [Footnote: Holding Company Release Act Nos. 4011 and 4043.] The plan provided for the distribution to U.G.I.'s preferred and common stockholders of $30,600,000 in cash and substantially all its stockholdings in Philadelphia Electric and Public Service Corporation of New Jersey, two subsidiaries with combined assets of $1,200,000,000. The plan was filed in December 1942, was approved by the Commission March 18, 1943 [Footnote: Holding Company Release Act No. 4173.] by the common stockholders April 19, 1943, and was declared effective as of June 18, 1943. By effecting the retirement in this manner of its preferred stock, U.G.I. made possible the further distribution of investments or cash to its common stockholders. [Footnote: Subsequent to the distribution of its interest in Philadelphia Electric and Public Service, U.G.I. has effectuated a series of transactions which will enable it to distribute, on or about May 22, 1944, to its stockholders all its holdings of securities of Delaware Power & Light Company and subsidiaries, which have consolidated assets of $52,334,642. Holding Company Act Release No. 4505.]

Immediately prior to the filing of the plan, the market price of U.G.I. common stock was about $4 per share and, like many other holding company stocks, represented a considerable discount from the interest of each holding company share in the market value of the underlying investments. The common stock rose to $6 per share immediately after the filing of the plan, and just before the distribution of the securities to stockholders on August 19, 1943, it sold at $9-7/8 per share. As noted, the plan provided for the transfer to stockholders of direct ownership in the two principal subsidiaries of U.G.I., eliminating the interposition of the holding company, with its attendant complexity and large expense.

4. The Commonwealth & Southern Corporation

Section 11 (b) (1) proceedings were started with respect to The Commonwealth & Southern Corporation and its subsidiaries on March 6, 1940. [Footnote: Holding Company Release Act No. 1956.] This proceeding was later consolidated with Section 11 (b) (2) proceedings instituted on April 8, 1941. [Footnote: Holding Company Release Act No. 2679.]

On April 9, 1942 [Footnote: Holding Company Release Act No. 3432.], the Commission, under Section 11 (b) (2), ordered Commonwealth to reduce its outstanding preferred and common stock to a single class of common stock. Commonwealth appealed the order to the Circuit Court of Appeals for the Third Circuit which, on March 31, 1943, upheld the Commission's order in all respects. [Footnote: 134 F. (2d) 747.] Commonwealth filed a recapitalization plan on April 20, 1943, designed to comply with the order. The plan as originally filed provides for reclassifying the existing preferred and common stocks into a single class of new common stock and for the distribution to its stockholders (or earlier sale) of the common stock of one of its northern subsidiaries. The plan contemplates that the remaining subsidiaries would continue to be owned by Commonwealth, pending the outcome of the Section 11 (b) (1) proceedings. The plan was pending at the close of the fiscal year.

5. Cities Service Company

On July 3, 1941, the Commission instituted a Section 11 (b) (1) proceeding with respect to Cities Service Company (Cities), the top company in this system, and all its subsidiaries. [Footnote: Holding Company Release Act No. 2867.] Hearings have been completed and Commission action on the case was pending at the close of the past fiscal year.

On March 4, 1940, the Commission started a proceeding under Section 11 (b) (1) with reference to the holding company systems of Cities Service Power & Light Company (Power & Light), principal holding company subsidiary of Cities, and Federal Light & Traction Company, principal holding company subsidiary of Power & Light. [Footnote: Holding Company Release Act No. 1954.] The Commission's decision in that case was rendered after the close of the past fiscal year. [Footnote: By orders dated August 17, 1943 and September 10, 1943 (Holding Company Act Release Nos. 4489 and 4551), the Commission required Power & Light to limit the operations of its system to its Ohio properties. Since then, Power & Light has disposed of its interest in Public Service Company of Colorado and Durham Public Service Company, and Federal Light and Traction has disposed of its interest in Rawlins Electric Company. Power & Lights filed a petition with the Circuit Court of Appeals for the Third Circuit to review the Commission's Section 11 (b) (1) orders, but subsequently withdrew the petition.]

By order dated August 29, 1942, a proceeding was instituted under Section 11 (b) (2) regarding Power &Light and certain of its subsidiaries. [Footnote: Holding Company Act Release No. 3769. In December 1943, Power & Light filed a Section 11 (e) plan designed to effect partial compliance with Section 11 (b) (2). The plan proposes to retire the publicly-held senior securities of Power & Light through the use of treasury cash and a $20,000,000 short-term bank loan. The proceeding on the plan was consolidated with the Section 11 (b) (2) proceeding.]

On May 4, 1942, the Commission instituted a Section 11 (b) (2) proceeding with respect to Empire Gas and Fuel Company, a non-utility subsidiary of Cities [[Footnote: Holding Company Release Act No. 3498.] and on August 3, 1942, the Commission approved a comprehensive plan for recapitalizing Empire. [Footnote: Holding Company Release Act No. 3711.]

Approximately 24 percent of Empire's preferred stock was publicly-held, the balance of the preferred stock and all the common stock being held by Cities Service Company. No dividends had been paid on the preferred stock in more than ten years. Interest had been paid regularly, however, on approximately $100,000,000 principal amount of inter-company debt owed by Empire and its subsidiaries to Cities. The approved plan provided for the exchange of the publicly-held preferred stock for 3-1/2% sinking fund debentures of Empire in an aggregate principal amount (over $20,000,000) equal to the par value of the preferred plus accumulated dividends. The debts owed by Empire and its subsidiaries to the parent company were subordinated to the new debentures. On the day before the proceedings were instituted, the $6 preferred stock of Empire with dividend arrearages of $57.50 per share sold on the market at $87 per share; three days after the plan was approved, on August 8, 1942, the stock was quoted at $131.50 per share. On September 25, 1943, the equivalent market price of that stock in terms of 3-1/2% debentures was $157 per share.

6. Associated Gas and Electric Company

The Commission, on September 4, 1941, instituted a Section 11 (b) (1) proceeding with regard to the Trustees of Associated Gas and Electric Corporation (Agecorp) who controlled, directly or indirectly, 175 subsidiaries of which 68 were public utilities as defined by the Act. [[Footnote: Holding Company Release Act No. 2983.] The Trustees stated that their aim was to create out of the system four groups of properties to be disposed of as units in the liquidation of Agecorp. One of these four groups of properties is located in Florida and Georgia, while the other three are in New York, Pennsylvania and New Jersey.

On August 13, 1942, the Commission issued an order requiring the Trustees to divest themselves of all interest in a long list of utility and non-utility companies,

reserving for future consideration questions relating to the composition of the groups of properties as single integrated systems, additional systems, and permissible non-utility businesses. [Footnote: Holding Company Release Act No. 3729 By the end of the fiscal year the Trustees had divested themselves of all interest in 58 of the 113 companies (other than Utilities Investing Trust and New England Gas and Electric Association and its subsidiaries) listed in the Commission's order of August 13, 1942.]

On February 3, 1941, the Commission initiated Section 11 (b) (2) proceedings against General Gas and Electric Corporation (Gengas), a registered holding company subsidiary of Agecorp. [[Footnote: Holding Company Release Act No. 2543.] Subsequently, Section 11 (e) plans for the reorganization of Gengas were filed by Gengas [Footnote: Holding Company Release Act No. 2598, March 7, 1941.] and by Agecorp [Footnote: Holding Company Release Act No. 4382, June 24, 1943.], the hearings on which were consolidated with the Section 11 (b) (2) proceedings. The plan filed by Agecorp provided for the distribution by Gengas of certain assets among its public security holders, after which there would remain no claims against Gengas except those held by the Trustees of Agecorp who proposed to turn in all their securities of, and claims against, Gengas and receive in exchange an entire issue of new common stock. The record in this proceeding -was closed after the close of the fiscal year.

Section 11 (b) (2) proceedings were directed to Virginia Public Service Company, a subsidiary of Gengas, on August 12, 1941. [Footnote: Holding Company Release Act No. 2933.] For the purpose of fairly and distributing voting power among its security holders, Virginia, on April 18, 1942, filed a Section 11 (e) plan which provided for the refunding of long-term debt, the dissolution of three subsidiaries, the elimination of certain inflationary items, and the substitution of new no par common stock for the outstanding preferred and common stock of the company. [Footnote: Holding Company Release Act No. 3454.] On May 22, 1942, dissolution of the three subsidiaries was authorized and the accounting adjustments and refunding program were approved. [Footnote: Holding Company Release Act No. 3562. The Commission rendered its opinion on the remaining issues in this proceeding on October 16, 1943. Holding Company Act Release No. 4618.]

On February 10, 1943, the Commission instituted Section 11 (b) (2) proceedings with regard to Georgia Power & Light Company, another subsidiary of Gengas. [Footnote: Holding Company Release Act No. 4111.] Hearings were held in this case beginning in March 1943 and the matter was pending at the close of the fiscal year.

On June 14, 1943, a thoroughgoing reorganization plan was filed jointly by the Trustee of Associated Gas and Electric Company and the Trustees of Associated

Gas and Electric Corporation. [Footnote: Holding Company Release Act No. 4399. Hearings on this plan have recently been completed and the matter is now awaiting Commission decision.] This plan, filed pursuant to Section 11 (f) of the Act, is designed to extricate these companies from bankruptcy proceedings which have been pending since January 10, 1940 in the United States District Court for the Southern District of New York under Chapter X of the Bankruptcy Act.

On June 4, 1943, Utilities Employees Securities Company (Uesco), a subsidiary of Ageco and Agecorp, entered into an agreement with the Trustees of Ageco and Agecorp, Gengas, Associated Utilities Corporation, New England Gas and Electric Association, and Trustees under Pension Trust Agreement dated December 14, 1937, as amended, for the voluntary liquidation and dissolution of Ueseo. Uesco was an investment company, being at the same time the largest single creditor of the estates of Ageco and Agecorp. It had been organized by Howard C. Hopson in 1931 as an investment medium for employees of the companies in the Associated system. The investment of the employees was largely through coerced salary deductions, and system operating companies were also compelled to make contributions. The plan filed under Section 11 (e) of the Act provided for setting up voluntary pension funds by the various system companies, paying off employee and certain other security holders, and evolving a mechanism for participation in the reorganization proceedings of the parent companies. The Commission approved the plan on August 12, 1943.

On September 30, 1941, the Commission instituted proceedings under Section 11 (b) (2) with respect to New England Gas and Electric Association (Negea), a registered holding company. Subsequent to the close of the hearings but prior to a final order of the Commission, the Trustees of Ageco and Agecorp and a subsidiary company in the Associated system instituted suits, in both a state court and a federal court, in Massachusetts against Negea. The suit in the state court involved consideration of the status of indebtedness, in the amount of $14,583,290, which had been canceled in 1930 through the issuance by Negea of equity securities. The suit in the federal court involved an accounting for alleged profits received by Negea in, and resulting from, the transfer of certain stock and indebtedness of Electric Associates, Inc. from Agecorp to Negea in 1932.

It appeared to the Commission that the subject matter of the suits against Negea were relevant to any determination of a proper allocation of securities under any plan of recapitalization of Negea. Hence, on February 17, 1943, the Commission instituted further proceedings under various sections of the Act, including Section 11, for the purpose of determining (1) whether, and to what extent, the Trustees of Ageco and Agecorp and its subsidiary had valid claims against Negea, and (2) in the event that any claims were deemed to be valid, the rank of such claims in

relation to the claims of publicly-held securities of Negea. [Footnote: Holding Company Release Act No. 4124.]

The issues in this matter were subsequently broadened to include consideration of whether and to what extent the Trustees of Ageco and Agecorp, and their subsidiaries, have claims against Negea for unjust enrichment, if any, of Negea as the result of any transfers or diversions to Negea of assets of the Associated system. The hearings were in progress at the close of the fiscal year.

7. Standard Power and Light Corporation and Standard Gas and Electric Company

The Commission started proceedings on March 6, 1940, pursuant to Section 11 (b) (1), with regard to Standard Power and Light Corporation, Standard Gas and Electric Company (Standard Gas) and their subsidiaries. [Footnote: Holding Company Release Act No. 1957.] Standard Gas admitted that the electric utility operations of its holding company system were not confined to a single integrated system and agreed to dispose of all its holdings except the common stock of Philadelphia Company, which operates principally in and around Pittsburgh and from which Standard Gas received approximately 35 percent of its corporate income in 1940. Reserving for future consideration the question of whether the gas and non-utility properties of the Philadelphia Company may be retained with the electric, the Commission approved the retention of this company by Standard and ordered the disposition of all other subsidiaries, except the system service company. [Footnote: Holding Company Release Act No. 2929, August 8 1941 (9 S.E.C. 862).]

The Commission started proceedings on June 5, 1940, pursuant to Section 11 (b) (2), with regard to Standard Power and Light Corporation. [Footnote: Holding Company Release Act No. 2095.] At the hearings, counsel for Standard Power acknowledged that the company performed no useful functions. On June 19, 1942, the Commission ordered Standard Power to liquidate and dissolve. [Footnote: Holding Company Release Act No. 3607.] An extension of time has been granted for compliance with this order. [Footnote: Holding Company Release Act No. 4416.]

On March 24, 1943, the Commission gave notice that Standard Gas had filed a comprehensive plan pursuant to Section 11 (e) for the purpose of enabling it to comply with the provisions of Section 11 (b). On the same date the Commission instituted a proceeding pursuant to Section 11 (b) (2) and consolidated the two hearings. [Footnote: Holding Company Release Act No. 4198.] Hearings on the plan have been completed and the plan is under consideration.

On June 30, 1942, Southern Colorado Power Company (Southern Colorado), a subsidiary of Standard Gas, filed a plan of recapitalization pursuant to Section 11 (e) and, on July 2, 1942, the Commission instituted Section 11 (b) (2) proceedings and consolidated the two. [Footnote: Holding Company Release Act No. 3644, July 2, 1942. On August 23, 1943, the Commission approved Southern Colorado's plan with modifications. Amendments to meet the Commission's objections were filed on October 21, 1943. The Commission approved the amended plan on November 24, 1943 and the United States District Court in Colorado approved the plan on December 21, 1943]

8. Columbia Gas & Electric Corporation

Proceedings initiated by the Commission on August 25, 1941, [Footnote: Holding Company Release Act No. 2963.] with regard to Columbia Gas & Electric Corporation (Columbia) and several of its subsidiaries, including Columbia Oil & Gasoline Corporation, pursuant to Sections 11 (b) (1) and 11 (b) (2), were consolidated with a Section ll (e) plan by order dated July 14, 1942. [Footnote: Holding Company Release Act No. 3668.] The plan involved, among other things, the sale by Columbia Oil & Gasoline Corporation (Columbia Oil), a subsidiary of Columbia, of its interest in Panhandle Eastern Pipe Line Company (Panhandle), the transfer of its five oil and gasoline subsidiaries to Columbia Gas and the liquidation of Columbia Oil. The Commission in an order [Footnote: Holding Company Release Act No. 3829.] and opinion [Footnote: Holding Company Release Act No. 3885.] dated October 2, 1942, approved the plan. On March 23, 1943, the United States Circuit Court of Appeals, Third Circuit, affirmed the Commission's order [Footnote: 134 F. (2d) 822.] and six days later the United States District Court for the District of Delaware entered its order approving the plan. [Footnote: 50 F. Supp. 965.] Columbia's relationships with certain of its subsidiaries had involved it in a long series of legal difficulties. Among other results, consummation of Columbia's plan had the effect of divorcing Panhandle from the Columbia system, a step which the Commission had found to be necessary to effectuate the provisions of Section 11 (b) (1), extricated some of the companies and other interested parties from problems which they faced under the anti-trust laws and terminated a complex tangle of private litigation.

9. Niagara Hudson Power Corporation

The Commission instituted Section 11 (b) (2) proceedings in August 1942 with respect to Niagara Hudson Power Corporation, Buffalo Niagara and Eastern Power Corporation and their subsidiary companies. [Footnote: Holding Company Act Release No. 3754.] During the course of the hearings the Commission held a public conference to explore the means whereby dividend payments on the preferred stocks of the two holding companies in the system, which were

discontinued in the fall of 1942, could be resumed. The management formulated an over-all plan of reorganization, filed in June 1943 under Section 11 (e) of the Act, [Footnote: Holding Company Act Release No. 4387.] providing for the consolidation of the principal public utility companies in the system and Buffalo Niagara and Eastern Power Corporation into one operating company, and the dissolution of Niagara Hudson Power Corporation. The plan further provides for the payment in cash of all accrued and unpaid dividends. Hearings relating to certain aspects of the proposed reorganization were held from time to time before the New York Public Service Commission and completed toward the end of l943. [Footnote: Hearings before this Commission are presently scheduled to commence on February 8, 1944.]

10. International Hydro-Electric System

Proceedings under Section 11 (b) (2) of the Act involving International Hydro-Electric System (IHES) were instituted on June 17, 1940. [Footnote: Holding Company Act Release No. 2122.] IHES is a Massachusetts trust which owns directly the equity in New England Power Association, also a registered holding company, and the equities in Gatineau Power Company, a Canadian public utility company, and in two wholesale electric utilities operating in the United States.

On January 17, 1941, the Commission ordered that all of the common stock and all of the Class B stock of IHES held by certain trustees for the benefit of International Paper Company and International Paper and Power Company be surrendered to IHES for cancellation, the Commission having found such stocks to be of no value. [Footnote: 8 S.E.C. 485.] On June 18, 1941, this order was complied with by the trustees and the Class B and common stocks were thereafter canceled.

On July 21, 1942 IHES itself was ordered to liquidate and dissolve, the Commission finding that IHES performed no useful function and constituted an unnecessary complexity in the system. [Footnote: Holding Company Act Release No. 3679.]

On March 17, 1943, the Commission, pursuant to Section 11 (b) (2), ordered that Massachusetts Utilities Associates Common Voting Trust be liquidated and dissolved and that Rhode Island Public Service Company, Massachusetts Utilities Associates, Massachusetts Power and Light Associates and North Boston Lighting Properties be eliminated as sub-holding companies in the New England Power Association and IHES system. [Footnote: Holding Company Act Release No. 4168.]

Paul H. Todd, a stockholder and director of IHES, filed petitions on September 19, 1942 and December 20, 1942, in the United States Circuit Court of Appeals

for the Sixth Circuit, for the review of the Commission's order of July 21, 1942 directing the liquidation and dissolution of IHES and asking the court to remand the proceedings to the Commission for further investigation of certain alleged rights of action of IHES against International Paper Company. The Commission contended that dissolution was the appropriate action in the light of the applicable statutory standards and that the alleged claims against the Paper Company would be fully explored but that such exploration was not a necessary prerequisite to the issuance of the dissolution order. IHES intervened in the review proceeding and supported the validity of the Commission's order. The court denied the application to adduce additional evidence and dismissed the petition for review, thereby sustaining the Commission's order. [Footnote: 137 F. (2d) 475 (CCA 6, 1943).]

Shortly after the close of the past fiscal year, IHES notified the Commission that because of the asserted claims against International Paper Company and the imminence of the maturity of its bonds it would be impossible for it to comply with the Commission's order of July 21, 1942 without the aid of court enforcement, On August 12, 1943 the Commission instituted a proceeding pursuant to Section 11 (d) of the Act in the United States District Court for the District of Massachusetts to enforce compliance with its liquidation order and the District Court took jurisdiction over IHES. The investigation of the alleged claims against International Paper Company is now in progress.

11. The Middle West Corporation

The Commission instituted Section 11 (b) (1) proceedings with regard to The Middle West Corporation (Middle West) and its subsidiaries on March 1, 1940. [Footnote: Holding Company Act Release No. 1950.] Hearings in this case have been completed and arguments have been presented, At the close of the past fiscal year, the Commission's findings, opinion and order were in preparation,

In February 1940, two subsidiaries of The Middle West Corporation, Central and South West Utilities Company (Central) and American Public Service Company (American), filed a joint application proposing a consolidation of the two companies. On December 5, 1940 the Commission instituted proceedings under Section 11 (b) (2) and ordered that the hearings in the two cases be consolidated, The major issue in the case centered around the question of whether the new corporation should issue any preferred stock, The proponents of the plan submitted by the companies contended that preferred stock was necessary in the new company in order to preserve the priorities of the holders of the prior lien preferred stocks of Central and of the preferred stock of American. The Commission ruled that the new corporation could have only common stock. [Footnote: Holding Company Act Release No. 3580, June 4, 1942.] The respondents appealed to the United States Court of Appeals for the District of

Columbia, which upheld the Commission on June 7, 1943. [Footnote: 136 F. (2d) 273. On August 2, 1943, Central and American filed an amended plan of merger to be effectuated through the issuance of a single class of capital stock. Holding Company Act Release No. 4498.]

The Commission initiated proceedings on June 9, 1941, pursuant to Section 11 (b) (2), which raised issues as to the equitable distribution of voting power among the security holders of The North West Utilities Company (North West) system, and also as to the continued existence of North West. [Footnote: Holding Company Act Release No. 2806.] The proceeding was consolidated, on June 11, 1941, with a plan of recapitalization of North West which had been submitted by North West and Middle West. [Footnote: Holding Company Act Release No. 2812. The Commission, in an opinion dated September 10, 1943, held that the proposed plan of recapitalization fell far short of effectuating the provisions of Section 11 (b) and ordered that North West be liquidated. Holding Company Act Release No. 4552.]

12. The United Light and Power Company

Three major Section 11 proceedings involving The United Light and Power Company (United Light) were consolidated in 1941, namely: a Section 11 (b) (1) proceeding instituted on March 8, 1940, [Footnote: Holding Company Act Release No. 1961.] proceedings with respect to a recapitalization plan filed by United Light [Footnote: Holding Company Act Release No. 2185, July 24, 1940.] and Section 11 (b) (2) proceedings started December 6, 1940. [Footnote: Holding Company Act Release No. 2407.]

United Light is the top holding company astride two subsidiary tiers of holding companies in an excessively pyramided holding company system. United Light performs no necessary or useful function. No dividends have been paid since the first quarter of 1932 on its outstanding $60,000,000 preferred stock issue. Under the standards of Section 11, its liquidation was necessary and was ordered by the Commission. [Footnote: Holding Company Act Release No. 2636, March 20, 1941 (8 S.E.C. 837).] The company subsequently filed a number of applications covering action necessary to accomplish liquidation, now in its final stage. One of the most important steps involved the distribution by United Light of its principal asset, all of the common stock of a subsidiary holding company, The United Light and Railways Company (Railways), to the preferred and common stockholders of United Light on a fair and equitable basis. The original plan filed by the company provided that 91.2 percent of the common stock of Railways should be distributed to the preferred stockholders of United Light and 8.8 percent to the common stockholders. In an opinion rendered April 5, 1943, the Commission disapproved this distribution but approved the plan when it was amended to allow

the preferred stockholders approximately 95 percent of Railways' common. [Footnote: Holding Company Act Release No. 4215.] Commissioner Healy dissented on the ground that the preferred stockholders were entitled to receive all the assets. The order of the Commission approving the plan of distribution was confirmed by Judge Leahy of the United States District Court of Delaware on July 30, 1943 and is now on appeal to the United States Circuit Court of Appeals, Third Circuit. [Footnote: See discussion of Litigation ***infra***.]

The United Light and Power system has made substantial progress in complying with the Section 11 (b) (1) order which the Commission issued with respect to this system on August 5, 1941. [Footnote: Holding Company Act Release No. 2923 (9 S.E.C. 833).] United Light and Railways Company, on September 12, 1941, sold its stock interest in Northern Natural Gas Company to underwriters for resale. Proceeds from the sale, $10,533,000, were applied on the purchase from United Light of common stock of Iowa-Illinois Gas and Electric Company in order to facilitate the dissolution of United Light. A number of other divestments of properties by sub-holding companies in this system, including the sale on October 24, 1942 by American Light & Traction Company of its holdings in San Antonio Public Service Company, are summarized in Appendix Table 16.

13. American Water Works and Electric Company, Inc.

This was the first registered holding company to file a corporate simplification plan pursuant to Section 11 (e). [Footnote: Holding Company Act Release No. 793, August 25, 1937.] The plan contemplated the elimination of several "second degree" holding company relationships, the continuance of which is forbidden under the terms of Section 11 (b) (2) of the Act. Its consummation was contingent upon the accomplishment of certain refinancing. No change in the actual physical utility properties of the system was involved. The Commission approved the plan on December 31, 1937, reserving for future consideration the question of adjustments of write-ups of system properties and investments. [Footnote: Holding Company Act Release No. 949 (2 S.E.C. 972.] The refinancing was postponed because of changed market conditions, and the major simplification provisions of the plan have not been put into effect.

14. Engineers Public Service Company

Section 11 (b) (1) proceedings were instituted with regard to Engineers Public Service Company (Engineers) and its subsidiaries on February 28, l940. [Footnote: Holding Company Act Release No. 1945.] On July 23, 1941, the Commission ordered Engineers to dispose of its interest in Puget Sound Power & Light Company and The Key West Electric Company, and on the same date initiated Section 11 (b) (2) proceedings against The Western Public Service Company (a Maryland corporation), a subsidiary of Engineers. [Footnote: Holding

Company Act Release Nos. 2897 and 2898.] On December 29, 1941, the Commission approved the sale of Western's Nebraska and South Dakota properties. [Footnote: Holding Company Act Release Nos. 3230 and 3245.] Western then redeemed its publicly-held securities and liquidated. Its remaining properties were acquired by The Western Public Service Company, a Delaware corporation (Western, Del.), a newly-formed subsidiary of Engineers, which also acquired the securities of Western's subsidiaries, The Northern Kansas Power Company and Missouri Service Company. Engineers accepted an order to divest itself of the properties owned by Western, Del. and by The Northern Kansas Power Company and Missouri Service Company. On September 16, 1942 the Commission ordered the divestment of the remaining properties in the Engineers system except the electric utility properties of Virginia Electric and Power Company, allowing Engineers, however, fifteen days within which to petition for leave to retain instead the electric utility properties of Gulf States Utilities Company. [Footnote: Holding Company Act Release No. 3796.] Engineers appealed to the United States Court of Appeals for the District of Columbia. [Footnote: For the court's opinion, rendered on November 22, 1943, see summary of litigation ***infra***.]

On March 16, 1943 and by supplemental order dated April 27, 1943, the Commission approved a Section 11 (e) plan which had been filed by Engineers providing for the recapitalization of Puget Sound Power & Light Company. [Footnote: Holding Company Act Release Nos. 4175 and 4255. Commissioner Healy dissented on the ground that he could not find that the plan was fair and equitable to the preferred stockholders of Puget.] Puget had a seriously unbalanced capital structure with two classes of preferred stock on which dividend arrearages of over $18,000,000 had accumulated. The plan greatly simplified the company's capital structure and put Puget in position to pay dividends to all its stockholders. [Footnote: On September 25, 1943 the company announced that an initial dividend had been declared on the new common stock which under the plan had been distributed to the holders of the old preferred and common stocks.] The plan was approved by the United States District Court of Massachusetts on June 10, 1943 [Footnote: Civil Action No. 2308.] and became effective September 13, 1943.

15. Northern States Power Company

On June 5, 1942, Northern States Power Company (Delaware) filed a liquidation plan pursuant to Section 11 (e) for the purpose of enabling it to comply with the requirements of Section 11 (b) (2). On the same date the Commission instituted proceedings with respect to that company and each of its subsidiaries pursuant to Section 11 (b) (2), 15 (f) and 20 (a). [Footnote: Holding Company Act Release No. 3595.] Extensive hearings were held in the consolidated proceedings and the record was closed on August 5, 1943.

16. The United Corporation

On July 28, 1941, the Commission instituted proceedings under Sections 11 (b) (1) and 11 (b) (2) with respect to The United Corporation, and consolidated such proceedings for hearing with United's Section 11 (e) plan filed in March 1941. [Footnote: Holding Company Act Release No. 2907.] In its plan, United proposed to reduce its holdings in each of its statutory subsidiaries to less than 10 percent of the outstanding voting securities when such reduction would be advantageous in the opinion of its management. Pending such reduction, United proposed to refrain from voting the securities without the prior approval of the Commission. The predominant portion of United's portfolio comprises the common stocks of four holding company subsidiaries: The United Gas Improvement Company, Public Service Corporation of New Jersey, Niagara Hudson Power Corporation and Columbia Gas & Electric Corporation. On August 14, 1943, after extensive hearings, the Commission disapproved United's plan, and, pursuant to Section 11 (b) (2), ordered that United change its existing capitalization to one class of stock and cease to be a holding company. [Footnote: Holding Company Act Release No. 4478.]

Statistical Summary of Enforcement of Section 11

In the Appendix to this report there is included a group of tables which indicate some of the progress that has been made in carrying out the objectives of Section 11 (b) of the Holding Company Act. The information given in Parts 1, 2 and 3 of Table 16 relating to the electric, gas and non-utility subsidiaries which have been divested by registered holding companies from December 1, 1935 to November 15, 1943 is summarized below:

[table omitted]

It will be noted that 223 electric, gas and non-utility subsidiary companies with total assets of approximately $3,233,000,000 have been divested in this period. This includes 92 electric utility companies with total assets of $2,749,000,000, 60 gas utility companies with total assets of $342,000,000 and 71 non-utility companies with total assets of $142,000,000. Most of the electric utility companies and substantially all the gas and non-utility companies were divested for the purpose of, or with a view to, meeting the integration requirements of Section 11.

Of the total number of these divested companies, 187 companies, with total assets of $1,879,000,000, are no longer subject to the Holding Company Act and

36 companies, with total assets of $1,354,000,000, are still subject to the Act by reason of their relationship to other registered holding companies.

In addition to the divestment of companies, as such, the tables show that 60 other subsidiary companies have sold parts of their electric, gas and non-utility properties for a total consideration of $89,000,000. The greater part of these properties are no longer subject to the Act.

Reference is made to Appendix Table 17 which lists the subsidiary utility and non-utility companies, the control of which must be divested by their respective parents under Section 11 (b) (1) orders outstanding as of November 15, 1943. By virtue of these orders, 14 holding company systems must divest themselves of their control over 211 subsidiary companies having aggregate total assets of $3,368,000,000.

In a number of holding company systems, there are holding companies which are merely pyramiding devices and perform no useful function. Many of these have already been ordered dissolved after appropriate Section 11 (b) (2) proceedings. Table 18 in the Appendix lists the holding companies which are subject to dissolution or liquidation under Section 11 (b) (2) orders outstanding as of November 15, 1943. The tabulation includes 14 holding companies and shows that 10 of these companies have 159 utility or non-utility subsidiaries with total assets of approximately $2,600,000,000.

CIVIL LITIGATION

(1) Cases involving the integration and corporate simplification requirements of Section 11 (b)
(a) Section 11 (b) (1)-Integration

During the past fiscal year [Footnote: Since the close of the fiscal year the Circuit Court of Appeals for the Third Circuit unanimously affirmed an integration order in ***United Gas Improvement Company*** v. ***S.E.C***. F. (2d) , November 7, 1943; and the United States Court of Appeals for the District of Columbia, by a divided court, reversed and remanded an integration order of the Commission in ***Engineers Public Service Co.*** v. ***S.E.C.,*** F. (2d) , U.S. App. D.C. ,November 22, 1943, the reversal being confined to the Commission's construction of the "other business" clauses of Section 11 (b) (1).] the Circuit Court of Appeals for the Second Circuit in ***North American v. S.E.C.***, [Footnote: 133 F. (2d) 148. The Supreme Court granted certiorari March 1, 1943, 318 U.S. 750; briefs have been filed but argument has not been had because of the absence of a quorum.] unanimously affirmed an order of the Commission designed to effectuate the requirements of Section 11 (b) (1) with regard to The North American Company.

(b) Section 11 (b) (2)-Corporate simplification and equitable distribution of voting power

All of the Commission's orders under Section 11 (b) (2) which were reviewed in the courts during the past fiscal year were unanimously affirmed. In ***Commonwealth & Southern Corp***. v. ***S.E.C.*** [Footnote: 134 F. (2d) 747.] the Circuit Court of Appeals for the Third Circuit upheld a Commission order under Section 11 (b) (2) requiring the Commonwealth & Southern Corporation to recapitalize so as to have outstanding but a single class of stock, namely, common stock. In ***Central and South West Utilities Company*** v. ***S.E.C.,*** [Footnote: 136 F. (2d) 273, U.S. App. D.C. .] the United States Court of Appeals for the District of Columbia upheld a Commission order requiring Central and South West Utilities Company and its subsidiary, American Public Service Company, to wind up either of those two companies and recapitalize the remaining company on an all-common-stock basis. In ***Todd*** v. ***S.E.C.***, [Footnote: 137 F. (2d) 475.] the Circuit Court of Appeals for the Sixth Circuit upheld a Commission order requiring International Hydro-Electric System, a Massachusetts company, to liquidate and dissolve.

(c) Constitutionality of Section 11 (b)

In the four cases involving Section 11 (b) orders decided in the past fiscal year and in the two cases subsequently decided, the constitutionality of Section 11 (b) of the Act has been unanimously upheld. The Circuit Court of Appeals for the Second Circuit reached this decision in ***North American Co.*** v. ***S.E.C.*** (Judges Swan, A. N. Hand and Chase), [Footnote: 133 F. (2d) 148.] the Third Circuit in ***Commonwealth & Southern Corp.*** v. ***S.E.C.*** (Judges Biggs, Mans and Goodrich) [Footnote: 134 F. (2d) 474.] and in ***United Gas Improvement Company*** v. ***S.E.C.*** (Judges Biggs, Mans and Jones), [Footnote: ***F. (2d)***, November 7, 1943.] the Sixth Circuit in ***Todd*** v. ***S.E.C***. (Judges Weeks, Simons and Allen) [Footnote: 137 F. (2d) 475.] and the Court of Appeals for the District of Columbia in ***Central and Southwest Utilities Co.*** v. ***S.E.C.*** (Judges Miller, Edgerton and Arnold) [Footnote: 136 F. (2d) 273, U.S. App. D.C. .] and in ***Engineers Public Service Co.*** v. ***S.E.C.*** (Judges Soper, A. L Stephens and Miller) [Footnote: F. (2d) , U>S. App. D.C. ,November 22, 1943.]

(2) Cases involving the fairness of the treatment of different classes of security holders under plans of compliance with Section 11 (b)

(a) Payment of debentures in cash

In two cases, holding companies required to liquidate under Section 11 (b) had outstanding unmatured debentures, and had cash available for their payment.

Commission decisions approving the payment of such debentures without the payment of a voluntary call premium were affirmed in ***New York Trust Co.*** v. ***S.E.C.*** [Footnote: 131 F. (2d) 274 (C.C.A. 2d).] and in ***City National Bank and Trust Co.*** v. ***S.E.C.*** [Footnote: 134 F. (2d) 65 (C.C.A. 7th).]

(b) Allocation of securities and cash among classes of security holders

The Circuit Court of Appeals for the Third Circuit in ***Marquis*** v. ***S.E.C.***, [Footnote: 134 F. (2d) 822.] unanimously affirmed a Commission decision approving as fair and equitable plan for the liquidation of Columbia Oil and Gasoline Corporation; one of the consideration was the existence of claims on behalf of Columbia Oil against its parent company which also owned all of its preferred stock. The plan was subsequently approved and enforced by the United States District Court for the District of Delaware in ***Columbia Oil and Gasoline Corporation***. [Footnote: 50 F. Supp. 965.] In Jacksonville Gas Company, [Footnote: 46 F. Supp. 852.] the District Court for the Southern District of Florida approved and enforced a plan of reorganization for that company which allotted the bulk of the new securities to the company's bondholders and the remainder, because of a small amount of unpledged assets, to its debenture holders.

In ***Puget Sound Power & Light Company***, [Footnote: Unreported, May 6, 1943.] the District Court of Massachusetts approved and enforced a reorganization plan for Puget Sound Power & Light Company, allotting the bulk of a new issue of common stock to the junior preferred stockholders of that company and a small amount thereof to the old common stockholders; the principle determining the allocation was that used in ***The United Light and Power Company*** [Footnote: Holding Company Act Release No. 4215.] discussed above. [Footnote: After the close of the fiscal year, the liquidation plan of United Light and Power Company was approved and an order of enforcement was entered by the United States District Court for the District of Delaware, F. Supp. . A reorganization plan similar to that involved in the Puget Sound case was approved by the United States District Court for the District of Colorado in ***Southern Colorado Power Company***, unreported, Oral Opinion, December 21, 1943.]

A Commission decision in ***Federal Water Service Corporation*** [Footnote: 8 S.E.C. 893.] limiting the participation of officers and directors in a reorganization to the cost of shares of preferred stock acquired while efforts at reorganization were being made was reversed by a divided court in ***Chenery Corp.*** v. ***S.E.C.*** [Footnote: 128 F. (2d) 303, 75 U.S. App. D.C. 374 (1942).] Upon review, [Footnote: ***S.E.C***. v. ***Chenery Corp.,*** 318 U.S. 80.] the Supreme Court (Justices Black, Reed and Murphy dissenting) held that the Commission had based its decision solely upon the application of principles of equity derived from judicial decisions and that such judicial decisions did not go as far as the Commission said they did; the Commission's action, therefore, was not allowed to stand since

“an administrative order cannot be upheld unless the grounds upon which the Agency acted in exercising its powers were those upon which its action can be sustained.” The matter was remanded.

(3) Cases involving the existence of control or controlling influence

In four cases, Circuit Courts of Appeals in the past fiscal year have affirmed Commission decisions denying applications of holding companies or subsidiary companies for exemption on the ground of an alleged absence of control or controlling influence. [Footnote: In ***Pacific Gas and Electric Company*** v. ***S.E.C.,*** F. (2d), after the close of the fiscal year, the Circuit Court of Appeals for the Ninth Circuit affirmed by an equally divided court a previous decision reported 127 F. (2d) 378, affirming such a decision of the Commission.] Two of these cases were in the Court of Appeals for the District of Columbia: ***American Gas and Electric Company*** v. ***S.E.C.*** [Footnote: 77 U.S. App. D.C. 174, 134 F. (2d) 633, cert. den. 319 U.S. 763.] and ***Koppers United Company*** v. ***S.E.C.*** [Footnote: ***U.S. App. D.C.***, F. (2d) .] The Circuit Court of Appeals for the Second Circuit affirmed the Commission’s decision in ***Hartford Gas Company*** v. ***S.E.C.*** [Footnote: 129 F. (2d) 794.] and the Third Circuit affirmed a similar decision in ***Public Service Corporation of New Jersey*** v. ***S.E.C.*** [Footnote: 129 F. (2d) 899, cert. den. 317 U.S. 691.]

PUBLIC UTILITY FINANCING

In the fiscal year ended June 30, 1943, the Commission approved 93 applications and declarations pursuant to Sections 6 and 7 of the Act, pertaining to the issuance of securities totaling $612,579,363. For the preceding year, 124 such applications were approved with respect to $631,661,484 of securities.

[table omitted]

There was a sharp increase over last year of the percentage of total financing comprising securities issued in exchange for other securities and in connection with reorganizations. The percentages in question rose from 9.0% to 35.4% and from 0.2% to 22.8%, respectively. A corresponding increase occurred in the proportion of total financing represented by common stock, the proportion in 1943 being 45.9% as contrasted with 10.5% in 1942. These increases are the direct result of refinancings stemming from Section 11 proceedings.

Continued progress was made during the past fiscal year in strengthening the financial structures of public utility operating companies and their parent holding companies. The manner in which that has been accomplished in other years has been set forth in previous annual reports of the Commission (See, for example, the Seventh Annual Report, pages 90-98).

In passing on refinancing cases which came before it, the Commission gave further indication that it has not established a rigid formula for determining initial allowable limits of senior securities for public utility operating companies. The Commission's policy in this regard has heretofore been set forth in its opinion in the El Paso case early in 1941, where it was specifically stated that financial problems "must, of course, be considered in the light of the circumstances surrounding the particular transaction and we make no attempt here to lay down a hard and fast rule." [Footnote: Holding Company Act Release No. 2535.] In those cases in which it has not been feasible to limit senior securities initially to conform to long-range conservative standards of finance, it has been the Commission's policy to require the inclusion of safeguards which will result in the achievement of such objectives over as short a period of time as possible.

Speaking generally, the improvement in public utility capital structures, mentioned above, has resulted from debt reduction, made either at the time a refunding took place or, where that was impracticable, by provision for the retirement of debt through sinking fund or serial debt retirement programs, from the elimination of write-ups, from increased provision for depreciation both as to current accruals and existing reserves, from improved mortgage indenture provisions, from the elimination in many instances of preferred stock dividend arrearages, and from the inclusion in corporate charters of improved protective provisions with respect to preferred stock. All this has been accompanied by a substantial decrease in the burden of interest on funded debt and preferred stock dividend requirements.

Competitive Bidding

During the past fiscal year an additional $140,582,128 of securities were sold at competitive bidding pursuant to Rule U-50, which prescribes public invitation of sealed bids in connection with the sale of securities by registered public utility holding companies and their subsidiaries. This brings to $570,681,134 the total amount thus sold from May 7, 1941, the date on which the rule became effective, to July 1, 1943. [Footnote: Detailed information on each issue sold at competitive bidding is contained in a tabulation entitled "Competitive Bids Submitted for Security Issues Sold Pursuant to Rule U-50 under the Public Utility Holding Company Act of 1935" released by the Commission under date of September 8, 1943. Holding Company Act Release No. 4538.] The rule permits exemption from competitive bidding under specified or appropriate circumstances. A number of such exemptions have been granted since the rule was adopted.

REGULATION OF SERVICE COMPANIES

Several important proceedings relating to service companies and their practices were successfully disposed of during the past fiscal year, resulting in annual savings of more than $1,250,000 to the operating utility companies affected. These savings are in addition to those previously reported. Certain principles and standards as to holding company, service company and operating company relationships were crystallized in the ***Columbia Engineering Corporation*** case. The findings and opinion in this case (Holding Company Act Release No. 4166) established the following principles:

(1) No operating company should be charged or have allocated to it, directly or through the medium of a service company or by any other arrangement, including treasurer's or agent's account, split-check system, or other devices, any portion of the salaries or expenses of any person or persons who are holding company officers or employees, or whose functions relate primarily to the functions of supervision of the holding company system and review of the activities of operating companies, their officials and staffs.

(2) A corollary to the above principle is that no holding company officer or person or persons whose functions relate primarily to the holding company functions of supervision of the holding company system and review of the activities of operating companies, their officials and staffs, should receive any compensation or reimbursement of expenses from any operating company directly or through a service company or any other arrangement including treasurer's or agent's account and split-check systems.

(3) Each service company should confine itself to functions which the operating subsidiaries cannot perform as efficiently and economically themselves. These services should be limited to services of an "operating nature" as distinguished from managerial, executive, or policy-forming functions.

These principles are directed towards preventing costs attributable to holding corn— parry functions from being passed on to operating companies by any means or device.

Following the termination of the Columbia Engineering Corporation case, proceedings were initiated with respect to Cities Service Company, its two public utility subsidiary holding companies and four system mutual service companies. [Footnote: Holding Company Act Release No. 4197.] The respondents indicated that they would comply with the Columbia principles, and after the close of the fiscal year they submitted proposals which the Commission approved. [Footnote: Holding Company Act Release No. 4432.] The system's revised servicing methods substantially reduced service charges to the systems utility operating companies. A similar result was achieved in the American Gas and Power

Company system [Footnote: Holding Company Act Release No. 4395.] and in the American Water Works and Electric Company system after appropriate action by the Commission. [Footnote: Holding Company Act Release No. 4749.]

The case concerning American Water Works and Electric Company, ***et al.,*** was initiated at the request of the New Jersey Board of Public Utility Commissioners. The holding company and two of its subsidiary service companies had been rendering services for a charge to system water operating companies. At the joint hearing held in Newark, New Jersey, respondents proposed a comprehensive reorganization of their system servicing arrangements to meet the issues raised by the New Jersey Board and the Commission. [Footnote: This was the second such proceeding which the Commission initiated at the request of a state public service commission. In August 1940 the Public Service Commission of the State of Vermont requested a similar investigation of the central servicing arrangements in the New England Power Association system resulting in a complete reorganization of the system's central servicing arrangements, with substantial savings to the Vermont operating companies and other system operating companies.]

This proposed plan was reviewed at subsequent hearings at which the Connecticut and Pennsylvania state utility commissions were also represented. As a result of this cooperative proceeding, substantial annual savings will result to the system water operating subsidiaries.

Other servicing company cases during the fiscal year resulted in the segregation of the servicing activities for foreign subsidiaries in the Electric Bond and Share Company system (Holding Company Act Release No. 4070) and the abandonment of system service arrangements in the Associated Gas and Electric Company system. With respect to the latter, the technical staff of the system service company formed an independent service company called Gilbert Associates, Inc. [Footnote: Holding Company Act Release No. 3735.] Any future servicing business with the companies in the Associated system will be on a competitive basis with other independent service companies. The remaining case involved a complete reorganization of the servicing arrangements in the New England Gas and Electric Association System. [Footnote: Holding Company Act Release No. 3790.]

RULES AND REGULATIONS

Changes in the Commission's Rides and Regulations during the fiscal year were limited to five minor amendments of existing rules, three of these amendments relating to Rule U-70 exempting certain persona from the provisions of Section 17 (c) of the Act. An amendment to Rule U-40 extended the exemption from the

requirements of Section 9 (a), while sub-paragraph (6) of Rule U-45 (b) was amended to meet changes in the Revenue Act of 1942 relating to consolidated tax returns.

As a war-time provision, a major revision was made in the Annual Supplement Form U5S for registered holding companies eliminating many of the items and expenditures formerly required to be furnished. This simplification in the reporting requirements under the Act was described earlier in this report.

PART IV

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

SUMMARY OF ACTIVITIES

The Commission actively participated during the fiscal year in 139 reorganization proceedings involving the reorganization of 168 companies (139 principal debtor corporations and 29 subsidiary debtors). The aggregate stated assets of these 168 companies totaled $2,046,442,000, and their aggregate indebtedness was $1,319,058,000. For the first tine the cases closed exceeded the new cases in which the Commission filed a notice of appearance, there having been 29 cases closed and 16 new cases in which the Commission filed a notice of appearance. [Footnote: Under Section 265a of the Bankruptcy Act, as amended, the Commission receives copies of every petition for reorganization filed under Chapter X and copies of other specified documents filed in the proceedings.] As of June 30, 1943 the Commission was actively engaged in 110 reorganization proceedings involving the reorganization of 129 companies (110 principal debtor corporations and 19 subsidiary debtors), The aggregate stated assets of these 129 companies totaled $1,745,156,000, and their aggregate indebtedness was $1,103,698,000. Appendix Table No. 17 classifies these debtors, together with their assets and indebtedness, according to their respective industries, while Appendix Table No. 18 classifies them according to the size of their total indebtedness.

With respect to the 16 new cases in which the Commission participated during the year, its notice of appearance was filed at the request of the judge in two proceedings, while in the remaining 14 cases the Commission entered its appearance upon the approval by the judge of the Commission’s motion to participate. Of these 16 new proceedings, 14 were instituted under Chapter X and two under Section 77B. The debtors involved in these 16 proceedings had aggregate stated assets and aggregate indebtedness of approximately $93,777,000 and $70,693,000, respectively.

THE COMMISSION AS A PARTY TO PROCEEDINGS

There have been no significant changes in the past fiscal year in the policies or practices of the Commission in performing its functions under Chapter X. Five years of experience by the Commission, the Federal courts and attorneys with the operation of Chapter X have produced a substantial number of precedents on nearly all important procedural and interpretive questions. From this store of experience through participation in many cases, the Commission has continued to afford substantial aid to parties, referees, special masters, and judges who frequently call upon the Commission for advice and suggestions. In this manner, the Commission has encouraged the development of uniformity in the interpretation of Chapter X and in the procedure thereunder. This work has also been of value in saving the court officers and parties to the proceeding much of the time, effort and expense that would be entailed in handling such questions ***de novo***. In addition, the Commission has continued, primarily through the method of informal suggestion and conference, to call to the attention of parties to the proceeding any violations or lack of compliance with the procedural provisions of Chapter X, -- thereby avoiding technical and delaying objections at a later date.

It is, however, particularly with respect to substantive matters that the Commission has concentrated its efforts throughout the year. It has given increasing attention among other things to proposed corporate charters, by-laws, trust indentures, and similar instruments so that the rights of investors will be clearly defined and appropriately protected after the reorganization proceedings are consummated. Here, too, the Commission has relied largely on informal conferences for the presentation of its views, and, where these methods have proved inadequate, the questions requiring revision have been brought to the attention of the court. At the same time the Commission has continued its efforts to assist the parties and the courts in achieving equitable, financially sound, expeditious and economic readjustments by furnishing detailed studies of economic factors affecting the debtor and competitive conditions affecting its particular industry.

PLANS OF REORGANIZATION UNDER CHAPTER X

The Act requires as a condition to confirmation of a plan of reorganization that the judge be satisfied that the plan is fair, equitable and feasible. The consummation of a plan which meets these requirements is the main objective of any reorganization proceeding. It may be recalled that the Commission’s primary function under Chapter X is to aid the court in securing this objective.

In regard to appraisals of the fairness of plans, certain basic legal principles consistently urged by the Commission under Chapter X are now firmly

established as a result of the Supreme Court decisions in the Los Angeles Lumber [Footnote: ***Case*** v. ***Los Angeles Lumber Products Co., Ltd.,*** 308 U.S. 106.] and the Consolidated Rock Products [Footnote: ***Consolidated Rock Products Co***. v. ***DuBois***, 312 U.S. 510.] cases. These principles require that a plan provide full compensatory treatment for claims and interests of creditors and stockholders according to their legal and contractual priority either in cash or new securities or both.

The requirement of feasibility relates to the economic soundness or workability of the proposed financial structure. For that reason, in evaluating the feasibility of a plan, the Commission has been particularly concerned with the adequacy of working capital, the relationship of funded debt or capital structure to property values, the adequacy of corporate earning power in relation to interest and dividend charges, and the effect of the proposed new capitalization upon the company's prospective credit.

A frequent obstacle to the adoption of a feasible plan arises when the parties to the proceeding, in order to effect tax savings, refuse to reduce an excessive indebtedness even where a failure to do so would result in an unsound capital structure. Nevertheless, the full protection of security holders demands that the capital structure shall not be so inflated as to hamper subsequent operations or compel resort to another reorganization. It is also of paramount concern to the Commission that the new securities shall not by their terms or otherwise be deceptive to subsequent purchasers. In the light of the prior history of companies in reorganization, it is clear that the Commission's insistence that plans should comply with reasonable standards of feasibility is fully justified. Thus, of the new cases in which the Commission participated during the fiscal year 1942, 17 of a total of 34 cases (or 50%) had previously been in reorganization, and, during the fiscal year 1943, 7 out of 16 such eases (or about 44%) had a similar history.

ADVISORY REPORTS ON PLANS OF REORGANIZATION

Under the provisions of the Bankruptcy Act, as amended, the Commission may submit formal advisory reports on plans of reorganization referred to it by the courts. The purpose of an advisory report is to provide an impartial survey and critique of the plan not only for the use of the judge in determining whether or not to approve the plan but also for the assistance of security holders in reaching their decision with regard to the acceptance or rejection of the plan.

During the fiscal year, the Commission prepared a formal advisory report with respect to a plan of reorganization in the proceeding involving the ***Philadelphia & Western Railway Company***, and also a supplemental advisory report in the proceeding involving the ***Philadelphia and Reading Coal and Iron Company*** in which an initial advisory report had previously been filed.

APPEALS

Although the Commission may not appeal in a proceeding under Chapter X, it may participate in appeals taken by others, and it took part in 12 such appeals decided by the court during the past fiscal year. Questions raised and decided in 5 of these cases are indicated below.

In ***In re Plankinton Bldg. Co.,*** [Footnote: 135 F. (2d) 273 (C.C.A. 7th, May 3, 1943] an appeal was taken from an order in a proceeding under Chapter X for the reorganization of Plankinton Building Company, which had some years before gone through a Section 77B reorganization. The order denied participation in the Chapter X reorganization to holders of bonds of the debtor's predecessor corporation who had not exchanged their old bonds for securities of the present debtor in the prior 77B proceeding. The Commission urged that the old bondholders were entitled to participate as creditors in the Chapter X proceeding since their claims had been listed by the Section 77B trustee as fixed, liquidated in amount and not disputed, and had been so allowed in the 77B proceeding. The Circuit Court of Appeals for the Seventh Circuit upheld this position and reversed the order of the District Court.

In ***Brooklyn Trust Company*** v. ***R. A. Security Holdings, Inc.,*** [Footnote: 134 F. (2d) 164 (C.C.A. 2nd, March 4, 1943).] the Commission urged that Congress intended to give persons, holding claims only against the property of the debtor, the right to file an involuntary petition under Chapter X and that the institution of such proceeding did not deprive the debtor of property without due process in violation of the Fifth Amendment of the Constitution. The District Court sustained this position and the Circuit Court of Appeals for the Second Circuit affirmed.

In ***In re Cuyahoga Finance Co.,*** [Footnote: 136 F. (2d) 18 (C.C.A. 6th, June 7, 1943).] there was involved the question whether the Bankruptcy Court had jurisdiction in a Chapter X proceeding to determine in a summary action set-offs against the debtor's obligation to a pledgee creditor, where such creditor had possession of the assets and where it declined to file a claim or otherwise consent to the jurisdiction of the court. The Circuit Court of Appeals for the Sixth Circuit held, as urged by the Commission, that the District Court had properly exercised summary jurisdiction in that case.

In ***In re Cosgrove-Meehan Coal Corporation, et al.***, [Footnote: 136 F. (2d) 3 (C.C.A. 3rd, May 34, 1943) as amended on Denial of Rehearing June 17, 1943; cert. den. Oct. 25, 1943.] the Circuit Court of Appeals for the Third Circuit upheld the contention of the Commission that Section 249 of the Bankruptcy Act which prohibits an allowance of compensation to those parties who purchase or sell claims against or stock of the debtor while acting in a representative capacity

applies also to a person who traded in the debtor's securities prior to the reorganization proceeding while he was a member of a bondholders' committee.

In ***Abrams v. Cleveland Terminals Building Company*** [Footnote 136 F. (2d) 537 (C.C.A. 6th, May 31, 1943); cert. den Nov. 15, 1943.] the Circuit Court of Appeals for the Sixth Circuit affirmed an order of the court below which accepted the recommendation of the Commission with respect to an application of attorneys for allowances based upon services rendered in the reorganization proceedings, which recommendation urged a reduction of the amount sought from $172,000 to $18,000.

PART V

ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

The Trust Indenture Act of 1939 requires that bonds, notes, debentures, and similar securities publicly offered for sale, 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 the Securities Act of 1933 and the Trust Indenture Act of 1939 are so integrated that registration pursuant to the Securities Act of 1933 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 of 1939. The indenture is automatically "qualified" when registration becomes effective as to the securities themselves.

With one minor exception, no changes were made during the year in the Commission's rules and regulations under this Act. Rule T-7A-4 was amended merely to change the hour from which the time of the effective date of applications is computed from 4:30 P.M., E.S.T., to 5:30 P.M., E.S.T.

STATISTICS OF INDENTURES QUALIFIED

The following tables show the number of indentures filed with the Commission together with the disposition thereof and the amounts of indenture securities involved, not only for the past fiscal year but also cumulatively for the period February 4, 1940, through June 30, 1943.

[table omitted]
[table omitted]

ADDITIONAL INFORMATION RELATING TO TRUST INDENTURES

During the year the following additional material relating to trust indentures was filed and examined for compliance with the appropriate standards and requirements:

12 indentures exempt from the Trust Indenture Act of 1939 but subject to the Public Utility Holding Company Act of 1935.

46 trustee statements of eligibility and qualification under the Trust Indenture Act of 1939 (41 on Form T-l for corporations, and 5 on Form T-2 for individuals).

77 amendments to trustee statements of eligibility and qualification (62 “pre-effective,” and 15 “post-effective”).

25 Supplements S-T, covering special items of information concerning indenture securities registered under the Securities Act of 1933.

5 applications for findings by the Commission pursuant to Sec. 310 (b) (1) (ii).

5 applications, on Form T-4, for exemption pursuant to Sec. 304 (c).

185 annual reports of indenture trustees pursuant to Sec. 313.

During the period February 4, 1940 through June 30, 1943 an aggregate of 321 trustee statements (273 for corporations and 48 for individuals) and 180 Supplements S-T had been filed.

Under the Trust Indenture Act there has been no litigation and there have been only two refusal order proceedings initiated. In the first case, April 1940, the indenture was amended prior to the entry of an order and in the second case, July 1940, the refusal order was rescinded and the trust indenture qualified.

PART VI

ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

During the past fiscal year the Commission in its administration of the Investment Company Act of 1940 [Footnote: For a description of this Act see Seventh Annual Report page 1.] concerned itself primarily with: (1) the registration of companies subject to the Act; (2) the disposition of applications filed pursuant to the provisions of the Act; (3) the promulgation of rules prescribing the type of periodic information and reports required to be filed with the Commission and the type of information and reports required to be transmitted to security holders; and (4) the promulgation of rules and forms to enable investment companies to use their registration statements under that Act as a basis for effecting registration of

their securities under the Securities Act of 1933, thus avoiding a duplication in registration statements and of effort and expenses upon the part of investment companies.

Most investment companies registered with the Commission pursuant to Section 8 (a) of the Act during the fiscal year ended June 30, 1941. However, 14 companies filed notifications of registration during the past fiscal year. Two of these 14 companies were organized during the fiscal year and the others had not registered previously, either because they claimed an exemption from the provisions of the Act or for some other reason.

From the effective date of the Act to the close of the last fiscal year 481 investment companies of all types had registered under the Act. Ninety-one of these companies by the close of the last fiscal year had for one reason or another ceased to be investment companies, so that at the close of the fiscal year 390 investment companies were registered with the Commission under the Act. The total assets of these companies were well in excess of two billion dollars at the close of the fiscal year.

During the preceding fiscal year the Commission adopted rules which permit investment companies to file copies of information already filed under other Acts administered by the Commission in lieu of registration statements under the Investment Company Act of 1940, and thereby gave effect to the directive of the Congress as set forth in Section 8 (c) of the Act. The Commission also promulgated several rules and forms under which investment companies are enabled to use their registration statements filed under the Investment Company Act of 1940 as the basis for registration under the Securities Act of 1933. The purpose of these new rules and forms was to eliminate duplication of filings under the various Acts of material already filed under one Act. In this connection the Commission promulgated Form S-4 under the Securities Act of 1933 for registration under that Act by closed-end management investment companies registered on Form N-8B-l under the Investment Company Act of 1940; Form S-5 for registration under the Securities Act of 1933 of open-end management investment companies registered on Form N-8B-1; and Form S-6 for registration under the Securities Act of 1933 of unit investment trusts registered on Form N-8B-2 under the Investment Act of 1940. In addition, rules were adopted to enable investment companies to file their annual reports under the Investment Company Act of 1940 as their annual reports under all Acts administered by the Commission pursuant to which the companies were required to file annual reports.

PERIODIC REPORTS TO THE COMMISSION AND TO SECURITY HOLDERS

Section 30 (a) of the Investment Company Act of 1940 provides that registered investment companies must file annually with the Commission such information, documents, and reports as companies having securities registered on a national securities exchange are required to file with the Commission pursuant to Section 13 of the Securities Exchange Act of 1934, Section 30 (b) of the Investment Company Act of 1940 authorizes the Commission to require registered investment companies to file reports on a semi-annual or quarterly basis so as to keep reasonably current the information contained in the registration statements of such companies. During the proceeding fiscal year the Commission promulgated two period report forms applicable to management investment companies. During the last fiscal year the Commission promulgated annual report forms for unit investment trusts and other types of investment companies.

The annual report forms are designed to bring up to date, as of the close of each fiscal year of the registrant, the information originally furnished by the registrant in its detailed registration statement.

During the past fiscal year 215 annual reports and 911 quarterly reports were filed by registered investment companies of all types.

Section 24 (b) of the Act requires the filing with the Commission, within ten days after the use thereof, of copies of the full text of all sales literature employed by various types of investment companies registered under the Act. Daring the past fiscal year 1,069 pieces of sales literature were filed with the Commission.

Section 30 (d) of the Act provides that every registered investment company than transmit to its stockholders, and file with the Commission, at least semi-annually, reports containing certain prescribed information and financial statements. During the fiscal year ended June 30, 1943, 1,078 periodic reports to security holders were filed with the Commission.

APPLICATIONS FOR EXEMPTIONS OR EXCEPTIONS

Applications under Section 3 (b) (2) of the Act. -- A company which comes within the quantitative definition of an “investment company” as contained in Section 3 (a) (3) of the Act may apply to the Commission for an order, pursuant to Section 3 (b) (2) of the Act, declaring it to be primarily engaged in a business other than that of an investment company. Such other business may be conducted either directly or through majority-owned subsidiaries or controlled companies conducting similar types of businesses. During the past fiscal year two such applications were denied, and one such application was withdrawn. The Commission granted 6 applications pursuant to this section during the fiscal year, and at June 30, 1943, 6 applications were pending.

Other applications for exemptions. -- Section 6 (c) of the Act confers upon the Commission general exemptive powers if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Thirty-nine applications under this section were pending before the Commission during the last fiscal year. Of these 39 applications, 21 were filed during the last fiscal year and 22 were disposed of by the Commission during that period.

Section 6 (d) of the Act authorizes the Commission to exempt small closed-end investment companies from any and all provisions of the Act if the securities of such companies are not sold outside the States of incorporation and provided the exemption is not contrary to the public interest or inconsistent with the protection of investors.

Three applications under this section were pending before the Commission during the past fiscal year. All of these applications were filed during the year and were pending at the close of the fiscal year.

DISSOLUTION OF INVESTMENT COMPANIES AND WITHDRAWAL OF REGISTRATION STATEMENTS

Eleven registered investment companies filed applications with the Commission during the fiscal year seeking orders of the Commission declaring that such companies had ceased to be investment companies within the meaning of the Act. These applications were filed pursuant to Section 8 (f) of the Act, which provides that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

The Commission had pending before it approximately 21 Section 8 (f) applications during the fiscal year. Of these 21 applications, 11 were granted and 10 were pending at the close of the fiscal year. The applications that were granted involved companies which had formally dissolved and distributed all of their assets to their security holders, companies which had merged with other companies and transferred all of their assets to such other companies, and companies whose outstanding securities were owned by less than 100 persons and which were not making and did not presently propose to make a public offering of their securities. The last category of companies mentioned is excepted from the definition of “investment company” by the provisions of Section 3 (c) (I) of the Act.

AFFILIATED PERSONS OF INVESTMENT COMPANIES

Transactions between investment companies and their affiliated persons. -- Section 17 of the Act makes it unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company to sell to, or purchase securities or other property or borrow money or other property from, the investment company or any company controlled by it. However, authority is given to the Commission to exempt, by order, any proposed transaction if evidence establishes that the terms of such transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching by any person concerned, and that it is consistent with the policies of the investment company as recited in its registration statement and with the general purposes of the Act.

For the fiscal year ending June 30, 1943, there were filed or pending from the preceding year 25 applications to exempt proposed transactions between affiliated persons and investment companies, or companies controlled by them. The Commission disposed of 11 of such applications after hearings; one was withdrawn without hearing, and 13 were pending at the close of the year. While these applications ostensibly sought exemption of a proposed transaction involving the purchase and sale of securities, the disposition of such applications often included such matters as reorganizations and re-capitalizations of investment companies as well as affiliated non-investment companies.

CIVIL ACTIONS INSTITUTED BY THE COMMISSION

During this fiscal year the Commission instituted two actions to restrain violations of the Investment Company Act of 1940 and to secure the appointment of a receiver under Section 42 (e) of that Act.

The first case, ***Securities and Exchange Commission*** v. ***United Funds Management Corporation***, [Footnote: U.S.D.C. Western Dist. Of Mo.] sought to enjoin the named officers and directors of United Funds Management Corporation from acting in that capacity and to have a receiver appointed shortly after the commencement of the Commission's action, the corporation filed a petition of voluntary bankruptcy in the adjudication of which the Commission appeared as amicus curiae. The Commission's action has been continued pending the disposition of this bankruptcy proceeding.

In ***Securities and Exchange Commission*** v. ***Fiscal Funds, Inc.*** [Footnote: U.S.D.C District of Delaware] the Commission's complaint alleged violations of Section 22 (e) of the Investment Company Act of 1940 and asked for the appointment of a receiver. An injunction was granted and a receiver was appointed by the court on January 12, 1943. [Footnote: The final distribution of assets was ordered on

October 28, 1943. The amount of the assets at this time was in excess of the amount at the time of the commencement of the action.]

The Commission obtained an injunction against James S. Gladish [Footnote: ***Securities and Exchange Commission*** v. ***Guaranty Income Trust and James S. Gladish***, U.S.D.C. Dist. Of Okla. Defendants consented to entry of judgment.] from further violation of the registration provisions of the Investment Company Act of 1940. In its complaint, the Commission alleged that Gladish had been using the mails and instrumentalities of interstate commerce in selling, purchasing, redeeming or otherwise acquiring face-amount certificates of Guaranty Income and Trust and effecting securities transactions for the trust without having the trust registered pursuant to the provisions of the Investment Company Act of 1940.

PART VII

ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

ENFORCEMENT

As was pointed out in the last annual report, the Investment Advisers Act of 1940 does not confer upon the Commission the authority or duty to make periodic inspections of the records of registered investment advisers such as is conferred upon the Commission by Section 17 (a) of the Securities -Exchange Act with respect to registered brokers and dealers. The Commission has, to be sure, investigatory powers under Section 209 (a) of the Investment Advisers Act, but these powers may be employed only when it appears that the provisions of the Act have been or are about to be violated and the Commission's enforcement work under the Act is therefore necessarily limited. The Commission is making a special report to Congress with recommendations in this matter.

INVESTMENT ADVISERS' REGISTRATION STATISTICS

The following tabulation relates to investment advisers' registrations:

July 1, 1942 -- June 30, 1943

Effective registrations at close of preceding fiscal year/ 732
Applications pending at close of preceding fiscal year/ 7
Applications filed during fiscal year/ 79
Total/ 818
Applications withdrawn during year/ 1
Registrations withdrawn during year/ 104
Registrations cancelled during year/ 5

Registrations denied during year/ 0
Registrations suspended during year/ 0
Registrations revoked during year/ 1 [Footnote: ***In the Matter of Frances J. Lubbe***,-Investment Advisers Act Release No. 37.]
Registrations effective at end of year/ 698
Applications pending at end of year/ 9
Total/ 818

On June 30,1943 there were 698 registered investment advisers consisting of 398 sole proprietors, 128 partnerships, 170 corporations and 2 others.

PART VIII
OTHER ACTIVITIES OF THE COMMISSION UNDER THE VARIOUS STATUTES

LITIGATION

Civil Proceedings

At the beginning of the fiscal year ended June 30, 1943, 11 civil proceedings instituted by the Commission were pending; during the year, the Commission instituted 37 additional proceedings, including 28 injunctive actions brought against 71 persons to restrain them from fraudulent and otherwise illegal practices in the sale of securities. Of this total of 48 proceedings, 26 were disposed of during the fiscal year, including 23 cases which resulted in the entry of injunctions against 54 persons. Twenty-two civil proceedings were pending at the end of the year.

Since its inception, the Commission has instituted a total of 477 civil proceedings and disposed of 455. Permanent injunctions have been obtained against 994 firms and individuals.

Data with respect to civil cases and appellate proceedings, including a brief description of all civil proceedings commenced or pending during the fiscal year and their status at the close of the year, together with all criminal proceedings, are included in Appendix Tables 20 to 30. Some of the more important of these civil cases have been summarized in the preceding parts of this report.

Criminal Proceedings

The statutes administered by the Commission provide for the transmission to the Department of Justice of evidence of violations of the criminal provisions of those statutes. The Attorney General determines whether criminal proceedings shall be instituted. It is the Commission’s policy to make a thorough investigation of

alleged violations before referring a case to the Department of Justice, and to furnish to the Department the results of such investigations as in the Commission's opinion appear to warrant prosecution. Thereafter, if criminal proceedings are instituted, the members of the Commission's staff who participated in the investigation assist the United States attorneys in the preparation of the cases for the grand jury and for trial, and in the writing of briefs on appeal.

During the fiscal year the enforcement of the federal securities laws became increasingly important by reason of the continued rise in national income, the accelerated accumulation of savings, and the concomitant scarcity of consumer goods. In the absence of vigorous policing activities, economic conditions such as these would be highly favorable to the operation of fraudulent securities promotions.

During a period of war when industrial activity is greatly expanded, when individual savings are at a high level and when war bond selling campaigns introduce security investments to millions of new investors, conditions are conducive to an increase in fraudulent securities practices. The Commission is, therefore, applying extra and unusual vigilance to prevent a rise in fraudulent securities activities. So far as we are able to discover they have been held in check.

Up to July 1, 1943, a total of 2,223 defendants have been indicted in cases developed by the Commission. During the past year indictments were returned against 189 defendants. Convictions have been obtained against 1,013 defendants. [Footnote: Includes an adjustment of convictions for prior years reported late.] Of these, 126 defendants were convicted during the past year. This includes two defendants held in criminal contempt for violating decrees of injunction obtained in actions prosecuted by the Commission, Of these convicted defendants, almost two-thirds had pleaded guilty or no defense. Only one-third of the defendants stood trial.

During the past fiscal year, in over 95% of the cases developed by the Commission, the main defendants either were found guilty by a jury or pleaded guilty or no defense. If minor defendants are included, the figures for the year are 126 convicted and 13 acquitted. In almost one-third of the cases disposed of during the past year, the indictment was returned and the case tried within the same fiscal period.

The nationwide character of the Commission's investigations is shown by the fact that during the past year, as in previous years, the investors affected resided in each of the forty-eight states. Cases were instituted or tried in approximately forty of the federal district courts.

The status of all of the cases pending during the year and the major events in each of the cases are set forth in Appendix Table 23. Most of the cases fell into the following general classifications: frauds on the part of certain broker-dealers, industrial loan company frauds, stock market manipulations, miscellaneous investment company frauds, vending machine promotions, whiskey warehouse receipt promotions, exploitation of natural resources, and promotions of inventions.

An unusually high number of small loan companies were involved in the cases prosecuted during the year. They were ***U. S.*** v. ***Dewitt T. Simpson***, ***et al.*** (Standard System Investment Corp., Savannah, Georgia.); ***U. S.*** v. ***Jesse Michael*** (Industrial Loan Company, Inc., Columbus, Ohio); ***U. S.*** v. ***Carl A. Schroeder, et al.*** (Continental Finance Company, Jersey City, New Jersey); ***U. S.*** v. ***Charles R. Beall et al.*** (Carolina Industrial Securities Corp., Columbia, South Carolina); ***U. S.*** v. ***Clifton M. Bisele, et al.*** (Southeastern Industrial Bankers, Inc., District of Columbia); ***U.S. v. Joseph M. Lydon, et al***. (Brokers Acceptance Corp., Boston, Massachusetts).

The first of these cases is illustrative of some of the practices. Standard System was a holding company which had obtained control of a number of industrial loan companies operating in various cities in Georgia. Prominent business and professional men who were not aware of the scheme were persuaded to serve on the board of directors, thus furnishing Standard System with a respectable facade. Actually, control of the corporation was exercised by Dewitt T. Simpson, Alonso P. Ricks and Edward P. Brandon, who paid dividends out of capital, made fictitious book entries, and acted freely with the corporate funds. They were indicted in February 1943 in Savannah, Ga., for violations of the fraud provisions of the Securities Act of 1933, and for other statutory offenses. All were convicted, and varying prison terms were imposed.

Charges of frauds by broker-dealers and stock market manipulation charges figured prominently in the cases prosecuted during the year. The manipulation cases were ***U.S.*** v. ***Norman W. Minuse, et al.*** (Trading on the New York Curb Exchange in the stock of Tastycast, Inc.); ***U.S.*** v. ***Raymond R. Taylor*** (Trading on the Detroit Stock Exchange the stock of Midwest Abrasive Co.); ***U.S.*** v. ***Edmond B. Bronson, et al.*** (Trading over-the-counter in the stock of Bagdad Copper Corp.); ***U.S.*** v. ***Henry Lieberman***, ***et al.*** (Trading on the New York Stock Exchange in the stock of Julian & Kokenge, Inc.).

In the first of these cases, Norman W. Minuse and Joseph E. H. Pelletier were convicted of conspiracy to violate the anti-manipulation provisions of the Securities Exchange Act of 1934. The defendants were charged with operating a stock “jiggle” in the Class A capital stock of Tastycast, Inc., a security listed on

the New York Curb Exchange, and during the period of their activities the price of Tastycast had risen from 1-5/8 to 4-1/8. The proceeding during the fiscal year constituted the second trial for the defendants, a prior conviction for the same offense having been reversed on appeal. A second appeal is pending.

Frauds perpetrated by broker-dealers on their customers were involved in ***U. S.*** v. ***Russell W. McDermott,*** Indianapolis, Indiana; ***U. S***. v. ***Ray 0. Braden, et al.***, Parkersburg, West Virginia, ***U. S***. v. ***E. E. Morrison et al.*** (Morrison Bond Company, Ltd., Oakland, Calif.); ***U. S.*** v. ***Phillip J. Liuzza***, New Orleans, La.; U. S. v. B. T. Konsberg Co., Chicago, Ill.)

In the ***McDermott*** case, one of the most important decided during the year, the constitutionality of the margin requirement provisions of the Securities Exchange Act of 1934 was upheld by the U. S. Court of Appeals for the Seventh Circuit. The determination is also noteworthy because it is the first court case predicating fraud on excessive trading by a broker in a customer's discretionary account. In 1939, the Commission learned of the impending dissolution of a Chicago stock brokerage firm, and reports were received of irregularities in the firm's Indianapolis office. An investigation followed, and it was discovered that Russell N. McDermott, manager of the Indianapolis office, had been guilty of serious violations of the margin rules, by means of a deceptive system of "kited" checks and "free-riding." He had also engaged in certain fraudulent practices. The Circuit Court of Appeals sustained his conviction (131 F, (2d) 313 (C.C.A. 7, 1942)), and certiorari was denied by the U. S. Supreme Court (318 U. S. 765).

The ***Morrison Bond Company*** case was the first instance of a conviction for hypothecation of customers' securities in contravention of Section 8 (c) of the Securities Exchange Act of 1934. E. E. Morrison and H. C. Stone, who specialized in street improvement bonds, with offices in California, had sold bonds on a "when, as, and if issued" basis, and thereafter, despite full payment by the purchasers, they had hypothecated the bonds with an Oakland bank, in violation of regulations promulgated by the Commission. They were indicted in San Francisco on September 16, 1942, convicted on pleas of ***nolo contendere*** and sentenced on April 13, 1943.

Oil and gas leases were the underlying basis for investment in the following cases: ***U. S.*** v. ***Roy E. Wilson*** (Wilson Drilling Company, Danville, Illinois); ***U. S.*** v. ***Eugene M. Shirley, et al.,*** Indianapolis, Indiana; ***U. S.*** v. ***E. Randall Henderson***, Memphis, Tennessee; ***U. S.*** v. ***Todd M. Pettigrew, et al.*** (Western Plains Oil Corp., Rochester, New York); ***U. S.*** v. ***Joshua F. Simons, et al.*** (Peoples Gas & Oil Corp., State of Washington); ***U. S.*** v. ***Gabriel Diaz, et al.*** (Plaquemines Land Co., New Orleans, La.); ***U. S.*** v. ***W. H. Koch et al.*** (Patmin Production Co., Casey, Illinois); ***U. S***. v. ***H. R. Edwards*** (Edwards Petroleum Co., Oklahoma City,

Okla.); [Footnote: 113 F. (2d) 286; 312 U.S. 473; 131 F. (2d) 198; 317 U.S. 689.] ***U. S.*** v. ***George L. Green*** (Midwest Petroleum, Wichita, Kansas).

The vending machine cases included ***U. S.*** v. ***A. B. Block*** (National Automatic Vendors, Dallas, Texas); ***U. S.*** v. ***Maurice A. Levine, et al.*** (Paymaster Plan, Inc., Boston, Mass.); ***U. S.*** v. ***Albert Janis*** (Parking Meter Corp., Cleveland, Ohio).

In the usual vending machine case, the promoter undertakes to sell vending machines to the investor under an arrangement whereby the investor will immediately lease the machine back to the promoter, who is to operate it for the new owner on a profit-sharing basis. Thereafter, periodic payments, purporting to be profits, are made to the investor. Actually, such payments are made out of capital. The purpose is to induce the purchase of additional machines. This fraudulent pattern was the subject of the indictment in the ***Levine*** case, which involved the sale of cigarette and peanut vending machines. Additional frauds were also charged. One of the defendants, Alfred B. Cohen, has been convicted and sentenced on a plea of guilty. The others are awaiting trial. The Commission' s interest in these cases arises from the fact that the transactions, under the Securities Act of 1933, are essentially securities investments rather than mere sales of personal property.

Mining company stocks were often involved in the fraud cases. In a number of these, the securities were sold by residents of Canada operating from across the border without compliance with the statutes of this country. The Commission has been cooperating with the State Department and the Department of Justice in efforts to obtain ratification of a pending treaty with Canada in order to permit extradition from Canada of those who violate our securities laws and other cognate statutes. The treaty was ratified by the United States Senate in 1942.

The cases involving promotion of mines in this country were: ***U. S.*** v. ***Patrick T. Henry et al.*** (Rainbo Gold Mines Marysvale, Utah); ***U. S.*** v. ***Edmond B. Bronson et al.*** (Bagdad Copper Company, New York); ***U. S.*** v. ***Phillip Suetter*** (Suetter Placer Mines, Josephine County; Oregon); ***U. S***. v. ***Amos Downs, George Hawley, et al.,*** 133 F. (2d) 966; (Humbolt Consolidated Mines Co., Clear Creek County, Colo.); ***U. S.*** v. ***Simon C. Hedrick et al.*** (Desert Gold & Aluminum, Alaska and Imperial County, Calif.).

Promotion of mines in Canada were involved in ***U. S.*** v. ***John Herck*** (LaReine Gold Mines, Ontario, Canada); ***U. S.*** v. ***Edward S. Harrison et al***. (Pilot Molybdenite Mines, Ltd., Ontario, Canada); ***U. S.*** v. ***George Reynolds, et al.*** (Avon Gold Mines, Ltd., Montreal, Canada); ***U. S.*** v. ***J. Samuel Wacker, et al.*** ("The Financial Indicator", Toronto, Canada).

Among the cases involving charges of fraudulent transactions in whiskey warehouse receipts were ***U. S.*** v. ***Edward A. Sloane, et al.*** (A. D. Lowe & Associates, Chicago, Illinois); ***U. S.*** v. ***Mark A. Freeman, et al.*** (Consolidated Associates, Inc., Chicago, Illinois); ***U. S.*** v ***Frank J. Ryan, et al.*** (Research and Investment Co., Wilmington, N. Carolina); ***U. S.*** v. ***John Factor, et al.*** (United Bottling & Distributing Company, Chicago, Illinois, and Cedar Rapids, Iowa).

Factor (Jake the Barber) and a group of confederates, operating through the United Bottling and Distributing Company, a Delaware corporation, defrauded some 250 investors to the extent of $1,000,000. The owners of whiskey warehouse receipts were induced to exchange them for bottling contracts, by the terms of which United Bottling was to hold the whiskey until it matured, see to its bottling and distribution, and transmit the profits, less a stated service fee, to the investors. Actually, United Bottling was a mere paper organization, and the confidence ring sold or hypothecated the whiskey warehouse receipts as soon as possession was obtained. Owing to the destruction of corporate records, an intensive, two-year investigation was necessary to secure evidence sufficient to convict. An indictment was returned in Cedar Rapids, Iowa, many of the victims of the fraud being Iowa residents. Eleven defendants pleaded guilty and received substantial prison sentences. Factor was sent to the Federal penitentiary at Leavenworth for a term of ten years.

Other cases during the year involved a social and fraternal organization (the Mantle Club), companies promoting inventions, purported investment programs in assets of one kind or another (such as land, mortgages, building and loan securities, or stocks and bonds), a newspaper, a reference library, the so-called front-money racket, a stock-market tipster, sale of ship-shares, and promotion of a pinless diaper.

The Mantle Club was organized by Hugh B. Monjar and was a nationwide fraternal organization with 30,000 members, devoted to moral betterment and other high ideals. A deep sense of personal loyalty to Monjar was fostered among the membership. Monjar was represented as a financially astute individual, who could and would extend pecuniary benefits to persons proving themselves worthy. A large number of the club’s members were induced to make personal loans to Monjar. The sum of $1,340,000 was raised in this manner.

The Commission’s investigation resulted in the indictment of Monjar and a number of his confederates. It was charged that Monjar had converted most of the money to his own use, and that he had obtained the $1,340,000 loans by falsely representing that he would assure the financial independence of those who put up their money. It was also charged that Mantle Club members were induced to deal, to their disadvantage, with enterprises controlled by Monjar and his associates. Monjar and ten co-defendants were convicted, and received jail

sentences totaling over twenty-three years, and fines totaling more than $81,000. Appeals are pending at the present time,

In a front-money case (***U. S.*** v. ***Edward Hill, et al.***), the scheme, as alleged in the indictment, involved getting small business men who needed additional capital to make an initial payment on account of the expenses incident to the obtaining of private financing or the floating of securities. The defendants made a pretense of financing operations, it was charged, although actually there was no intention of rendering the services promised. Eleven of the twelve defendants have been convicted on pleas of guilty or ***nolo contendere***, the most recent of them being one Samuel J. Lewis. The twelfth defendant has not been apprehended.

In the ship-shares case (***U. S.*** v. ***Mark L. Gilbert, et al.***), the inventor of a new type boat, called the "Sea Hydro No. 1", which was supposed to operate on an entire new principle, sold shares to the investing public on the false pretenses that a previously promoted vessel was in successful operation, and that the new ship was in process of construction as a $4,000,000 liner which would attain a speed of 80 to 100 miles per hour. The defendants in this case pleaded guilty.

In the tipster case a railroad bond trader named John Hession, who had been the author of the newspaper column, "Streaks of Steel", was convicted for violations of the fraud provisions of the Securities Act of 1933. The indictment charged that he had pretended to have inside information derived from a government source as to action to be taken by the Interstate Commerce Commission in connection with the reorganization of a certain railroad. It was also charged that the dissemination of this and other false information induced widespread purchases and a marked rise in the price of the bonds. Hession has taken an appeal.

In ***U. S.*** v. ***Harvey H. Hevenor et al.*** (General Ordnance Co.) an indictment returned in New York City charged that in the sale of General Ordnance preferred stock, Hevenor represented that a new type of mechanical fuse, designed for use on anti-aircraft projectors, had been developed by the company and was ready for testing, whereas it was charged that the development work had been abandoned before completion. This case had not been tried.

COMPLAINTS AND INVESTIGATIONS

The Commission, during the fiscal year ended June 30, 1943, received approximately 12,840 items of mail classified as "complaint-enforcement." This correspondence dealing with alleged securities violations constitutes one of the Commission's chief sources of information concerning possible securities violations. Investigations made by the Commission's own staff and contacts maintained by the staff with other governmental (Federal, State and local) or

private agencies provide additional information alleged violations. The following table indicates the extent of the Commission's investigatory activities:

[table omitted]

The Commission's Securities Violation Files, consisting of a clearing house of information concerning fraudulent securities transactions, and established in connection with enforcement and registration activities, have been maintained and expanded during the year through the continued cooperation of State securities commissions and other public agencies, members of the National Association of Better Business Bureaus, Inc., and members of the United States Chamber of Commerce. As of June 30, 1943, the Commission had assembled in these files data concerning an aggregate of 43,382 persons against whom Federal or State action had been taken in connection with securities violations. During the past fiscal year alone additional items of information relating to 6,004 such persons were added to these files, including information concerning 2,317 persons not previously identified therein.

ACTIVITIES OF THE COMMISSION IN THE FIELD OF ACCOUNTING AND AUDITING

Effect of the War

One of the most important problems confronting accountants during the past year has been that of determining the proper approach to be taken toward the special uncertainties which are inherent in the presentation of financial statements under existing wartime conditions. Accountants have been obliged to face situations in which the entire business done is novel, is subject to abnormal business and economic risks, and is conducted under novel legal and contractual arrangements of uncertain incidence.

The Commission has cooperated with the accounting profession and with particular registrants in exploring these problems and in developing appropriate techniques, procedures, and interpretations for dealing with them. One of the most important and pervasive of these uncertainties has resulted from the statutory provision for the re-negotiation of war contracts of companies engaged in war production. The Commission has followed a policy of requesting that the financial statements of registrants disclose the pertinent facts about the company's position with respect to renegotiation. In addition the Commission, during the past year, amended its requirements for filing interim reports on Form 8-K so as to require the filing of this form upon the settlement of any renegotiation proceeding. Inasmuch as the settlement of renegotiation proceedings eliminates a material uncertainty relative to the financial statements, it was felt that the fact of settlement called for prompt disclosure in an interim

report. The provision of war and post-war reserves for the special expenses and losses attributable to wartime production has in the case of many registrants been a most difficult accounting problem. The Commission has not attempted to issue general rules governing the provision of such reserves. However, in Accounting Series Release No. 42 attention was called to the disclosures that should be made in financial statements with respect to such reserves and the charges made in establishing then.

Accounting firms and business organizations have continued to be faced with critical shortages of personnel. The seriousness of the situation prompted the Commission during the past year to undertake a comprehensive revision of its reporting requirements designed to facilitate the furnishing of financial information with a minimum burden and expense. [Footnote: Securities Act of 1933 Release No. 2888.] One such change permitted the omission or partial omission, under certain circumstances, of particular schedules supporting the financial statements of registrants. Also, money figures in financial statements were permitted to be stated in even thousands with zeros omitted. It was expected that these changes would permit substantial time saving in the final preparation of schedules and financial statements. Furthermore, it was provided that financial statements included in annual reports to stockholders might, in some cases, be filed in lieu of the financial statements required to be filed under certain annual report forms of the Commission. Financial statements so filed must, however, substantially comply with the requirements of Regulation S-X. The concept of “substantial conformity” was clarified by an interpretative opinion of the Chief Accountant in Accounting Series Release No. 41. These several changes have in all cases been made permissive so as to avoid any possible hardship to registrants for whom the pre-existing requirements would, because of special circumstances, be simpler.

Cooperation With Societies and Others

The Commission has sought to cooperate with the accounting profession and to add its full influence to that of the professional societies and others in a joint effort to maintain and raise accounting and auditing standards. As heretofore, the Commission, in its promulgation of rules or opinions on accounting matters, has, wherever practicable, invited the comments or suggestions of other Federal and State agencies interested in accounting, of committees of professional societies, and of other interested persons. Reciprocally, the Commission has been invited to offer suggestions or comments on proposed actions or bulletins of these organizations. The benefits accruing from such cooperation have continued to be quite substantial.

Professional Conduct

Independent status is requisite for a professional accountant if his certification is to accomplish its intended purpose of providing an impartial and expert review of the financial statements of a particular company. The Commission in its regulations and published releases has previously indicated particular relationships or conditions that might destroy independence. However, during the past year the Commission amended its rules to codify the principles to be applied in considering questions of independence. It appeared to be desirable to incorporate these principles in the published rules and regulations in view of cases in which substantial amounts due from officers and directors were shown separately in balance sheets filed with the Commission but, in the balance sheet contained in the annual report to stockholders, were included without disclosure under the caption “Accounts and notes receivable, less reserves.” Accounting Series Release No. 37 amended the Commission’s rules to make explicit what was previously implicit that in “determining whether an accountant is in fact independent with respect to a particular company, appropriate consideration shall be given to the propriety of the relationships and practices involved in all services performed for the company by such accountant…” This amendment resulted in inquiries from the accounting profession as to whether the Commission’s intention was to seek to determine the “propriety” of these relationships in and of themselves. To avoid any possible misinterpretation of its policy, the Commission, in Accounting Series Release No. 44, amended the rule in question to provide that in determining whether an accountant is in fact independent with respect to a particular registrant “the Commission will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and that registrant…”

Accounting and Auditing

During the past year the Commission revised its Uniform System of Accounts for Public Utility Holding Companies. The original system of accounts prescribed for public utility holding companies became effective January 1, 1937 and continued in effect without change until these revisions which were announced in Accounting Series Release No, 39 issued December 19, 1942. Among other things the new system of accounts provided that a dividend received on stock of a paying company of the same class as the stock on which such dividend was paid should not be treated as incomes [Footnote: In September 1941, a bulletin was issued by the Committee on Accounting Procedure of the American Institute of Accountants indicating that a dividend of common stock declared on common stock was not income. On October 14, 1943, the Board of Governors of the New York Stock Exchange issued a statement on stock dividends in which the same position was taken.] Previously it had been provided that such dividends could, within certain limits, be included in income or earned surplus at the option of the recipient. The other principal substantive changes related to the showing of income taxes in the income statement, and the handling of discount and

repurchase premiums on capital stock, and “basket” investment accounts in which several investments are carried at an unsegregated book amount.

The Commission also amended Regulation S-X to prescribe the manner in which original cost data and other components of utility plant are to be shown in the balance sheets of public utility companies and consolidated balance sheets of public utility holding companies which file financial statements subject to this regulation. These amendments, announced in Accounting Series Release No. 43, were predicated on the belief that the segregation of original cost, historical cost and other components of book amounts of utility plant is, in the light of present trends of rate regulation, of great concern to investors.

More general questions of accounting principles or practices were dealt with in several releases issued during the past year in the Accounting Series. Release No. 45 dealt with the accounting treatment to be accorded premiums paid upon the redemption of preferred stock. This release, issued on June 21, 1943, concluded that such premiums should ordinarily be charged to earned surplus. Subsequently a committee of the American Institute of Accountants raised a number of objections to the position taken, These objections, which were first urged as to preliminary drafts of the release, are nevertheless being given further consideration by the Commission. Release No, 35 dealt with the proper disclosure to be given in financial statements to provisions and conditions that limit the availability of surplus for dividend purposes. Release No. 36 discussed the treatment by an investment company of interest collected on defaulted bonds applicable to a period prior to the date on which such bonds and defaulted interest were purchased, while Release No. 38 discussed the proper accounting treatment of the post-war refund of federal excess profits taxes provided for in Section 250 of the Revenue Act of 1942.

Informal Consideration of Accounting Problems Raised in the Case of Individual Registrants

The greatest part of the Commission’s accounting and auditing activities stems from the examination of financial statements filed by particular registrants. Memoranda issued for the purpose of citing deficiencies or making suggestions for future reports continue to play an important role in securing satisfactory financial statements for investors. Also accounting and auditing problems have been the subject of innumerable informal conferences between the Commission’s staff and representatives of particular registrants. These conferences have proved to be an expeditious means of resolving difficult or unusual questions with respect to which no specific rules have been issued or the application of existing rules is uncertain.

REPORTS OF OFFICERS, DIRECTORS, PRINCIPAL SECURITY HOLDERS AND CERTAIN OTHER AFFILIATED PERSONS

The general purpose and scope of the ownership reporting requirements, prescribed by Sections 16 (a) of the Securities Exchange Act of 1934, 17 (a) of the Public Utility Holding Company Act of 1935 and 30 (f) of the Investment Company Act of 1940 and the Commission's rules, regulations, and forms promulgated thereunder, as well as the Commission's procedures for obtaining the filing of required reports, examining them for compliance with the statutes and the rules, obtaining amended reports where necessary, and the publication of information contained in the reports, have been described in the Sixth Annual Report, pages 180-182, Eighth Annual Report, page 47, and other previous annual reports.

Number of ownership reports of officers, directors, principal security holders, and certain other affiliated persons filed and examined.

[table omitted]

At the close of the past fiscal year, when the security ownership reporting requirements had been operative under Section 16 (a) for more than 8 years, under Section 17 (a) for more than 7 years, and under Section 30 (f) for nearly 3 years, an aggregate of more than 200,000 original and amended reports had been filed by 33,815 persons closely identified with the management or control of industrial, utility, and investment enterprises.

CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

The Commission has power, as described in its Seventh Annual Report, page 234, and previous annual reports, to provide for the confidential treatment, upon application by registrants, of information contained in reports, applications, or documents such as prospectuses, proxy statements and registration statements, required to be filed under a number of the acts which it administers.

In addition, as set forth in the Eighth Annual Report, page 6, rules have been adopted by the Commission pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935 which provide for the omission or confidential treatment, either on the Commission's own motion or upon application, of any such information which is inconsistent with the standards of the Code of Wartime Practices promulgated by the United States Office of Censorship. Since copies of the documents filed with the Commission under Sections 12 and 13 of the Securities Exchange Act of 1934, the not inconsiderable volume and the nature of which are indicated earlier on

this report, must also be filed with the securities exchanges, the Commission has continued to obtain the cooperation of the exchanges in temporarily withholding from public inspection their copies of these documents until the Commission has completed its preliminary examination of this material and the exchanges have had an opportunity to delete from any document such information as is specifically authorized or directed by the Commission. Immediately thereafter these documents are made available for public inspection, While the general type of information which the Office of Censorship in the Code of Wartime Practices deems adversely to affect the war program and which thus, under the Commission's additional flies, is to be omitted or treated confidentially in documents filed under the three statutes mentioned above, was summarized in Securities Act of 1933 Release No. 2781, members of the Commission's staff have rendered every possible assistance to registrants, in advance of filing dates, in the preparation of documents in accordance with the objectives sought by these rules.

The following table indicates the number of applications – including thereunder any action taken by the Commission on its own motion under these new rules -- received and acted upon during the past year, together with the number pending at its close:

[table omitted]

PUBLICATIONS

Public Announcements

Under the various Acts it is the Commission's duty to publish its decisions and generally to inform Congress and the public of its activities, Its releases are classified into various categories so that a person may receive the material relating only to those phases of the Commission's work in which he is interested, The Commission has made an exhaustive check of its mailing lists to eliminate those no longer desiring specified material.

The announcements issued during the past fiscal year included 78 releases under the Securities Act of 1933; 187 under the Securities Exchange Act of 1934; 756 under the Public Utility Holding Company Act of l935; 143 under the Investment Company Act of 1940; and 5 under the Investment Advisers Act of 1940. In addition, three releases were issued concerning the Commission's activities in corporate reorganizations and three releases were issued under the Trust Indenture Act of 1939.

The Commission also continued the daily publication of its Registration Record, which presents a brief description of data filed under the Securities Act of 1933 and the Trust Indenture Act of 1939.

The following is a partial classification by subject matter:

Opinions and Orders/ 857
Reports on court actions/ 126
Statistical data/ 34
Survey series/ 22
Accounting series/ 12

Other Publications

Decisions and Reports of the Commission:

Buckram-Bound:
Volume 9 -- April 1, 1941 to August 31, 1941

(The Decisions and Reports of the Commission may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., and a price list will be furnished upon request.)

Twelve monthly issues of the Official Summary of Security Transactions and Holdings of Officers, Directors and Principal Stockholders.

An alphabetical List of Companies Registered under the Investment Company Act of 1940.

An alphabetical List of Investment Advisers Registered pursuant to Section 203 of the Investment Advisers Act of 1940.

An alphabetical List of Over-the-Counter Brokers and Dealers registered with the Commission as of July 31, 1942.

List of Securities Traded on Exchanges under the Securities Exchange Act of 1934, as of December 31, 1942, together with Supplements thereto.

(A complete list of the Commission’s publications, the Rules of Practice or the Guide to Forms will be sent upon request made to the office of the Commission in Philadelphia, Pa.)

INSPECTION OF REGISTERED INFORMATION BY THE PUBLIC

Copies of an 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 Philadelphia, Pa. During the past fiscal year more than 7,327 members of the public visited this Public Reference Room seeking such information, and thousands of letters and telephone calls were received requesting registered information. (This is exclusive of requests for releases, etc.) The Commission, through the facilities provided for the sale of public registered information, filled more than 1,757 orders for photocopies of material, involving 148,468 pages.

Insofar as practicable, the Commission has sought to make some of the public registered filed with it available in its regional offices. In the New York Regional Office at 120 Broadway, facilities are provided for the inspection of certain public information on file with the Commission. This 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 or 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. During the past fiscal year 8,051 members of the public visited the New York Office Public Reference Room, and more than 3,701 made telephone calls to this office, seeking registered public information, forms, releases, and other material.

In 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, 1943, more than 2516 members of the public visited the Chicago Public Reference Room, and approximately 652 telephone calls were received there and 2338 requests were made for registered information, forms, releases and other material.

In each of the Commission’s regional offices there are available for inspection copies of prospectuses used in public offerings of securities effectively registered under the Securities Act of 1933, as amended. Duplicate copies of applications for registration of brokers or dealers transacting business on over-the-counter markets, together with supplemental statements filed under the Securities Exchange Act of 1934, are also available for public inspection in the regional office having jurisdiction over the zone in which the principal office of the broker or dealer is located. Also, inasmuch as letters of notification under Regulation A

exempting small issues of securities from the registration requirements of the Securities Act of 1933, as amended, may be filed with the regional office of the Commission for the region in which the issuer's principal place of business is located, copies of such material are available for inspection at the particular regional office where it is filed.

During the past fiscal year duplicate copies of application for registration of investment advisers, together with supplemental statements thereto filed under the Investment Advisers Act of 1940, have been made available for public inspection in the regional offices having jurisdiction over the zone in which the principal office of the investment adviser is located.

There are available for inspection in the Commission's San Francisco and Cleveland Regional Offices, in which are provided complete facilities for such registration and qualification, copies of registration statements and applications for qualification of indentures filed at those regional offices.

Copies of all application for permanent registration of securities on national, securities exchange are available for public inspection at the respective exchange upon which the securities are registered.

PUBLIC HEARINGS

The following statistics indicate the number of public hearings held by the Commission from July 1, 1935 to June 30, 1943:

[table omitted]

PERSONNEL

Commissioner Ganson Purcell was reelected Chairman of the Commission on June 24, 1943, for the period ending June 30, 1944.

On June 6, 1943, Commission Sumner T. Pike was reappointed as Commissioner for the term expiring June 5, 1948.

The Commissioners as of the close of the past fiscal year were as follows:

Purcell, Ganson, Chairman
Healy, Robert E.
Pike, Sumner T.
Burke, Edmund Jr.
O'Brien, Robert H.

As of the close of the past fiscal year the personnel of the Commission was comprised of 5 Commissioners and 1,283 employees, of which 321 were assigned to the Regional Offices, This is exclusive of 354 employees who were then in the military service and were carried on the payrolls on a furlough status.

As of January 1, 1944, the number of employees in the military service increased to 397. This does not include 13 employees who have received honorable discharges from the military service and have returned to duty with the Commission; and one employee whose name was dropped from the rolls of the Commission because of his death while in the military service.

Reorganization of the Divisions of the Headquarters Office

A rather broad reorganization of the operating divisions of the Commission's headquarters office was put into effect on August 24, 1942. The Legal Division, the Reorganization Division and the Investment Company Division were then abolished. The functions and personnel of the Reorganization Division and the Investment Company Section of the Investment Company Division were combined with those of the Registration Division and transferred to a new division known as the Corporation Finance Division. The personnel and functions of the Investment Advisers Section of the Investment Company Division were transferred to the Trading and Exchange Division. A certain portion of the investigative and interpretative staff of the Legal Division were transferred to the Counsel's Office of the Corporation Finance Division'. Two new organizational units were created, i.e., the Solicitor's Office and the Opinion Writing Office. The remainder of the personnel of the Legal Division was transferred to those offices.

The immediate effects of this were substantial money savings in that it was then possible to abolish many vacant positions without impairment to the Commission's work. During the fiscal year, further savings of man-power resulted because the new arrangement of divisions and offices allowed greater use of experienced supervisors and key-personnel and provided for the consolidation in one division of certain examination and analytical work that previously had been performed in three divisions.

[table omitted]