Fourteenth Annual Report
of the
Securities and Exchange Commission

Fiscal Year Ended June 30, 1948

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SECURITIES AND EXCHANGE COMMISSION
Central Office
425 Second Street, N. W.
Washington 25, D. C.

COMMISSIONERS

EDMOND M. HANRAHAN, Chairman
ROBERT K. McCONNAUGHEY
RICHARD B. McENTIRE
HARRY A. McDONALD
PAUL R. ROWEN

ORVAL L. DuBOIS, Secretary

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D. C.,
February 15, 1949.

SIR: I have the honor to transmit to you the Fourteenth Annual Report of the Securities and Exchange Commission, in accordance with the provisions of section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934;

section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940, and section 216 of the Investment Advisers Act of 1940, approved August 22, 1940.

Respectfully,
EDMOND M. HANRAHAN, Chairman.

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

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FOREWORD

This is the fourteenth annual report to the Congress about the work of the Securities and Exchange Commission. Of necessity it is only a summary and a selection of the more significant Commission activities. The day-to-day work load is presented primarily through statistical tables and other condensed compilations. The Commission is always ready to give any additional information that may be requested. This report should be of particular help to members of the Congress who have had no experience with the work of the Commission. An attempt has been made to outline the regulatory provisions of the statutes administered by the Commission and to relate each segment of Commission activity to the specific authority under which it is performed.

COMMISSIONERS AND STAFF OFFICERS

(as of January 15, 1949)

Commissioners

EDMOND M. HANRAHAN, of New York, Chairman -- Term expires June 5,1952 [Footnote: Elected chairman on May 18, 1948.]

ROBERT K. McCONNAUGHEY, of Ohio -- Term expires June 5,1949

RICHARD B. McENTIRE, of Kansas -- Term expires June 5,1953

HARRY A. McDONALD, or Michigan -- Term expires June 5,1951

PAUL R. ROWEN. of Massachusetts -- Term expires June 5,1950 [Footnote: Appointed May 27, 1948, to fill the vacancy created by the resignation of James J. Caffrey.]

Secretary: Orval L. DuBois.

Staff Officers

BALDWIN B. BANE, Director, Division of Corporation Finance. ANDREW JACKSON, Associate Director.

MORTON E. YOHALEM, Director, Division of Public Utilities. SIDNEY H. WILLNER, Associate Director.

EDWARD H. CASHION, Director, Division or Trading and Exchanges. [Footnote: Appointed to fill the vacancy created by the resignation of James A. Treanor.] ANTHON H. LUND, Associate Director.

ROGER S. FOSTER, General Counsel. LOUIS LOSS, Associate General Counsel.

MICHAEL B. MOONEY, Director, Division of Opinion Writing. [Footnote: Appointed to fill the vacancy created by the resignation of Herbert B. Cohn.]

WALTER C. LOUCHHEIM, Jr., Adviser on Foreign Investments.

NATHAN D. LOBELL, Adviser to the Commission.

SHERRY T. McADAM, Jr., Assistant to the Chairman.

EARLE C. KING, Chief Accountant of the Commission.

HASTINGS P. AVERY, Director, Division of Administrative Services.

WILLIAM E. BECKER, Director, Division of Personnel.

JAMES J. RIORDAN, Director, Division of Budget and Finance.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Zone 1 -- PETER T. BYRNE, Equitable Building (Room 2006), 120 Broadway, New York 5, N. Y.

Zone 2 -- PHILIP E. KENDRICK Post Office Square Building (Room 501), 79 Milk Street, Boston 9, Mass. [Footnote: Appointed to fill the vacancy created by the appointment of Paul R. Rowen to the Commission.]

Zone 3 -- WILLIAM GREEN, Atlanta National Building (Room 322), Whitehall and Alabama Streets, Atlanta 3, Ga.

Zone 4 -- CHARLES J. ODENWELLER, Jr., Standard Building (Room 1608), 1370 Ontario Street, Cleveland 13, Ohio.

Zone 5 -- THOMAS B. HART, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Ill.

Zone 6 -- ORAN H. ALLRED, United States Courthouse (Room 103), 10th and Lamar Streets, Fort Worth 2, Tex.

Zone 7 -- JOHN L. GERAGHTY, Midland Savings Building (Room 822), 444 Seventeenth Street, Denver 2, Col.

Zone 8 -- HOWARD A. JUDY, Appraisers Building (Room 308), 630 Sansome Street, San Francisco 11, Calif.

Zone 9 -- DAY KARR, 1411 Fourth Avenue Building (Room 810), Seattle 1, Wash.

Zone 10 -- B. RUSSEL KELLY, O'Sullivan Building (Room 2410), Baltimore 2, Md. [Footnote: Moved to 425 Second Street, N. W., Washington 25, D. C.]

Branch Offices

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

United States Post Office and Courthouse (Room 1737), 312 North Spring Street, Los Angeles 12, Calif.

Pioneer Building (Room 400), Fourth and Roberts Streets, St. Paul 1, Minn.

Wright Building (Room 327), Tulsa 3, Okla.

United States Courthouse and Custom House (Room 1006), 1114 Market Street, St. Louis 1, Mo.

COMMISSIONERS APPOINTED DURING FISCAL YEAR

PAUL R. ROWEN

Mr. Rowen was horn in Brighton, Mass., October 7, 1899. He received an A. B. degree from Georgetown University in 1921, attended Harvard Law School from 1921 to 1924, received an Ll. B. degree from Boston University Law School in 1925, and was admitted to the Bar of Massachusetts in 1926. From 1926 to 1932 Mr. Rowen was engaged in the general practice of law in Boston. From 1932 to 1936 he served successively as assistant district attorney in Boston, as assistant counsel, regional litigation attorney, N. B. A., in Washington, D. C., and as legal consultant, Federal Coordinator of Transportation, in Washington, D. C. In 1936 Mr. Rowen became a member of the staff of the Commission at its office in Washington, D. C., and served as an attorney on the staff until 1939. Thereafter, Mr. Rowen was appointed regional administrator of the Commission's Boston regional office and served in that capacity for over 6 years.

On May 27, 1948, he was appointed to the Securities and Exchange Commission for a term of office ending June 5, 1950.

PART I
ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is designed to prevent fraud in the sale of securities. It affords to investors the protection of full and fair disclosure of information about the security offered for sale and, at the same time, prohibits the employment of certain practices in connection with the sale of securities as fraudulent. The act provides for the registration of securities and for the use of a prospectus in their sale, both designed to provide the investor with sufficient facts about the security

to enable him to make an informed judgment of the merits of the investment before he buys the security offered to him. In addition, the act defines and prohibits certain practices to prevent active fraud, misrepresentation, and deceit in the sale of securities. The Commission is charged with the enforcement of these provisions as to the adequate disclosure of information and the prevention of active fraud, but it does not pass upon the merits of securities registered with it under the act. 'The fact that a registration statement has been filed under the act, or that it has been examined by the Commission's staff, or that the registration statement is in effect does not imply any approval or disapproval by the Commission of the security as an investment. The act does not aim at the elimination of risk in investment, but only at the disclosure of sufficient information to enable the investor to measure the risk involved.

THE REGISTRATION PROCESS

The Registration Statement and Prospectus

A security may be registered with the Commission by filing a registration statement with the Commission, and it is one of the Commission's most important functions under the act to examine these statements to insure their compliance with the statutory requirements is to the contents of a registration statement. An integral part of each statement is the prospectus, consisting of pertinent information about the security to be sold. Unless a registration statement is in effect as to a security, the act makes it unlawful to sell or offer to buy the security through the mails or in interstate commerce, and it is also made unlawful thereby to sell or deliver any security unless accompanied or preceded by a prospectus meeting the requirements of the act.

The prospectus brings the pertinent information about the security directly to the attention of the investor, but it should be pointed out that the filing of any registration statement, which is immediately made public by the Commission pursuant to the statute, instantly gives rise to widespread publicity released by financial, news services, financial writers, and newspapers generally.

Effective Date of Registration Statement

In order to permit widespread publicity among investors of the information contained in a registration statement, the act provides for a 20-day waiting period after the filing of the registration statement before the registration statement becomes effective and the security may be offered for sale. If the registration statement is amended after it is filed but before it has become effective, the 20-day waiting period starts anew from the time of the amendment, unless the amendment is filed with the consent of or by order of the Commission.

The Commission is empowered at its discretion to accelerate the effective date of a registration statement, in cases where the facts justify such acceleration, so that a full 20-day period need not expire before the securities may be offered for sale. The act directs that, in the exercise of this power, the Commission must give due regard to the adequacy of the information about the security already available to the public, to the complexity of the particular financing, and to the public interest and the protection of investors.

Examination of Registration Statements

An important step in the registration process is examination of registration statements to insure their compliance with the requirements of the act. In view of the fact that a registration statement may become effective on the twentieth day after filing, this examination must be completed with a maximum speed consistent with thoroughness and a full consideration of all the facts. Neither the Commission, the issuer, nor the underwriter desires a statement to become effective unless it complies with the act. It is often the case that the staff will ascertain that deficiencies exist in the registration statement, or the issuer or underwriter may wish to amend the statement or delay its effectiveness for business reasons. In such cases, if there is a danger that the registration statement may become effective in defective form or prematurely for the purposes of the issuer or underwriter, it is customary for the issuer to file a minor amendment to the registration statement, thereby starting the 20-day period running anew.

In order to speed the registration process, and at the same time to make available to the registrants the assistance of the Commission's staff of experts, the Commission has continued to make widespread use of the procedures of its prefiling conference and "letter of comment." The prefiling conference enables the registrants to discuss with the staff, prior to the filing of the registration statement, any special or novel problems involved in the particular registration statement. The letter of comment is an informal device by which the registrations informed of any deficiencies found upon examination to exist in the registration statement as filed. The registrant can thereupon make the necessary amendments and thereby prevent the registration statement from becoming effective in deficient form.

Time Required for Registration

The Commission seeks to accomplish completion of the registration process, from the time the registration statement is filed to the time when it becomes effective, within the 20-day waiting period provided by the act. With the cooperation of persons in the securities industry it constantly studies ways to

shorten the process, and a great deal has been accomplished in this direction during the 1948 fiscal year. During the 1947 fiscal year the average median elapsed time was 30 1/2 days. In the 1948 fiscal year it was 24 1/2 days.

More significant than the average for the year are the averages for each month during the 1948 fiscal year. In 1 month the elapsed median time was only 21 days. In 4 months it was only 22 days, in 1 month 23 days and in 2 months 24 days. In the other 4 months the median time was 25, 27, 30, and 32, respectively. It is to be noted that in no month did the median time from the (late of filing to the date when the Commission provided the registrant with a letter of comment exceed 12 days, which was the case in only 1 month. In the other months, this median time was only 9 days in 2 months, 10 days in 7 months, and 11 day's in 2 months. It may be pointed out that in the 2 months when the total median elapsed time was 30 and 32 days, respectively, the letter of comment was provided in the median time of 11 and 12 days, respectively. In the same months, the median elapsed time from the date of the letter of comment to receipt of the first amendment to the registration statement was 12 and 10 days, respectively, substantially above the average for the whole year, which was 8.4 days.

In evaluating this data, and in comparing it with the goal of 20 days total elapsed time, it must be borne in mind that a single registration statement may substantially affect the figures for the whole month. Thus, as has been indicated, the issuer or underwriter may seek to delay effectiveness for business reasons, perhaps to await a better market. It is also the case that some registration statements require more amendment than others, or amendment of a more complex nature, so that the total elapsed time is increased. These are the two major reasons for a total elapsed time of more than 20 days, and inasmuch as these situations occur invariably in one or more cases in each month, the median figures must be interpreted accordingly. In the 1948 fiscal year 1,778 amendments were filed prior to the time when the registration statements became effective. Of these 980 were filed intentionally to delay effectiveness and 798 were filed in order to make material changes in the registration statement.

The Commission will continue to study its processes with the aim of further reductions in the total elapsed time for registration, and it has every indication that this may be accomplished. The figures as to the time required for registration in the 1948 fiscal year are presented in the following table:

(chart omitted)

THE VOLUME OF SECURITIES REGISTERED

Volume of All Securities Registered in Fiscal Year 1948: $6,404,633,000

Volume of All Securities Registered in Fiscal Year 1947: $6,732,447,000

The amount of securities effectively registered during the 1948 fiscal year was 5 percent less than the amount registered in the 1947 fiscal year and 9 percent less than the peak of $7,073,280,000 established in the 1946 fiscal year. The volume registered in the 1948 fiscal year was distributed over 435 registration statements covering 559 issues, as compared with 493 statements covering 686 issues for the 1947 fiscal year.

Volume of Securities Registered for Cash Sale

A. All Securities

(chart omitted)

B. Stocks And Bonds Registered For Cash Sale For The Accounts Of Issuers

(chart omitted)

The volume of securities registered for cash sale for the accounts of the issuers in the 1948 fiscal year was greater than that for the prior year. A small decrease in the volume of bonds was more than compensated for by an increase in the volume of stocks which brought the volume of stocks to within 5 percent of the highest volume of stocks registered for cash sale for the accounts of issuers in the 1946 fiscal year.

From September 1934 through June 1947, new money purposes represented 26 percent of the net proceeds expected from the sale of issues registered for the accounts of the issuers. In the 1948 fiscal year, new money purposes were 81 percent of the expected net proceeds for the year -- large enough to raise the 14-year average over seven points to 33 percent.

C. All Securities Registered For Cash Sale For The Accounts Of Issuers -- By Type Of Issuer

Transportation and communication companies [Footnote: Does not include companies subject to regulation by the Interstate Commerce Commission and therefore exempted from registration.]
1948: $1,674,528,000
1947: $1,190,814,000

Electric, gas, and water companies
1948: $1,606,551,000
1947: $1,214,346,000

Manufacturing companies
1948: $872,471,000
1947: $1,266,055,000

Financial and investment companies
1948: $780,542,000
1947: $714,529,000

Merchandising companies
1948: $51,333,000
1947: $201,373,000

Extractive companies
1948: $26,238,000
1947: $15,685,000

Service companies
1948: $20,498,000
1947: $16,109,000

Construction and real estate companies
1948: $39,000
1947: $8,125,000

Foreign governments
1948: -----
1947: $247,105,000

Registrations of securities for cash sale by transportation and communication companies in the 1948 fiscal year established a new high for the group exceeding by 41 percent the previous high established in the 1947 fiscal year, and accounted for a third of the total. The amount of such registrations by the electric, gas, and water group, almost equal to that for the transportation and communication group, represented an increase of 32 percent from its amount for the 1947 fiscal year. Financial and investment companies registered 9 percent more and manufacturing companies 31 percent less than in the 1947 fiscal year. Bonds of the international Bank for Reconstruction and Development are included in the figures for the financial and investment companies group.

D. Use Of Investment Bankers As To Securities Registered For Cash Sale For The Accounts Of Issuers

(chart omitted)

In the 1948 fiscal year, investment bankers were used for the sale of 75 percent of the total securities registered for cash sale for the accounts of issuers as compared with 83 percent in the 1947 fiscal year. Commitments by investment bankers to purchase for resale involved 60 percent of the total registered for cash Sale for the accounts of issuers, as compared with 68 percent in the 1947 fiscal year.

E. Cost Of Flotation Of Securities Registered For Cash Sale For The Accounts Of Issuers

The cost of flotation of securities registered for primary cash distribution, as reported in the registration statements for such securities, amounted to 6.1 percent of the aggregate dollar volume of such securities. A further break-down of this 6.1 percent indicates that 5.5 percent represented commissions and discounts and 0.6 percent all other expenses incidental to the flotation of the securities, including all costs relative to registration. A study of the portion of aggregate gross proceeds paid as compensation to investment bankers on securities registered for sale to the general public through such bankers reveals a downward trend for bonds but a sharp interruption of the downward trend for preferred stock in the 1948 fiscal year and a slightly higher rate for common stock in 1948 than in the five previous years.

Compensation -- Percent of gross proceeds

Year ended June 30, 1939
Bonds: 2.0
Preferred stock: 6.4
Common stock: 16.9

Year ended June 30, 1940
Bonds: 1.9
Preferred stock: 7.2
Common stock: 16.4

Year ended June 30, 1941
Bonds: 1.8
Preferred stock: 4.1
Common stock: 14.4

Year ended June 30, 1942
Bonds: 1.5
Preferred stock: 4.1
Common stock: 10.1

Year ended June 30, 1943
Bonds: 1.7
Preferred stock: 3.6
Common stock: 9.7

Year ended June 30, 1944
Bonds: 1.5
Preferred stock: 3.1
Common stock: 8.1

Year ended June 30, 1945
Bonds: 1.3
Preferred stock: 3.1
Common stock: 9.3

Year ended June 30, 1946
Bonds: .9
Preferred stock: 3.1
Common stock: 8.0

Year ended June 30, 1947
Bonds: .9
Preferred stock: 2.8
Common stock: 9.3

Year ended June 30, 1948
Bonds: .6
Preferred stock: 4.5
Common stock: 10.2

In general, a trend similar to that noted in the table may be noted with respect to bonds, subdivided on the basis of the investment risk involved.

ALL NEW SECURITIES OFFERED FOR CASH SALE

Registered Securities

Securities effectively registered under the Securities Act of 1933 and actually offered for cash sale during the 1948 fiscal year were at approximately the same level as the preceding year. The amounts of such offerings, valued at actual offering prices, are as follows:

Corporate (excluding investment cos.)
1948: $3,758,000,000
1947: $3,733,000,000

Noncorporate (foreign gov't and Int'l Bank)
1948: $249,000,000
1947: $247,000,000

Total registered securities offered
1948: $4,007,000,000
1947: $4,080,000,000

Unregistered Securities

Corporate

Some $3,332,000,000 of unregistered new corporate securities are known to have been offered for cash sale by issuers in the 1948 fiscal year as compared with $2,529,000,000 in the 1947 fiscal year. The basis for exemption of these securities from registration is as follows:

(chart omitted)

Noncorporate

The total of unregistered governmental and eleemosynary securities offered for cash sale in the United States was $11,897,000,000 as compared with $12,387,000,000 in the 1947 fiscal year. These totals consist of the following:

(chart omitted)

Total of Registered and Unregistered Securities

The volume of all corporate securities offered for cash sale rose to $7,090,000,000 in the 1948 fiscal year, the increase from the preceding year being due chiefly to the larger amount of securities placed privately. Offerings in the noncorporate category declined moderately, reflecting a substantial decline in sales of United States savings bonds more than offsetting an increase in State

and municipal offerings. Comparable figures for the 1948 and 1947 fiscal years are:

1948
Corporate: $7,090,000,000
Noncorporate: $12146,000,000

1947
Corporate: $6,262,000,000
Noncorporate: $12,634,000,000

Total securities:
1948: $19,236,000,000
1947: $18,996,000,000

New Capital and Refinancing

Proceeds from corporate securities flotations, both registered and unregistered, applicable to expansion of fixed and working capital amounted to $5,638,000,000 compared with $4,066,000,000 for the 1947 fiscal year. It is estimated that the dollar volume of new money financing by corporations, excluding investment trusts, holding companies, and other financial organizations, is at the highest level in our history, exceeding even the large amount of new capital flotations in the late twenties. Public utility companies (including telephone) accounted for 50 percent of the new money financing, industrial and miscellaneous firms for 44 percent, and railroad companies for 6 percent. The volume of refinancing through new issues of securities declined to $1,130,000,000 compared with $2,055,000,000 for the 1947 fiscal year and $5,310,000,000 for the 1946 fiscal year.

REGISTRATION STATEMENTS FILED

There were 449 registration statements filed in the 1948 fiscal year covering proposed offerings in the aggregate amount of $6,149,704,288. The corresponding figures in the previous year were 567 statements and $6,934,388,303 in offerings of securities. Comparative figures as to statements filed and their disposition, and data as to other filings with the Commission under the act, are given in the tables below.

(charts omitted)

EXEMPTION FROM REGISTRATION UNDER THE ACT

The Commission is empowered under section 3 (b) of the act to exempt from registration, subject to such terms and conditions as it might prescribe by rule and regulation, issues of securities not exceeding an aggregate offering price to the public of $300,000. Five regulations have been adopted pursuant to this authority: Regulation A, a general exemption for small issues, Regulation A-R, a special exemption for notes and bonds secured by first liens on family dwellings; Regulation A-M, a special exemption for assessable shares of stock of mining companies; Regulation B, an exemption for fractional undivided interests in oil or gas rights; and Regulation B-T, an exemption for interests in oil royalty trusts or similar types of trusts or unincorporated associations.

The availability of in exemption under any of these regulations does not include any exemption from civil liabilities under section 12 or from criminal liabilities for fraud under section 17. In order to insure the proper enforcement of these sections, the conditions for the availability of the exemptions provided by these regulations, with the exception of regulation A-R, include the requirements that certain minimum information be filed with the Commission and that disclosure of certain information be made in sales literature.

Exempt Offerings Under Regulation A

The trend of business to make greater use of public offerings under Regulation A continued during the fiscal year. In the 1948 fiscal year 1,610 letters of notification were filed and examined under the regulation, compared to 1,513 in the 1947 fiscal year. At the same time the aggregate offering price of the securities covered by these letters of notification remained about the same, deceasing slightly from $210,791,114 in the 1947 fiscal year to $209,485,794 in the 1948 fiscal year. A major increase is noted in connection with companies engaged in the oil and mining industries. Companies engaged in various phases of the oil and gas business filed 101 letters of notification in the 1948 fiscal year for a total of $12,797,478 in securities and oil and gas leases. In the 1947 fiscal year they filed 68 letters of notification for $8,660,261. Mining companies filed 181 letters of notification in the 1948 fiscal year for a total of $18,594,453 in securities.

The relative size of proposed offerings last year under regulation A is reflected in the following distribution of 1,594 letters of notification (omitting data as to 16 which were incomplete and subsequently withdrawn): First group, 851 of $100,000 or less; second group, 324 of more than $100,000 but less than $200,000; and third group, 419 of more than $200,000 but not more than the statutory maximum of $300,000. Of these 1,594 offerings, 1,392 were made by issuers, distributed generally through all size groups; 186 by stockholders, all

occurring in the first group; and the remaining 16 jointly by the issuer and a stockholder.

In 930 cases the offerings were to be made without use of an underwriter. An underwriter was to be used in the remaining 664 cases. Of these, a commercial underwriter was to be employed in 486 cases, distributed by size as follows: First group, 262; second group, 84; and third group, 140. In 178 cases officers and directors of the issuer or other persons not regularly engaged in the underwriting business were to be used as underwriters.

The regulation makes provision for the filing of the requisite letter of notification at the appropriate regional office of the Commission for the greater convenience of small businesses making use of this regulation. The letters of notification and the related sales literature are examined in the regional office where filed and then reviewed by a staff of experts at the Commission's central office. This review involves a search for pertinent information in the Commission's extensive files and an examination to determine whether the exemption of the regulation is applicable in the particular case and whether the information filed discloses any violations of any of the acts administered by the Commission. The results of this review are made available promptly to the regional office involved; 1,916 letters were written in this connection during the fiscal year, in addition to the numerous letters written by the various regional offices, which have the primary responsibility as to offerings under regulation A. Further, the Commission cooperates with the proper authorities in the States in which the securities are proposed to be offered by informing them of the fact that the offering is to be made and giving them a summary of pertinent data concerning the proposed offer.

It should be emphasized that the exemption from registration provided by regulation A, as well as by the other exemptions granted under section 3 (b), does not constitute complete exemption from all provisions of the act. Thus, these exemptions are subject to the express provisions of section 12 imposing civil liability on persons who sell securities in interstate commerce or through the mails by means of untrue statements or misleading omissions, and to the provisions of section 17, which makes it unlawful to sell securities by such means or by other types of fraud. By their express terms, each of these sections is applicable whether or not the transactions involve securities which have been exempted under section 3 (b). Accordingly, the principal effect of a section 3 (b) exemption is to permit the sale of small issues of securities on the basis of a less complete formal filing than that required by the act in the case of a registered security.

Exempt Offerings Under Regulation A-M

Last year the Commission received and examined a total of seven prospectuses covering an aggregate offering price of $241,346 for assessable shares of stock of mining corporations conditionally exempted from registration pursuant to rule 240 of regulation A-M.

Exempt Offerings Under Regulation B

Promotions in oil and gas securities increased considerably during the past year. This expansion is reflected especially in the sharp increase in the number of filings under regulation A which cover oil and gas stock offerings as mentioned above. In addition to the 101 offerings in the 1948 fiscal year under regulation A relating to oil and gas securities, 87 offering sheets were received and examined under regulation B. Regulation B provides for the conditional exemption from registration of fractional undivided interests in oil and gas rights where the aggregate offering price does not exceed $100,000. The following actions were taken with respect to these offering sheets:

Various actions on filings under regulation B:

Temporary suspension orders (rule 340 (a)): 18

Orders terminating proceeding after amendment: 11

Orders consenting to withdrawal of offering sheet and terminating proceeding: 2

Orders terminating effectiveness of offering sheet (no proceeding pending): 3

Orders consenting to amendment of offering sheet (no proceeding pending): 44

Orders consenting to withdrawal of offering sheet (no proceeding pending): 2

Total orders: 80

Confidential written reports of sales under regulation B. -- Offerors seeking exemption pursuant to regulation B are required under rules 320 (e) and 322 (c) and (d) to file with the Commission written reports of sales actually made by broker-dealers or offerors to individual investors and by dealers to other dealers. In the 1948 fiscal year 3,088 reports were received and examined under these provisions. Of these, 2,990 reports were on Form 1-G and 98 on Form 2-G, representing aggregate sales of $823,259 and $264,608 respectively. These reports are to be kept confidential, under the rules, unless the Commission orders otherwise.

Oil and gas investigations. -- The Commission's technical oil and gas staff made a number of analytical studies in the course of the year leading to the preparation of valuation estimates and technical memoranda, including the preparation of comprehensive charts relating estimated oil recoveries to past production of interests sold by royalty dealers, both for individual tracts and entire fields covering such tracts in various locations from the Great Lakes to the Gulf of Mexico. Studies of this kind form a significant part of the staff's work in conducting the oil and gas investigations which are made to determine whether there have been any violations of sections 5 (requiring registration) or 17 (prohibiting fraudulent sales) of the Securities Act or section 15 of the Securities Exchange Act (regulating the conduct of brokers and dealers) in the sale of oil and gas securities.

During the year 13 such oil and gas investigations were instituted by the Commission, making a total of 143 current during the year; 12 investigations were closed during the year and 131 were pending at the end of the year. In connection with these investigations, the Commission's staff prepared some 1,175 technical letters, reports, and memoranda, and conducted nearly 250 personal and telephone conferences during the year. In addition, a special unit which has been established within the Tulsa regional office prepared about 650 such letters, reports, and memoranda.

Four of these investigations led to an injunction against the persons concerned from violating the registration and fraud provisions of the Securities Act. In a fifth case the facts were referred to the Department of Justice for possible criminal prosecution. An indictment has been returned in a sixth case.

An example of the manner in which the Commission is sometimes called upon to render technical assistance in litigation arising out of these oil and gas investigations may be cited in the Grayson case, which involved the sale of oil royalties. Stanley Grayson had been convicted in the United States District Court, Southern District, New York, in early 1947 and had entered an appeal. Before the hearing on the appeal, a petroleum engineer of the Commission's staff was called upon to advise the assistant United States attorney as to whether, in view of the sharp increase in the price of oil, the interests sold by Grayson might return the original investment. After the circuit court of appeals had remanded the case for retrial, this engineer made a 3-week field trip to reexamine physically certain of the oil properties involved and to locate witnesses who could furnish primary factual evidence. The assistant United States attorney accompanied the Commission's engineer on a part of this trip and was convinced that, notwithstanding the greatly increased price of crude oil, the properties in which interests had been sold by Grayson would not produce sufficient oil to return the investment. Grayson pleaded guilty rather than face retrial and was sentenced on June 8, 1948, to a year and a day in prison, and he was placed on probation for a

period of 3 years after release from imprisonment during which time he is prohibited from engaging in any manner in the sale of securities.

FORMAL ACTIONS UNDER SECTION 8

The Commission employs its various informal procedures, such as conferences and the letter of comment, to insure that a registration statement shall comply with the requirements of the act before it becomes effective. In almost all cases this practice has been found to be sufficient both for the needs of the registrant and for the adequate protection of investors. It is sometimes necessary, however, for the Commission to exercise its]powers under section 8 in order to prevent a registration statement from becoming effective in deficient or misleading form or to suspend the effectiveness of a registration statement which has already become effective.

Under section 8 (b) the Commission may institute proceedings to determine whether it should issue an order to prevent a registration statement from becoming effective. Such proceedings are authorized if the registration statement as filed is on its face inaccurate or incomplete in any material respect. Under section 8 (d), proceedings may be instituted at any time to determine whether the Commission should issue a stop order to suspend the effectiveness of a registration statement if it appears to the Commission that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated or otherwise necessary to make the statements included not misleading. Under section 8 (e) the Commission may make an examination to determine whether to issue a stop order under section 8 (d). In the 1948 fiscal year the Commission instituted two examinations under section 8 (e) and one proceeding under section 8 (d). In the 1947 fiscal year seven examinations and five proceedings were instituted.

Examinations Under Section 8 (e)

Where examinations are conducted by the Commission under section 8 (e) it is the practice to direct that the proceedings be held privately to prevent any injury that might be done to a registrant through adverse publicity if, after the examination, it is determined that no violation of law has been committed. The Commission does, however, have the power to hold such examinations in public and may, after the close of a private proceeding, order that the record be made public. Both of the two examinations ordered to be held in the current year were held in private. One of these was still pending at the close of the year. In the second case the record of the examination was made public. [Footnote: Securities Act Release No. 3277 (1948).]

Stop-Order Proceedings under Section 8 (d)

Two stop-order proceedings were pending at the beginning of the year and one other was instituted during the year.

Globe Aircraft Corp. -- File No. 2-6204. -- This case was pending at the beginning of the year and is discussed in full at page 16 of the Thirteenth Annual Report. As a result of the proceeding the Commission issued a stop order suspending the effectiveness of the registration statement on the basis of the misleading nature of its contents. The formal opinion of the Commission was published in Securities Act Release No. 3255 (1947). For a fuller discussion of this case see the section herein on activities of the Commission in accounting and auditing.

Kiwago Gold Mines, Ltd. -- File No. 2-6852. -- -This case also was pending at the beginning of the year and is described fully at page 18 of the Thirteenth Annual Report. The Commission issued a stop order during the year suspending the effectiveness of the registration statement. A formal opinion was published in Securities Act Release No. 3278 (1948).

Thomascolor, Inc. -- File No. 2 -7142. -- Proceedings in this case were instituted during the fiscal year. The company filed a registration statement on July 9, 1947, relating to a proposed public offering of 1,000,000 shares of $5 par value class A common stock at a price of $10 per share. The underwriter did not contract to purchase the stock but only to use his best efforts in its sale. Stop-order proceedings were instituted on September 2, 1947, after extensive preliminary investigation, including consultation with technical experts, into the accuracy and adequacy of the information filed in the registration statement, much of which related to complex and technical aspects of color photography. Hearings in the matter were started on September 16, 1947, and the record was closed on October 20, 1947.

The order for proceeding alleged that the registration statement contained material misstatements and omissions of fact and it contained a complete statement as to such deficiencies. Generally, they were of four types: First, the statement of the proposed allocation of proceeds from the sale of the stock was incomplete and inaccurate; second, the registrant made false claims as to the technical nature of the process it was going to exploit; third, there was a failure to make adequate and accurate disclosure of the history of the registrant and of the relationship of various individuals to the registrant and fourth, the financial statements included in the registration statement were highly misleading in certain respects.

During the course of these proceedings the registrant admitted that the proposed allocation of proceeds appearing in the registration statement was incomplete

and inaccurate. The amended registration statement sets forth a complete revision in the allocation of proceeds and contains a full discussion of their proposed application. It is indicated that the initial proceeds of the offering will be used to pay liabilities of the registrants consisting primarily of organization and stock issue expense and legal fees, estimated to exceed $300,000.

Among the claims contained in the original registration statement thereafter admitted to be false by the registrant and deleted in the amended registration statement were misrepresentations to the effect that the Thomascolor process is a new system of color photography offering many advantages over existing processes; that Thomascolor can be employed under substantially the same conditions as ordinary black and white photography; that the registrant proposed to exploit first the motion-picture field; that its devices could be readily and widely used in connection with motion picture cameras and projectors; that its process offered great possibilities in the field of color television; and that its process had a ready market in the field of amateur photography.

In striking contrast to these claims the record reveals and the registration statement, as amended, discloses that the principle of the Thomascolor process is old in the art of color photography and has been wholly or in part abandoned or supplanted by other processes and techniques; that the Thomascolor process requires the use of special devices which cannot be attached to standard motion picture cameras and projectors without substantial modifications and reengineering; that registration entry into the motion picture field is conjectural because of the grave problems arising from the technical limitations of some of its devices and the very serious economic problem arising from the necessary conversion of existing equipment; that the registrant will devote itself principally to color printing and publishing and still color projection; that registrant does not now represent that its process will have any application in the field of amateur or ordinary portrait Photography; and that for the present the registrant intends only to conduct research in the field of television and that there is no assurance that a technically or commercially feasible process will result.

The facts developed during the proceedings show that the original registration statement did not disclose adequately and accurately the character of the various enterprises preceding the organization of the registrant. The record shows that the various predecessor organizations, which were controlled by Richard Thomas, who was instrumental in organizing the registrant and who controlled it, were primarily promotional and development organizations; that they had not produced on a commercial basis; and that at most they had constructed only prototypes of a few of the devices that the registrant proposed to market. In describing the transactions leading to the acquisition of the assets of the predecessor interests, the registration statement failed to make adequate disclosure of the nature of the relationships or, identity of the individuals involved

or of the method of determining the amount of consideration paid for the assets and, by references to formal agreements and offers and acceptances, implied that there had been arm's-length bargaining in the various transactions between the three predecessor organizations and the registration

The financial statements contained in the registration statement, as originally filed, were highly misleading in the disclosures and accounting treatment of registration stock issued for intangibles. The significance of this matter is evident from the fact that these intangibles amounted to $2,014,941.03 out of total assets shown in the balance sheet aggregating $2,551,583.40. The balance sheet was amended to carry patents and patent applications at the nominal amount of $1, and all of the remainder of the $2,014,941.03 was then displayed under the caption: "Other intangibles -- Excess of par or stated value of stock issued over net tangible assets acquired on May 20, 1947 (Note 2)." In brief, the financial statements included in the original registration statement overstated the registration assets and minimized, if it did not deliberately conceal, information that would have fairly disclosed the true nature of the assets which the registrant represented would be used to conduct its business.

During the course of and after the close of the hearings in the section 8 (d) proceedings, the registrant filed substantial amendments which appeared to correct satisfactorily the material misrepresentations and omissions. The Commission thereafter dismissed the proceedings and issued an opinion commenting, in the public interest and for the protection of investors, upon certain facts developed in the proceedings and discussing the Commission's action in this case and the limitation of its jurisdiction. [Footnote: Securities Act Release No. 3267 (1948).] In this opinion the Commission also warned the prospective investor of the danger of relying on past judgment based on magazine articles or other earlier publicity, in view of the admission in the proceedings that certain of such publicity contained materially false and misleading information, and pointed out the need for careful study of the amended registration statement and prospectus. The registration statement was permitted to become effective after adequate dissemination of the corrected prospectus had been made and sufficient time had elapsed since the release of the Commission's opinion. Subsequently, the registrant filed an amendment to its registration statement for the purpose of withdrawing registration for all but 100 shares of the stock originally registered.

DISCLOSURES RESULTING FROM EXAMINATION OF REGISTRATION STATEMENTS

In its examination of registration statements the staff of the Commission seeks not only to insure that the registration statement contain the information required

by the act but also that the information be clearly stated in a simple and not misleading manner and, to the extent possible, that the information be accurate. Due to the experience of the staff and to the availability of information about many companies in the Commission's extensive files, it is often possible for the staff to detect omissions of material facts, misstatements of material facts, and statements of minor facts made in such form as to give exaggerated and unwarranted importance to the facts out of proportion to their materiality. In addition, the staff may request a more simple statement of complex information so that it might be most readily understood by the prospective investor. In most cases a registrant makes the necessary amendments to its registration statement. The following brief case histories are examples of the failure of registrants to make adequate and accurate disclosure discovered by the staff after examination of the registration statements involved.

Failure To Disclose Price Differential

A foreign gold mining exploration and development company filed a registration statement for 666,667 shares of common stock of $1 par value. The stock was to be offered at 42.84 cents a share. However, the stock was listed on a foreign stock exchange, where it was then currently quoted at approximately half of the price at which the stock was to be offered to investors in the United States. In letters and conferences the Commission's staff pointed out to counsel for the registrant that this wide price discrepancy raised some doubt as to whether the registrant intended to make a bona fide offering accompanied by full disclosure of all relevant facts. The registrant subsequently made other arrangements for its financing and, shortly after the close of the fiscal year, filed an application for the withdrawal of its registration statement. This company had, in addition, failed to make adequate disclosure of its underwriting arrangements,

Exclusion of Exaggerated Claims

A company which intended to exploit an industrial process made many claims in its registration statement as to the nature of the process, its use, its application in various fields, and the availability of a market. The registration statement was thereafter amended to show that the process was not new, that it had been wholly or partly abandoned in favor of other processes and techniques, that the registrant does not represent that the process would have any application in certain fields, and that the registrant would devote itself for the present only to research and that there is no assurance that a technically or commercially feasible process would result. This case is described in greater detail in this report under the section discussing stop-order proceedings under section 8, above.

Sale of Stock at Different Prices

A foreign mining company filed a registration statement for 700,000 shares of common stock at $1 per share. The company amended its statement to disclose, in connection with the statement of the offering price on the cover page of the prospectus, that the offering price had been arbitrarily determined, In addition it filed an amendment to disclose that during the 2-year period prior to the filing of the registration statement the company had sold the stock at from 3.4 cents to 30 cents per share, and that during such period the price in the foreign over-the-counter market had ranged from 27.5 cents to 45 cents per share. In addition, the registrant indicated that it also knew of subsequent sales at prices from 35 cents to 60 cents per share.

Disclosure of Speculative Hazards

A foreign mining company filed a registration statement for 333,333 shares of capital stock of $1 nominal value at an offering price of 30 cents a share. After examination of the statement by the staff the registrant inserted under the heading “Introductory statement” a summary of the speculative and unusual aspects of the offering, so that the registration statement now includes the disclosures mentioned below.

The registrant has no operating history and the offering price of 30 cents a share was predicated solely upon future possibilities, as to which no representations are made.

The proposed financing will serve only to conduct preliminary exploration which, at best, will enable the registrants to decide whether additional exploratory work would be warranted, and, if such additional work becomes warranted, further financing will be required, possibly to be followed by still further financing.

No underwriter has contracted to purchase the stock and if only a portion of the offering is sold, the registrant has no further plans for financing. In such event the registrant might not have sufficient funds to carry through an adequate exploration program.

The registrant had offered 335,000 shares of stock for sale at only 15 cents a share after November 21, 1946, and only 131,000 shares were sold. No new developments in the registration business outlook justify an increase of 100 percent in the offering price over the last previous offering price.

The underwriting commission and advertising expenses will consume 32.5 percent of the offering price and, after estimated total distribution expenses of approximately 36.5 percent, only approximately 63.5 percent of the gross

proceeds from the proposed offering based upon the offering price will be invested in the registration business.

The three original promoters paid an average price of 4.59 cents per share for the 960,000 common shares acquired by them and still retain 361,750 of such shares costing them 2.53 cents per share, and another promoter owns 158,075 shares which cost him nothing in money. These promoters as a group will, after the proposed financing, retain 32.6 percent of the voting control through the ownership of shares costing them an average of 1.76 cents a share. These four promoters, on the basis of the proposed public offering price, would have a book profit of $146,794.75 or 28.24 cents a share.

CHANGES IN RULES, REGULATIONS, AND FORMS

Rules, regulations, and forms adopted by the Commission must be flexible to meet changing business conditions Further, experience has shown that any procedure for compliance with a regulatory statute is made most simple, economical, and expedient for those who must comply if each type of situation is recognized and specific provision made for its particular need. To assure these results the Commission has long made it a practice to maintain a continuous review of its procedures in the light of current conditions. Changes often result, either by reason of recommendations made by the staff or, as is frequently the case, at the suggestion of persons who must comply with the statute. No material, change is made without a series of conferences with all persons interested in or who might be affected by the contemplated change. Changes made or planned during the 1948 fiscal year in the rules, regulations, and forms under the Securities Act are described below. The accounting aspects of some of these changes are discussed in Part IX of this report in the section concerning the Commission's activities in accounting and auditing.

Proposed Rule 431 -- Definition of Prospectus

Information about a proposed issue of securities may be given the most widespread publicity through use of the preeffective prospectus under the provisions of rule 131. This prospectus, necessarily, does not contain certain information about the security, such as the finally determined selling price, information about underwriting agreements, and such other data not normally available before the time when the securities are actually offered for sale. In present practice complete data about the security are included in the final prospectus and this prospectus, if accurate, is the one actually used in the course of the sale. In order to avoid the necessity of printing both the preeffective and final prospectuses, as well as the duplications involved in two deliveries and

the delay in time attendant upon such a procedure, the Commission took under consideration a rule intended to prevent these results.

The proposed rule applies only to offerings by an issuer to its stockholders. Under it the information normally omitted from the preeffective prospectus could be added to that prospectus by the issuer in the form of a short document containing the missing data. This document and the preeffective prospectus could then together constitute the final prospectus. The proposed rule contains certain safeguards to prevent abuse of the procedure, to assure the full protection of the act to investors, and to permit adequate inspection by the Commission of the preeffective prospectus and the supplemental document. These safeguards provide: (1) That the preeffective prospectus be incorporated by reference into and be made part of the document; (2) that a copy of such prospectus was sent or given, in compliance with rule 131, to the person to whom the document is sent or given; and, (3) that the document is sent or given to the stockholder within 20 days of the time when he was sent or given a copy of the proposed form of prospectus. Shortly after the close of the fiscal year the Commission formulated these provisions in proposed rule 431 and issued the rule for public comment in Securities Act Release No. 3300.

Rule 409 -- Disclaimer of Responsibility

Under rule 409 a registrant may omit information from a registration statement if the information is unknown or not reasonably available to the registrant. In such cases, the present rule provides, in essence, that the registrant shall furnish the best information available to it under the circumstances. In addition, the rule permits the registrants to include in the registration statement a disclaimer of responsibility for the accuracy or completeness of such information. The proposed amendment would strike from the rule the provision permitting this disclaimer of responsibility. The purpose of this amendment is to protect the prospective investor against inaccurate or incomplete information. The proposal was widely circulated by the Commission in Securities Act Release No. 3296 (1948).

Rule 424 -- Preeffective Prospectus

Rule 131 provides for the use of a preeffective prospectus in order to give information about a prospective issue of securities the widest possible circulation The preeffective prospectus must comply substantially with requirements applicable to the proposed final prospectus as filed with the Commission, but there is no provision for filing the preeffective prospectus actually used. In order to provide the Commission with copies of such prospectus for its administrative functions and to make them available for inspection to the general public, the Commission proposes to amend rule 424 (which pertains to the filing of

Prospectuses with the Commission) in order to require the filing of preeffective prospectuses with the Commission.

Proposed Amendments to Regulation S-X

Regulation S-X contains the Commission's rules respecting the form and content of financial statements filed with the Commission under various of the statutes which it administers. The purpose of the proposed amendments, set out in Securities Act Release No. 3294 (1948), is to provide rules as to the financial statements of commercial, industrial, and mining companies in the promotional, exploratory, or development stage. A full discussion of these proposals appears in Part IX of this report under the section on the Commission's activities in accounting and auditing.

Changes in Forms for Registration

Form S-2 had been used for the registration of securities of certain corporations having simple corporate structures. This form was revised to provide a simple registration form for commercial and industrial companies still in the development stage. The change Permits use of Form S-2 by companies previously limited to Form S-12 and certain established companies previously using Form S-2 may now use Form S-1, the form most generally used to register securities. The revision of Form S-2 made it possible for the Commission to rescind Form S-12. See Securities Act Release No. 3247 (1947).

Form C-1 had been used for some time as a registration form for securities of unincorporated investment trusts of the fixed or restricted management type. The subsequent adoption of other forms for the securities of such trusts made Form C-1 obsolete and it was rescinded during the year. See Securities Act Release No. 3247 (1947).

Form S-3 is used to register securities of mining corporations in the promotional stage. Originally, the form required the inclusion of certified financial statements as of a date within 90 days prior to the date of filing the registration statement The Purpose of the amendment is to permit the filing of uncertified financial statements as of such date if there are also filed certified financial statements as of a date within 1 year prior to the date of filing. See Securities Act Release No. 3269 (1947).

Rule 131, which provides for the use of the preeffective prospectus had been adopted originally, in December 1946, for a 6-month trial period In Securities Act Release No. 3240 (1947) the Commission announced the continuance of the rule in its original form. Study of the operation of the rule during the 6 months

indicated that the rule does facilitate the dissemination of information contained in Securities Act registration statements.

In Securities Act Release No. 3238 (1947) the Commission announced adoption of Form S-7. This form is designed specifically for the registration of securities issued by the International Bank for Reconstruction and Development.

LITIGATION UNDER THE ACT

Part of the Commission's enforcement activity under the Securities Act is injunctive action to prevent violations of section 5, which (with certain exemptions) requires registration of securities offered to the public, and section 17, which makes it unlawful to sell securities by fraudulent means. While the Commission's investigation may result in subsequent criminal prosecution, the injunction is used to stop activity immediately and prevent the continuance of violations. Some of the injunction actions instituted last year are pending, but most of them have been success fully concluded.

As a result of a story appearing in a popular magazine a number of financing plans were offered to the public involving the use of Government bonds to guarantee repayment of the investment. This practice has been denounced by the Secretary of the Treasury and this Commission. It involves the sale of securities under an arrangement through which $75 of each $100 advanced by the investor is used to buy series E bonds in the name of the investor. This investment will be worth $100 at maturity in 10 years. The other $25 is invested in the business enterprise sought to be financed. The Commission filed an action to enjoin this practice, *S. E. C. v. W. Geoffrey Haynes* [U. S. D. C., E. D. Pennsylvania], alleging that, while the defendant unconditionally guaranteed the return of the original investment, he omitted to inform investors that only one-fourth of the amount would be used in the business enterprise and that three-fourths would be invested in Government bonds. The complaint charged violations of both the fraud and registration provisions of the Securities Act. A similar action, *S. E. C. v. John Derryberry* [U. S. D. C., W. D. Louisiana], was instituted to enjoin violations of the registration provisions of the Securities Act and the broker-dealer registration provisions of the Securities Exchange Act of 1934. Derryberry engaged in the purchase and sale of oil royalties, giving to each investor a $100 Government bond to guarantee repayment of the investment at the end of 10 years. Again only $25 of the investor's money went into the oil royalty. The Commission's enforcement staff has been able to deter several promotions of this type without court action and was able to secure full disclosure of the features of the plan in still other cases through filings made with the Commission.

The Commission filed a complaint charging Louis A. Montague [U. S. D. C., District of Columbia] with violating the provisions of the Securities Act in connection with the leasing of apartments in a building under construction. Under the terms of the agreement for lease each applicant was to loan a sum of money to Montague to be repaid within 1 year with interest at 5 percent. Upon service of the complaint the defendant immediately discontinued all attempts to offer securities and the action was dismissed pursuant to stipulation.

S. E. C. v. Petroleum Royalty Corp. [U. S. D. C., N. D. Texas] and *S. E. C. v. Petroleum Southwest Corp*. [U. S. D. C., N. D. Texas], were companion cases involving the activities of one John R. Moroney, who was president of both companies. Judgments were entered enjoining Moroney and the companies from selling unregistered stock. Petroleum Royalty Corp. had been organized to buy and sell oil royalties and Petroleum Southwest Corp. to produce and sell petroleum products.

Other actions filed by the Commission to enjoin the sale of securities in violation of the registration provisions of the Securities Act included *S. E. C. v. Fyre-Mist Inc.*, [U. S. D. C., D. Ohio] a company organized for the purported purpose of manufacturing and selling a device for the burning of oil and water to produce enormous heat; *S. E. C. v. Amos J. Downs* [U. S. D. C., D. Colorado], involving the president of Homestake Le Roi Mining Co. who was selling its common stock without registration; *S. E. C. v. Dixieland Petroleum Corp.* [U. S. D. C., S. D. New York], in which the Commission enjoined the sale of stock which had been issued to the company's president in exchange for oil leases and the sale of additional shares for the company without making the necessary filing; and *S. E. C. v. American Silver Corp.* [U. S. D. C., S. D. California], in which an injunction was requested to prevent the defendant from selling stock in a new company to be organized for the purpose of taking over the assets of American Silver Co., which was at that time in the bankruptcy court pursuant to a chapter XI proceeding.

In *S. E. C. v. Edmond Michel* [U. S. D. C., N. D. Illinois], the Commission charged violations of both the registration and fraud provisions of the Securities Act in the sale of stock of Larmloc Sales Corp. The complaint charged that the defendants failed to register the stock and that in effecting sales had made numerous false representations, including statements that the Bureau of Narcotics of the Treasury Department had approved the Larmloc device and had recommended its use by dealers in narcotics; that it had been approved by Underwriters Laboratory, Inc.; that use of the lock would reduce burglary insurance rates; and that the device was in use by banks, hotels, and stores in the Chicago area.

In the case of *S. E. C. v. Nye A. Wimer* [U. S. D. C., W. D. Pennsylvania] the Commission charged in its complaint for injunction that Wimer was selling unregistered stock of Great Western Exploration Co. and Tennessee-Schuylkill

Corp. by means of false representations concerning the stock. The court upheld the right of the Commission to bring the action in Pennsylvania even though the defendant resided in California and had never personally been present in the State of Pennsylvania or the district in which the action was instituted. The court stated that sections 20 and 22 of the Securities Act gave it jurisdiction to hear the case since the sale took place within that district and the defendant had participated in the sale. Other cases in which the Commission charged violation of the fraud provisions of the Securities Act include *S.E. C. v. American Soil Products Co., Inc.* [U. S. D. C., S. D. New York],and S. E. C. v. Ben Clinton Banner [U. S. D. C., N. D. Texas].

The complaint in *S. E. C. v. Metropolitan Mines Corporation, Ltd.* [U. S. D. C., E. D. Washington], was instituted during the 1947 fiscal year but resulted in the entry of a decree during the 1948 fiscal year requiring Metropolitan Mines Corp. to file with the Commission annual reports as required by section 13 of the Securities Exchange Act of 1934, and reports of change of ownership of equity securities by officers and directors as required by section 16 (a) of that act, and enjoining the further sale of securities without compliance with the registration requirements of the Securities Act.

In connection with its investigative function it was necessary for the Commission during the year to institute several actions to enforce Commission subpoenas. These subpoenas, issued by officers of the Commission in connection with investigative activities, required witnesses to appear and give testimony and in some cases to produce documentary evidence for examination. In each case the Commission was successful in obtaining the desired evidence. These cases were *S. E. C. v. Continental-Illinois Bank & Trust Co. of Chicago* [U. S. D. C., N. D. Illinois]; *S. E. C. v. Edward J. O'Connor* [U. S. D. C., S. D. California]; *S. E. C. v. M. F. Harrison and Allen Hull* [U. S. D. C., E. D. Michigan]; S. E. C. v. Tucker Corp. [U. S. D. C., N. D. Illinois].

Tucker Corp. -- During the past year the Commission instituted a routine investigation relating to certain activities of the Tucker Corp. Incident to the investigation it became necessary to examine certain books and records of the corporation and a request was made to the officers to permit such examination. When the corporation refused to produce the records a Commission subpoena was issued and upon the failure of the corporation to respond to the subpoena the Commission authorized the filing of an action in the United States District Court in Chicago to obtain an order requiring compliance with the subpoena. Subsequent to the filing of answers and argument on the issues involved, the court entered an order directing the Tucker Corp. to produce the books and records in compliance with the subpoena to be examined by an officer of the Commission at the plant of the corporation.

Kaiser-Frazer Corp. -- One of the major investigations by the Commission during the fiscal year concerned the collapse of the third offering of common stock of the Kaiser-Frazer Corp. [Footnote: Previous offerings had been made on September 26, 1945, and January 23, 1946.] On January 6, 1948, the Kaiser-Frazer Corp. filed with the Commission a registration statement covering a proposed offering of 1,500,000 shares of common stock. Otis & Co., First California Co., and. Allen & Co. were named as underwriters. Delaying amendments were filed by the issuer to prevent the statement from becoming effective 20 days after the filing. On February 2, 1948, the registration statement still not being effective, counsel for the corporation inquired of the Commission's staff concerning the propriety of the issuer stabilizing the market in its securities prior to the time of the offering. They were advised that this could be done within certain prescribed, limits and it was indicated to the staff that the issuer proposed to stabilize in this manner on the following day. On February 3, 1948, total trading for the day amounted to 186,200 shares compared with approximately 7,000 shares on the New York Curb on the previous day. All of the shares were purchased by Kaiser-Frazer at $13.50 per share in its stabilization effort. It was decided to conduct a private investigation for the purpose of determining the circumstances surrounding this large volume of trading. The private investigation disclosed facts which, in the judgment of the Commission, warranted a public investigation in the matter and such investigation was ordered by the Commission on March 23, 1948.

Public hearings began on April 12, 1948, in Washington and were subsequently held in seven other cities throughout the United States. [Footnote: New York, Cleveland, Cincinnati, Detroit, Chicago, San Francisco, Los Angeles.] These hearings disclosed that after the registration statement had become effective at 5:30 p.m. on February 3, 1948, the offering which was made at $13 per share had gone poorly and that at about 12 :30 p. m. (e.s.t.) on February 4 the underwriters, Otis & Co., First California Co., and Allen & Co., who were then stabilizing for their own account, had terminated the selling group and withdrawn the offering. The investigation, disclosed that on February 9, 1948, which was the day for settlement between the issuer and the underwriters, Otis & Co. and First California Co. stated that they were not bound by the underwriting agreement. This statement was based on a provision in the contract which provided that no material litigation not disclosed in the prospectus should be pending against the issuer at 10:00 a.m. on the date of settlement. A derivative action had been filed against the issuer in the county court for Wayne County, Mich., on that date, by one James F. Masterson, a Philadelphia attorney, as plaintiff. He was represented by David V. Martin, a Detroit attorney.

A number of circumstances raised serious questions in connection with this lawsuit. Among them was the fact that Marvin C. Harrison and Allen Hull, two Cleveland attorneys, testified under order of Judge Lederle in the United States District Court at Detroit that they had been retained by Cyrus Eaton, the principal

stockholder of Otis & Co., to go to the Wayne County Court in Detroit on February 9 to determine whether a suit similar to the Masterson suit had been filed against the Kaiser-Frazer Corp. [Footnote: In the course of this investigation it has on three occasions been necessary for the Commission to invoke the aid of Federal district courts to effect compliance with its subpoenas. In addition to the action referred to above, the Commission has instituted a similar action against the same defendants in the Federal District Court for the District of Columbia asking that the court order them to disclose the contents of communications which would normally fall under the attorney-client privilege, upon the ground that the Commission had made a prima facie showing that they were retained by Eaton for a fraudulent purpose. Judge Morris of that court has refused to enforce the subpoena. The Commission also intervened in an action in the Federal district court in Cincinnati wherein the Portsmouth Steel Co. sought to enjoin the telephone company from producing, in compliance with a Commission subpoena, certain telephone toll tickets covering calls made by certain officers of Portsmouth Steel Co. These papers were subsequently obtained. These matters are more fully covered in the section of this report relating to litigation under the Securities Exchange Act of 1934.]

Harrison and Hull refused to supply any information other than the identity of their client and based such refusal on the attorney-client privilege. The investigation remains open. [Footnote: On August 12, 1948, the Commission announced the institution of broker-dealer revocation proceedings against Otis & Co. based on alleged violations of sections 5 and 17 of the Securities Act of 1933 and sections 10, 15 (c) and 9 (a) (4) of the Securities Exchange Act of 1934. At the same time it was announced that similar proceedings had been instituted against First California Co. based solely on alleged violation of section 5 of the Securities Act of 1933. The institution of both of these actions was based on facts disclosed by the investigation.]

PART II
ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 is designed to eliminate fraud, manipulation, and other abuses in the trading of securities both on the organized exchanges and in the over-the-counter markets, which together constitute the Nation's facilities for trading in securities; to make available to the public information regarding the condition of corporations whose securities are listed on any national securities exchange; and to regulate the use of the Nation's credit in. securities trading. The authority to issue rules on the use of credit in securities transactions is lodged in the Board of Governors of the Federal Reserve System, but the administration of these rules and of the other provisions of the act is

vested in the Commission. The act provides for the registration of national securities exchanges, brokers, and dealers in securities, and associations of brokers and dealers.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration of Exchanges

Each securities exchange in the United States is required by section 5 of the act to register with the Commission as a national securities exchange or to apply for exemption from such registration. Under this section, exemption from registration is available to exchanges which have such a limited volume of transactions effected thereon that, in the opinion of the Commission, it is unnecessary and impracticable to require their registration. During the fiscal year the number of exchanges registered as national securities exchanges remained at 19 and the number of exchanges granted exemption from such registration remained at 5.

The registration or exemption statement of each exchange contains information pertinent to its organization, rules of procedure, membership, and related. matters. To keep this information up to date the 24 exchanges filed a total of 102 amendments to their statements during the 1948 fiscal year. Each of these amendments was reviewed to ascertain that the change involved was not adverse to the public interest and that it was in compliance with the relevant provisions of the act. The nature of the changes effected by the exchanges in their constitutions, rules, and trading practices varied considerably. Some of the more significant of these changes are briefly outlined below.

Baltimore Stock Exchange reinstated a rule, which had been rescinded in 1939, prescribing requirements for companies desiring to remove their securities from listing on that exchange.

Chicago Stock Exchange, following several years of study and trial operation, adopted a plan enabling its out-of-town members to clear their own exchange transactions by mail. The primary objective of the plan was to extend equal opportunities to all members and to develop a better exchange market by providing present and prospective out-of-town members with an added profit incentive to develop exchange business and to act as specialists in issues which are of public interest in their respective localities.

Cincinnati Stock Exchange and Philadelphia Stock Exchange each increased their rates of listing fees. in addition to the revised schedule of listing fees, Cincinnati also adopted an annual service charge payable by all companies having securities listed on that exchange.

San Francisco Stock Exchange adopted amendments to its constitution permitting corporations to become regular members of that exchange. Previously, corporations were eligible only for associate membership in the exchange.

New York Stock Exchange adopted, effective November 3, 1947, a schedule of increased commission rates on stocks selling at 50 cents or more per share. Under the new schedule, commission rates are computed on the basis of the amount of money involved in a transaction aggregating not more than 100 shares rather than on a rate-per-share basis as in the past. Following this action by the New York Stock Exchange, 12 of the 17 regional exchanges also adopted revised schedules of commission rates which are, in many instances, identical with the new rates of the New York Stock Exchange. The New York Curb Exchange, however, did not effect any changes in its schedule of commission rates.

In the latter half of 1947, the Board of Governors of the New York Stock Exchange placed greater restrictions on members' trading for their own account on the floor of the exchange. The modified floor trading rules, adopted in February 1947, prohibit any purchase of a stock by a floor trader at a price above the last sale price. Under the policy adopted by the exchange several months later, purchases cannot be made at a price above the last preceding different price if that price is lower titan the last sale price. Purchases at such a price by floor traders, individually or as a group, are limited to 300 shares or 30 percent of the amount offered at that price, whichever is greater. In April 1948 the 30 percent limit was raised to 50 percent. An exception to this policy may occur if there is an interval of 15 minutes during which no purchases by floor traders have been made. After such an interval, floor traders may again purchase stock subject to the limitations in the ruling. In addition, a floor trader who acquires stock off the floor must sell that stock off the floor.

Washington Stock Exchange, in an attempt to improve its service to the public and to provide facilities for the execution of transactions on the exchange which theretofore had been executed either over the counter or on another exchange, extended its hours of trading to coincide with those of the major exchanges. Only securities which are traded on the Washington Stock Exchange as well as on another exchange are eligible for trading during the new extended hours. Members continue to meet from 11:15 a.m. to noon each day as in the past to execute transactions in securities traded solely on the Washington Stock Exchange as well as in dually traded securities. The new trading hours went into effect on July 15, 1948.

Disciplinary Actions by Exchanges Against Members

Pursuant to a request of the Commission, each national securities exchange reports to the Commission any action of a disciplinary nature taken by the exchange against one of its members or an employee of a member for violation of the Securities Exchange Act, any rule or regulation thereunder, or of any exchange rule. During the year 5 exchanges reported such actions against a total of 34 members, member firms, and partners or employees of member firms.

In nine of these cases the individual or firm involved was censured for an infraction of the rules and warned against further violations. The remaining actions taken included fines ranging front $50 to $2,500 in 12 cases with total fines aggregating $6,450; the expulsion of an individual from exchange membership; the suspension of an individual and his firm from exchange membership for a period of 90 days; the suspension of five individuals from exchange membership for periods ranging from 3 months to 1 year; the suspension of two registered representatives of a member firm for a period of 2 months; and the cancellation of registration of three specialists in certain of their stocks. The disciplinary actions resulted front violations of various exchange rules, principally those pertaining to partnership agreements, capital requirements, handling of accounts, floor trading, registered employees, and specialists.

Market Value and Volume of Exchange Trading

The market value of total sales effected on national securities exchanges for the 1948 fiscal year, as shown in appendix table 7, amounted to $13,932,441,000, a decrease of 5.9 percent from the market value of total sales for the 1947 fiscal year. Of the total, stock sales (excluding value of right and warrant sales) had a market value of $12,899,694,000, a decrease of 6.2 percent front 1947, and bond sales that of $996,747,000, an increase of 2.4 percent over 1947. The market value of right and warrant sales totaled $36,000,000, involving 35,323,000 units.

The share volume of stock sales (excluding unit volume of right and warrant sales) for the 1948 fiscal year totaled 536,749,000 shares, a decrease of 3 percent front the preceding fiscal year. Total principal amount of bond sales was $1,356,379,000, an increase of 0.5 percent over 1947.

The market value of total sales effected on exempted exchanges for the 1948 fiscal year amounted to $9,899,000, a decrease of 13.5 percent front 1947.

Special Offerings on Exchanges

Under rule X-10B-2, special offerings of blocks of securities are permitted on national securities exchanges pursuant to plans filed with and declared effective by the Commission. Briefly stated, these plans provide that a special offering may be made when it has been determined that the auction market on the floor of the exchange cannot absorb a particular block of a security within a reasonable period of time without undue disturbance to the current price of the security. A special offering of a security is made at a fixed price consistent with the existing auction market price of the security and members acting as brokers for public buyers are paid a special commission by the seller. Buyers are not charged a commission on their purchases and obtain the securities at the net price of the offering. During the year the Los Angeles Stock Exchange became the eighth national securities exchange to file and have declared effective by the Commission a plan for special offerings. The plan of the Los Angeles Stock Exchange is generally similar to the plans of the other exchanges previously declared effective and which remained in effect throughout the year. [Footnote: These exchanges are: Chicago Stock Exchange, Cincinnati Stock Exchange, Detroit Stock Exchange, New York Curb Exchange, New York Stock Exchange, Philadelphia Stock Exchange, and San Francisco Stock Exchange.]

Three of the eight exchanges having plans in effect reported that a total of 25 special offerings were effected during the year. These offerings involved the sale of 332,999 shares of stock having an aggregate market value of $8,503,000. The size of these offerings ranged front one with a market value of $1,768,000 to one valued at $52,000. Brokers participating in these offerings were paid a total of $222,000 in special commissions. By comparison, in the preceding fiscal year a total of eight special offerings involving 104,814 shares of stock having a market value of $2,852,000 were effected on two exchanges, with special commissions paid to brokers totaling $68,000.

Secondary Distributions Approved by Exchanges

A “secondary distribution,” as the term is used in this section, is a distribution over the counter by a dealer or group of dealers of a comparatively large block of a previously issued and outstanding security listed or admitted to trading on an exchange. Such offerings take place when it has been determined that it would not be in the best interest of the various parties involved to sell the shares on the exchange in the regular way or by special offering. The distributions generally take place after the close of exchange trading. As in the case of special offerings, buyers obtain the security from the dealer at the net price of the offering which usually is at or below the most recent price registered on the exchange. It is generally the practice of exchanges to require members to obtain the approval of the exchange before participating in such secondary distributions. Registration of such distributions under the Securities Act of 1933 may also be necessary.

During the year 5 exchanges reported having approved a total of 83 secondary distributions under which 6,347,361 shares of stock having an aggregate market value of $152,803,000 were sold. Of these, 78 distributions involving the sale of 6,273,290 shares having a market value of $150,019,000 were completed, while 74,071 shares having a market value of $2,784,000 were sold in the 5 distributions which were not completed.

REGISTRATION OF SECURITIES ON EXCHANGES

Purpose and Nature of Registration

The statutory purpose of making available currently to investors reliable and comprehensive information as to the affairs of companies which have securities listed on a national securities exchange is accomplished by requiring each such company to file with the Commission and the exchange an application for registration which discloses such data. Unless a security is so registered pursuant to section 12 of the act (or has unlisted trading privileges), it is unlawful to trade in the security on the exchange. In order to keep this information up to date, section 13 requires the filing by these companies of annual, quarterly, and other periodical reports.

Examination of Applications and Reports

All applications and reports filed pursuant to sections 12 and 13 are examined by the staff to determine whether accurate and adequate disclosure has been made of the specific types of information required by the act and the rules and regulations promulgated thereunder, the examination under the Securities Exchange Act, like that under the Securities Act of 1933, does not involve an appraisal and is not concerned with the merits of the registration securities. When examination of an application or a report discloses that material information has been omitted, or that sound principles have not been followed in the preparation and presentation of accompanying financial data, the examining staff follows much the same procedure as that developed in its work under the Securities Act in sending to the registration letter of comment, or in holding a conference with its attorneys or accountants or other representatives, pointing out any inadequacies in the information filed in order that necessary correcting amendments may be obtained. Here again, amendments are examined in the same manner as the original documents. Where a particular inadequacy is not material, the registrations notified by letter pointing out the defect and suggesting the proper procedure to be followed in the preparation and filing of future reports, without insistence upon the filing of an amendment to the particular document in question.

Statistics of Securities Registered on Exchanges

At the close of the fiscal year, 2,209 issuers had 3,539 security issues listed and registered on national securities exchanges. These securities consisted of 2,575 stock issues aggregating 2,837,496,642 shares, and 964 bond issues aggregating $19,224,375,537 principal amount. This represents Increases of 182,432,292 shares and $797,621,682 principal amount, respectively, over the securities registered on national securities exchanges at the close of the 1947 fiscal year.

During the fiscal year 49 new issuers registered securities under the act on national securities exchanges, while the registration of all securities of 55 issuers was terminated, principally by reason of retirement and redemption and through mergers and consolidations. No proceedings were instituted during the year under section 19 (a) (2) of the act to deny, suspend, or withdraw the registration of s security.

The following applications and reports were filed during the fiscal year in connection with the listing and registration of securities on national securities exchanges:

Applications for registration of securities on national securities exchanges: 434

Application for registration of unissued securities for “when issued” trading on national securities exchanges: 63

Exemption statements for trading short-term warrants on national securities exchanges: 60

Annual reports: 2,123

Current reports: 8,767

Amendments to applications and reports: 1,101

TEMPORARY EXEMPTION OF SUBSTITUTED OR ADDITIONAL SECURITIES

Rule X-12A-5 provides a temporary exemption from the registration requirements of section 12 (a) of the act to securities issued in substitution for, or in addition to, securities previously listed or admitted to unlisted trading privileges on a national securities exchange. The purpose of this exemption is to enable transactions to be lawfully effected on an exchange in such substituted or additional securities

pending their registration or admission to unlisted trading privileges on an exchange.

The exchanges filed notifications of admission to trading under this rule with respect to 101 issues during the year. The same issue was admitted to trading on more than one exchange in some instances, so that the total admissions to such trading, including duplications, numbered 143.

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Unlisted trading on exchanges is of two principal varieties. The one variety is in issues listed and registered on some other registered exchange, in which case the public enjoys the protections afforded by the listing and registration under the Securities Exchange Act. A great majority of these issues are listed on New York Exchange and admitted to unlisted trading on various exchanges in other cities. The other variety is in issues not listed nor registered on some other registered exchange. Most of such issues are admitted to unlisted trading on New York Curb Exchange alone. In their case the public is not protected by any listing agreement with the issuer nor by the financial reporting requirements of section 13, the proxy rules under section 14, and the "trading by insider" reporting and penalty clauses of section 16 of the Securities Exchange Act, except to the extent that the issuers or issues are registered under other acts administered by the Commission containing similar requirements.

Exchange trading in issues admitted to unlisted trading prior to March 1, 1934, is permitted to continue under section 12 (f) (1) of the Securities Exchange Act. The further admission of issues to unlisted trading, however, has been prohibited except to the extent permitted under section 12 (f) (2), in the case of issues already listed and registered on some registered exchange [Footnote: "Registered exchanges" and "national securities exchanges" are used synonymously in this section], and under section 12 (f) (3), in the case of issues not so listed and registered, as more specifically outlined under the next subheading "Applications for Unlisted Trading Privileges." [Footnote: The subject is treated at length in the Tenth Annual Report under "Unlisted Trading Privileges on Securities Exchanges."]

Ten years ago, on June 30, 1937, the status of unlisted issues on the registered exchanges was as follows:

Stocks listed on some other registered exchange: 554

Stocks not listed on any registered exchange: 737

Bonds listed on some other registered exchange: 42

Bonds not listed on any registered exchange: 550

Total: 1,883

These issues were practically all in the section 12 (f) (1) category of securities admitted to unlisted trading prior to March 1, 1934.

Since the first grant in April 1937 of an application by an exchange under section 12 (f) (2) for unlisted trading in stocks listed on some other registered exchange, there have been 524 admissions of such stocks to the various exchanges. The number of issues involved is less than this figure because many issues have been admitted to unlisted trading on two, three, or more exchanges. These admissions of stocks under section 12 (f) (2) have, however, barely maintained the number of listed stocks traded unlisted on other exchanges, which has fallen from 554 in 1937 to 542 in 1948. The grants have tended to make the same stocks available on numerous exchanges and to substitute currently active stocks in offset to the many retirements of issues originally admitted to unlisted trading under section 12 (f) (1).

Only seven stock issues have been admitted to unlisted trading on an exchange (one of them on two exchanges) under section 12 (f) (3). Only two of these were common stocks, and one of these has been removed front unlisted trading on New York Curb Exchange by reason of listing on New York Stock Exchange. In addition, one of the preferred stocks has become listed also on Philadelphia Stock Exchange. Thus only five stocks, including four preferred and one common, admitted to trading under section 12 (f) (3) retain that status and are not listed on any registered exchange.

Admissions of bonds under sections 12 (f) (2) and 12 (f) (3) have totaled 49, but retirements have exceeded admissions, and only 20 of the issues are still outstanding. It has become unusual to apply for bond admissions under these sections, except in case of very large, and particularly convertible, issues.

The status of unlisted issues on the registered exchanges as of June 30, 1948, was

Stocks listed on some other registered exchange: 542

Stocks not listed on any registered exchange: 353

Bonds listed on some other registered exchange: 12

Bonds not listed on any registered exchange: 85

Total: 992

There has been a great disappearance of issues, in all except the first category, from the figures of 1937. The principal shrinkage has been in stocks and bonds not listed on any registered exchange, and this, as has been frequently stated in these reports, was the expectation of Congress when it authorized continuance of such privileges in 1936. The 353 stocks admitted to unlisted trading without being listed on any registered exchange aggregated 354,477,579 shares, warrants, and receipts as of June 30, 1948. The reported volume of trading in these stocks for the calendar year 1947 was 21,056,358 units, including 14,889,271 domestic shares, 3,046,387 Canadian shares, 2,312,700 warrants, and 808,000 American depositary receipts. The 354,477,579 unlisted shares were about 11 percent of the total 3,196,160,946 shares admitted to trading on the registered exchanges, and the 21,056,358 reported volume was a little over 4 percent of the total 512,475,639 share and warrant volume on the registered exchanges for the calendar year 1947.

Applications for Unlisted Trading Privileges

Section 12 (1) (2) of the act provides that, upon application to and approval by the Commission, a national securities exchange may extend unlisted trading privileges to a security which is listed and registered on another national securities exchange. Pursuant to this section, and in accordance with the procedure prescribed by rule X-12F-1, applications were granted during the year extending unlisted trading privileges to Boston Stock Exchange in 12 stock issues; Chicago Stock Exchange, 2 stock issues; Cleveland Stock Exchange, 1 stock issue; Detroit Stock Exchange, 1 stock issue; Los Angeles Stock Exchange, 23 stock issues and 1 bond issue; New York Curb Exchange, 1 stock issue; Philadelphia Stock Exchange, 4 stock issues; St. Louis Stock Exchange, one stock issue; San Francisco Stock Exchange, 1 stock issue and 1 bond issue. An application of Boston Stock Exchange involving one stock issue and an application of San Francisco Stock Exchange involving one bond issue were withdrawn by these exchanges after they had been advised that they did not meet the requirements prescribed by the rule.

Section 12 (f) (3) of the act permits the Commission to grant an exchange's application for the extension of unlisted trading privileges to a security which is not listed and registered on another national securities exchange if investors have, respecting such a security, protections equivalent to those provided for in the act regarding listed securities. An application of New York Curb Exchange under this section was granted with respect to Cities Service Co. 3-percent sinking fund debentures, due January 1, 1977, on the ground that equivalent

protection was afforded to the public from the fact that the common stock of the same company was listed and registered on other national securities exchanges.

Changes in Securities Admitted to Unlisted Trading Privileges

During the year the exchanges filed numerous notifications pursuant to rule X-12F-2 (a) of changes in title, maturity, interest rate, par value, dividend rate, or amount authorized or outstanding of securities admitted to unlisted trading privileges. Where changes of this nature only are effected in an unlisted security the altered security is deemed for the purposes of the Securities Exchange Act to be the security previously admitted to unlisted trading privileges and such privileges are automatically extended to the altered security. However, when changes more comprehensive than these are effected in an unlisted security, the exchange is required to file an application with the Commission, pursuant to rule X-12F-2 (b), seeking a determination that the altered security is substantially equivalent to the security previously admitted to unlisted trading privileges. Applications filed pursuant to this rule were granted by the Commission with respect to one stock issue on Boston Stock Exchange; one stock issue on Detroit Stock Exchange; four stock issues on New York Curb Exchange; three stock issues on Philadelphia Stock Exchange; one stock issue on Pittsburgh Stock Exchange; and one stock issue on San Francisco Stock Exchange. The Commission denied applications of the Boston, Detroit, Philadelphia, and Pittsburgh Stock Exchanges and New York Curb Exchange with respect to a total of three stock issues.

DELISTING OF SECURITIES FROM EXCHANGES

Securities Delisted by Application

Section 12 (d) of the act provides that upon application by the issuer or the exchange to the Commission, a security may be removed from listing and registration on a national securities exchange in accordance with the rules of the exchange and subject to such terms as the Commission deems necessary for the protection of investors in accordance with the procedure prescribed by Rule X-12D2-1 (b), 10 issues were removed from listing and registration on exchanges during the year. Of these, 3 issues were removed upon application of their issuers and the remaining 7 upon application of exchanges. In each of these instances the application was granted without the imposition of any terms by the Commission.

Of the three issues removed upon application of their issuers, one had not been traded on the exchange involved for a period of (3 months; the mining properties of the issuer of one had not been in operation for the past 20 years, there was no

immediate prospect for resumption of such operations, and there was an insufficient number of shares outstanding in the hands of a very few public stockholders to justify continuance of listing and registration of the issue which had been suspended from trading on the exchange involved for the past 2 years; the remaining issue was removed from one of the two exchanges on which it was listed and registered for the reason that the small number of transactions effected on one of the exchanges did not justify the expenses resulting from the maintenance of a coregistrar and cotransfer agent; and additional legal services in the State in which the exchange was located.

The removal of the seven issues upon application of exchanges was occasioned by various events which had the effect of practically terminating public interest in the issues involved. These included situations where the issuer was no longer operating; where the issuer was in process of liquidation; where the financial condition and future prospects of the issuer did not warrant continuation of listing and registration of the issue; and where the number of shares of the issue outstanding in public hands had been greatly reduced.

Securities Delisted by Certification

Securities which have been paid at maturity, redeemed, or retired in full., or which have become exchangeable for other securities in substitution therefor, may be removed from listing and registration on a national securities exchange upon the exchange's filing with the Commission a certification to the effect that such retirement has occurred. The removal of the security becomes effective automatically after the interval of time prescribed by Rule X-12D2-2 (a). The exchanges filed certifications under this rule effecting the removal of 227 separate issues. In some instances the same issue was removed from more than one exchange, so that the total number of removals, including duplications, was 284. Successor issues to those removed became listed and registered on exchanges in many instances.

In accordance with the provisions of rule X-12D2-1 (d), New York Curb Exchange removed 15 issues from listing and registration when they became registered on New York Stock Exchange. This rule permits a national securities exchange to remove a security from listing and registration in the event trading therein has been terminated pursuant to a rule of the exchange which requires such termination due to the security's becoming listed and registered and admitted to trading on another exchange. Removal under this rule is automatic, the exchange being required merely to notify the Commission of the removal.

Securities Removed From Listing on Exempted Exchanges

A security may be removed from listing on an exempted exchange upon the filing by such exchange of an appropriate amendment to its exemption statement setting forth a brief statement of the reasons for the removal.

Three exempted exchanges removed 11 issues from listing thereon during the year. The removal of these issues was occasioned by such events as calling of the issue for redemption, dissolution of the issuer, or substitution of a new security under a plan of reorganization.

Exempted Securities Removed From Exchange Trading

During the year Chicago Stock Exchange and New York Stock Exchange removed from trading a total of 19 separate issues which had been temporarily exempted from the registration requirements in section 12 (a) of the act pursuant to either rule X-12A-2 or rule X-12A-3. One of these issues has been paid at maturity while the remaining issues were retired in various manners under plans of reorganization of their issuers.

MANIPULATION AND STABILIZATION

Sections 9, 10, and 15 of the Securities Exchange Act empower the Commission to prohibit manipulation and to regulate manipulative devices. Section 9 of this act forbids certain specifically described forms of manipulative activity. Transactions which create actual or apparent trading activity or which raise or lower prices, if they are effected for the purpose of inducing others to buy or sell, are declared to be unlawful. Certain practices designated as “wash sales” and “matched orders’’ effected for the purpose of creating a false or misleading appearance of active trading or a false or misleading appearance with respect to the market for a security are declared to be illegal. Persons selling or offering securities for sale are prohibited from disseminating false information to the effect that the price of the security will, or is likely to, rise or fall because of market operations conducted for the purpose of raising or depressing the price of a security. Persons selling or purchasing securities are forbidden to make false or misleading statements of material facts, with knowledge of their falsity, regarding securities for the purpose of inducing the purchase or sale of such securities. Sections 10 and 15 empower the Commission to adopt rules and regulations to define and prohibit the use of new forms of manipulation which the Commission might encounter from time to time.

Pursuant to statutory authority, the Commission has adopted rules and regulations to aid it in carrying out the expressed will of Congress. The three above-mentioned sections, as augmented by rules and regulations, are aimed at freeing the security markets from artificial influence, thus insuring the

maintenance of fair and honest markets and allowing prices to be established by supply and demand.

Manipulation

The Commission's purpose in its administration of the provisions of the Securities Exchange Act against stock-market manipulation is to provide policing of the stock exchange markets and the over-the-counter markets sufficient to accomplish the elimination of manipulative practices without interfering with the legitimate functioning of these markets. In order to accomplish this, the Commission has continuously modified and sought to improve its procedure for the systematic surveillance of trading in securities. The methods used to detect manipulation have, of necessity, been elastic in character since techniques employed by manipulators have changed constantly, increasing in subtlety and complexity.

The staff scrutinizes price movements in approximately 7,500 securities, including 3,500 traded on exchanges and 4,000 in the over-the-counter markets. The information maintained with respect to these securities includes not only data reflecting the market action of such securities but also includes news items, earnings figures, dividends, options, and other data which might explain price and volume changes. When no plausible explanation can be found for an unusual movement in any security, the matter may be referred to the appropriate regional office of the Commission for a field investigation. For reasons of policy, the Commission keeps confidential the fact that trading in a given security is under investigation, lest knowledge of the existence of such investigation unduly affect the market or reflect unfairly upon individuals whose activities are being investigated. As a result, the Commission occasionally receives criticism for failing to investigate situations when in fact it is actually engaged in an intensive investigation of those very matters.

The Commission's investigations in respect to matters involving unusual market activity take two forms. The "flying quiz," or preliminary investigation, is designed to detect and discourage incipient manipulation by a prompt determination of the reason for unusual market behavior. Often the results of a flying quiz point to a legitimate reason for the activity under review and the case is closed. Frequently facts are uncovered which require more extended investigation, and in these cases formal orders of investigation are issued by the Commission. In a formal investigation, members of the Commission's staff are empowered to subpoena pertinent material and to take testimony under oath. In the course of such investigations, data on purchases and sales are often compiled covering substantial periods of time and trading operations involving considerable quantities of shares are scrutinized.

The Commission operates on the premise that manipulation should be suppressed at its inception. Many of the cases investigated never come to the attention of the public because the promptness of the Commission's investigation, through the flying quiz technique, stops the manipulation before it is fully developed. Since public losses are seldom recoverable even though the perpetrator of a fraud is brought to justice it is believed that the investigatory methods adopted afford important protection to the public.

A tabular summary with respect to the Commission's trading investigations follows:

(chart omitted)

Stabilization

During the 1948 fiscal year the Commission continued the administration of rules X-17A-2 and X-9A6-1. Rule X-17A-2 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. Rule X-9A6-1 governs stabilizing transactions effected to facilitate offerings of securities registered on national securities exchanges, in which the offering prices are represented to be "at the market" or at prices related to market prices.

Of the 449 registration statements filed during the fiscal year, 199 contained a statement of intention to stabilize to facilitate the offerings covered by such registration statements. Because a registration statement sometimes covers more than one class of security, there were 222 offerings of securities in respect of which a statement was made, as required by rule 426 under the Securities Act, to the effect that a stabilizing operation was contemplated. Stabilizing operations were actually conducted to facilitate 71 of these offerings, principally the stock offerings. In the case of bonds, public offerings of three issues aggregating $26,084,000 in principal amount were stabilized. Offerings of stock issues aggregating 23,370,892 shares and having an estimated aggregate public offering price of $335,147,302 were also stabilized. In connection with these stabilizing operations, 8,579 reports were filed with the Commission during the fiscal year. Each of these reports has been analyzed to determine whether the stabilizing activities were lawful.

To facilitate compliance with the Commission's rules on stabilizing and to assist issuers and underwriters to avoid violation of the statutory provisions dealing with manipulation and fraud, many conferences were held with representatives of such issuers and underwriters, and many written and telephone requests were answered. A total of 1,002 letters, memoranda relating to such conferences and

telephone requests, and memoranda to the regional offices of the Commission were written in connection with the administration and enforcement of the stabilization and manipulation statutory provisions and regulations.

SECURITY TRANSACTIONS OF CORPORATION INSIDERS

Under section 16 (a) of the Securities Exchange Act of 1934, section 17 (a) of the Public Utility Holding Company Act of 1935, and section 30 (f) of the Investment Company Act of 1940, during the past 14 years 43,243 corporate “insiders” of more than 3,000 issuers have filed 290,241 reports covering their transactions in and holdings of securities of their companies. Such reports must be filed by beneficial owners of more than 10 percent of any class of an equity security which is listed and registered on a national securities exchange; officers and directors of the issuers of any security so listed; officers and directors of registered public utility holding companies; and officers, directors, beneficial owners of more than 10 percent of any security (other than short-term paper), members of advisory boards, investment advisers, and affiliated persons of investment advisers of registered closed-end investment companies. An initial report is required of these persons showing their beneficial ownership of securities of their companies at the time any of these relationships is assumed, and a report setting forth purchases, sales, or other changes is required for each calendar month thereafter in which any change in beneficial ownership of these securities occurs.

Examination and Dissemination of Information

While, in general, the Nation’s principal organized security markets are located in the larger financial centers of the country, security ownership, particularly of the larger issues, is divided among thousands of large and small investors scattered throughout the country. The primary purpose of security ownership reports is to make available to investors, wherever located, information as to the transactions of insiders in their companies’ securities. Members of the staff examine all reports filed to determine their compliance with the statutory requirements, and request amended reports where inaccuracies or omissions appear. Documents and reports filed under other sections of the various acts administered by the Commission and data published by various financial news services must also be examined for current information as to corporate actions involving situations or transactions in which ownership reports must be filed. Where any report is not received within the prescribed time, necessary steps are taken to secure its prompt filing.

All ownership reports are available for public inspection as soon as they are tiled, at the Commission’s office in Washington, and in the case of reports under

section 16 (a) of the Securities Exchange Act also at the exchanges where additional copies of such reports must be filed. Recognizing the limited opportunity of many individual investors to inspect the reports in person at Washington or at the exchanges, the Commission in addition condenses the information contained in the actual reports and publishes a monthly Official Summary of Security Transactions and Holdings which is mailed to any interested person who requests it. This publication has a wide distribution among individual investors, security brokers and dealers, libraries, newspapers, press associations, and others. Complete files of this summary are available for public inspection at each of the Commission's regional offices and at each national securities exchange.

Preventing Unfair Use of Inside Information

Section 16 (b) of the Securities Exchange Act of 1934 aims at the prevention of unfair use of information, which may have been obtained by a corporate insider by reason of his relationship to the company. To this end, the section provides that any profit realized by an insider from any purchase and sale, or any sale and purchase, of any equity security of his company within a period of less than 6 months shall be recoverable by the issuer. Suit for the recovery of such profits may be instituted by the issuer, or by any security owner acting in its behalf if the issuer fails or refuses to bring suit within 60 days after request or if it fails diligently to prosecute the suit after it is instituted. Similar provisions are contained in section 17 (b) of the Public Utility Holding Company Act and section 30 (f) of the Investment Company Act.

Substantial amounts, ranging up to several hundred thousand dollars, have been recovered under these provisions by or on behalf of issuers. In a number of cases voluntary payment of such profits have been made to the company by the officer or director. Such voluntary payments were often brought about by the necessity to report short-term transactions. Inasmuch as the section provides for the recovery of profits through private civil suits, the Commission does not have the power to administer or enforce the provisions of the section. It has, however, filed briefs as amicus curiae in many of the suits brought in the courts, particularly where novel questions of law have been raised for judicial determination.

As has been noted, information as to changes in ownership of securities held by persons subject to liability under section 16 (b) is required to be furnished in reports under section 16 (a). These reports make available to stockholders data which may indicate the existence of liability under section 16 (b).

Statistics of Ownership Reports

The number of ownership reports filed with and examined by the Commission during the past fiscal year is set forth below.

(chart omitted)

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS

Under three of the acts it administers -- sections 14 (a) pf the Securities Exchange Act of 1934, 12 (a) of the Public Utility Holding Company Act of 1935 and 20 (a) of the Investment Company Act of 1940 -- the Commission is authorized to prescribe rules and regulations concerning the solicitation of proxies, consents, and authorizations in connection with securities of the companies subject to those acts. Pursuant to this authority, the Commission has adopted regulation X-14, which is designed to protect investors by requiring the disclosure of certain information to them and by affording them an opportunity for active participation in the affairs of their company. Essentially, this regulation makes unlawful any solicitation of any proxy, consent, or authorization which is false or misleading as to any material fact or which omits to state any material fact necessary to make the statements already made not false or misleading. Under the regulation it is necessary, in general, that each person solicited be furnished such information as will, enable him to act intelligently upon each separate matter in respect of which his vote or consent is sought. The proxy rules set forth in this regulation also contain provisions which enable security holders who are not allied with the management to communicate with other security holders when the management is soliciting proxies.

Statistics of Proxy Statements

During the 1948 fiscal year the Commission received and examined both the preliminary and definitive material required with respect to 1,677 solicitations under regulation X-14 as well as “follow up” material employed in 229 instances. The number of proxy statements filed by management and nonmanagement, and the principal items of business for which stockholders action was sought in these solicitations, is shown below for each of the past five calendar years.

(chart omitted)

A corresponding distribution of the specific proposals of action other than the election of directors reflected in these proxy statements is set forth below.

(chart omitted)

Examination of Proxies

An example of disclosure resulting from the Commission's examination of preliminary proxy soliciting material before it is mailed in definitive form to stockholders may be noted in the following particular case from among the hundreds processed last year. It involved solicitations by a registrant of proxies for the election of directors proposed by both the management and a minority stockholders group. The management slate was headed by the registration chairman of the board of directors, who had acquired a dominating position in the registration affairs as a result of the transactions described below.

In September 1945 the chairman acquired all the common stock and other property of company B for $200,625, of which he allocated $150,000 as the cost of the stock. In July 1947, he transferred this common stock to company A and received in exchange all the common stock of company A and a promissory note of the company for $650,000 at 4 percent interest. The common stock of company B was then the sole asset of company A. The chairman of the registrant then sold the common stock of company A to the registrant in the same month, July 1947. The registrant agreed to issue to the chairman, in payment for the stock, 47,000 shares of its own common stock having a market value of approximately $246,750. Subsequently, the registrant assumed payment of the $650,000 note of company A held. by the chairman. By reason of these transactions the chairman had converted his original $150,000 investment into stock of the registrant worth $246,750 and a promissory note for $650,000, a total of $896,750.

A former chairman of the registrant was in control of manufacturing, insurance, and investment companies which together owned 19,990 shares of the registration common stock (which shares were subsequently acquired by the chairman or his associates). One of these controlled companies, company C, had previously purchased one of the registration former subsidiaries, company D, and had given the registration note for $250,000 in payment. Thereafter, company C had refused to make payments of principal or interest on this note, asserting offsets and counterclaims against the registrant in the amount of $500,000 in connection with this transaction. Accordingly, as a condition precedent to the exchange of the 47,000 shares of stock of the registrant for stock of company A, general releases were exchanged between the registrant, company C and company D, with respect to all claims arising out of the sale of company D to company C, and the $250,000 note was canceled.

As a result of disclosures required by the Commission's staff in this situation, the registration definitive proxy statement contained the following information:
(a) Details of the arrangements entered into for the acquisition of the shares of the registrant by its chairman or his associates from the corporate interests of its former chairman.

(b) Details with respect to the exchange of general releases between the registrant, company C and company D related to claims arising out of the sale by the registrant to company C of the capital stock and accounts receivable of company D, and the relationship of the former chairman to these companies.

(c) An indication, with regard to company B that (1) its fixed assets were reappraised after acquisition by the chairman, resulting in a net increase of $26,038.59 over the previous depreciated carrying value of laud and buildings; (2) it has outstanding a mortgage upon its land and buildings, in the unpaid principal amount of $105,500, bearing interest of 4 percent a year; (3) it also has outstanding 30,000 shares of 60-cent cumulative preferred stock requiring annual dividend payments of $18,000, of which shares 5,595 were owned by the chairman, 420 by his son, and the balance by friends and/or employees; and (4) these interest and dividend requirements represent prior charges on the earnings of company B before dividends may be paid on its common stock which. was acquired. by the registrant. The net income of company B for each of the past 3 years was also set forth. The definitive proxy also disclosed, with respect to the $650,000 promissory note: (1) That if such note is not paid at maturity the ownership of company B will revert to the chairman, since all the common stock of company B is pledged as collateral for the note; (2) that in connection with the issuance of such note an intangible item of $650,000 arose which now appears on the books of company B and that the disposition thereof has not yet been determined; and (3) that such note has resulted in an annual fixed charge of $26,000, representing interest payments which must be paid out of the earnings of the registrant and its subsidiaries before any dividends may be paid to stockholders of the registrant.

The proxy requirements of the Securities Exchange Act operated in this case to give stockholders of the registrant full information about the manner in which the chairman acquired control of the registrant, about his dealings with the registrant, and of the results of these transactions as they affected the interests of the stockholders.

Changes in Proxy Rules

In Securities Exchange Act release No. 4037 (1947) the Commission announced the adoption of a number of changes in its proxy rules after wide circulation of the proposals and numerous conferences with interested persons. The fundamental purpose of the proposals was to revise the rules to clarify their application and to write into them more explicitly the exact situations they cover. The response to the Commission’s invitation for comments on the revision was very generous and the comments and suggestions received were most constructive and helpful to

the Commission. A number of the more important changes made are noted below.

The new rules require disclosure of the individual remuneration paid only to the three highest-paid officers of the issuer.

Follow-up material must now be in advance of its transmission to security holders, but this does not apply to replies to inquiries from stockholders requesting further information or to communications requesting only that proxies previously solicited be signed and returned. Where a proxy solicitation is made in person and written material discussing the merits of any matter as to which the proxy is being solicited is used, copies of such material must also be filed with the Commission prior to its use.

The rule requiring the mailing of communications for security holders has been clarified, particularly as to the circumstances under which the management of the issuer is required to mail solicitation material. The new rule also gives the management the option of furnishing the security bolder who wishes to make such a communication with a reasonably current list of security holders in lieu of mailing his material for him. Another rule which requires the management to include a security holder's proposal in its proxy material has been revised to require such security holder to furnish the management with a copy of his proposal and statement at the time he gives notice to the management of his intention to make the proposal at the meeting.

The revised rules became effective December 18, 1947, immediately upon announcement of the changes, in order to permit those who wished to do so to comply with the new rules rather than the old. However, it was provided that any person commencing a solicitation prior to February 15, 1948, could make the solicitation under either the old or revised rules at his option.

During the year the Commission also had under consideration proposals to adopt amendments to the proxy rules other than those described above. These proposals were circulated by the Commission shortly after the close of the fiscal year in Securities Exchange Act Release No. 4114 (1948). These proposals are not as extensive as the amendments adopted on December 1947, but they involve certain important problems. The proposed changes are noted below.

The proposals contemplate a number of changes as to the form of proxy and the rules governing its use. To simplify the proxy, the changes would eliminate certain statements heretofore required to be in the proxy. Other changes would provide that no proxy may confer authority to vote at any annual meeting other than the one following the solicitation and that the proxy statement provide that the shares covered by a proxy will be represented at the meeting and will be

voted according to the choice made by the security holder. The purpose of these changes is to prevent the premature solicitation of proxies on the basis of out-of-date information and to insure that a proxy be given its full effect.

Rule X-14A-8 would be amended so that the management of an issuer need not include the proposal of a security holder in its proxy solicitation material where such proposal is submitted for the purpose of enforcing a personal claim or of redressing a personal grievance against the issuer or its management. In addition, the management could omit a proposal if the management had included a proposal of the same security holder in its proxy statement and the security holder failed to attend the meeting before which the proposal was to be submitted and did not present the proposal for action. In another situation, the proposal could be omitted if the same proposal had been submitted for action at the last annual meeting of the security holders, or at a special meeting subsequent thereto, and received less than 3 percent of the total votes cast in regard to the proposal. Where a management does omit a proposal, under the proposed rule, it would have to file the proposal with the Commission together with a statement of the reasons why the management deems such omission to be proper in the particular case.

Schedule 14A, which states the information required to be contained in a proxy statement, would be amended with respect to item 7 (a) as to certain matters relating to the disclosure of remuneration paid by the issuer to its officers, directors, and other persons. It would also be amended to require information as to the indebtedness to the issuer or its subsidiaries of associates of directors, officers, and nominees of the issuer as well as the indebtedness of such directors, officers, and nominees. This would not include any indebtedness arising in the ordinary course of business or to any person whose indebtedness did not exceed $1,000 at any time during the last fiscal year of the issuer.

Item 12 of schedule 14A would be amended to make it clear that the information required by that item must be supplied as to authorizations for securities to be issued, otherwise than in exchange for outstanding securities of the issuer, even though the securities are not to be issued immediately. It would also be amended to provide that a description of the securities to be authorized or issued need not be given in cases involving only additional shares of common stock of a class already outstanding.

REGULATION OF BROKERS AND DEALERS IN OVER-THE-COUNTER MARKETS

Registration

Brokers and dealers using the mails or other instrumentalities of interstate commerce to effect transactions in securities on over-the-counter markets are required to be registered with the Commission pursuant to section 15 (a) of the Securities Exchange Act, except those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. The following tabulation reflects certain data with, respect to the registration of brokers and dealers during the fiscal year ended June 30, 1948.

Registration of brokers and dealers under section 15 (b) of the Securities Exchange Act, fiscal year ending June 30, 1948

Effective registrations at close of preceding fiscal year: 4,011

Effective registrations carried as inactive: 74 [Footnote: Registrations on inactive status because of inability to locate registrant despite careful inquiry. Two such registrations were canceled, withdrawn, or restored to active status during the year.]

Registrations placed under suspension during preceding fiscal year: 0

Applications rending at close of preceding fiscal year: 40

Applications filed during fiscal year: 466

Total: 4,591

Applications withdrawn during year: 12

Applications canceled during year: 2

Registrations withdrawn during year: 407

Registrations canceled during the year: 53

Registrations denied during year: 2

Registrations suspended during year: 0

Registrations revoked during year: 8

Registrations effective at end of year: 4,006

Registrations effective at end of year carried as inactive: 72 [Footnote: Registrations on inactive status because of inability to locate registrant despite careful inquiry. Two such registrations were canceled, withdrawn, or restored to active status during the year.]

Applications pending at end of year: 29

Total: 4,591

Broker-Dealer Inspections

Inspections of brokers and dealers are undertaken pursuant to section 17 of the Securities Exchange Act for the purpose of determining whether registrants are in compliance with the requirements of law. To a considerable extent, the inspection work is correlated with the examination of the financial reports filed by brokers and dealers, for when these financial reports reflect weak financial condition it is necessary to make prompt inquiry to determine whether customers' funds and securities are in jeopardy and whether remedial action may be necessary or appropriate. Inspections are also frequently made as a result of complaints made to the Commission by customers, but the facts presented by complainants are carefully considered before any decision is made to make an inspection as a result of their complaints.

During the 1948 fiscal year a total of 841 inspection reports were received from the Commission's regional offices. In 24 of these inspections the question of financial condition required consideration and continued surveillance. In 217 inspections the reports disclosed transactions at prices sufficiently different from prevailing market prices to raise some question as to the fair treatment of customers. For the most part, however, transactions of this type by the firms involved were isolated and did not represent the characteristic pattern of their business; 177 inspections disclosed information indicating noncompliance with regulation T relating to the extension of credit. In 55 inspections, questions were raised concerning noncompliance with the rules adopted by the Commission with respect to hypothecation and commingling of customers' securities. In only 3 inspections were secret profits reported -- transactions in which a firm misrepresents to customers the prices at which the customers' orders are executed.

The Commission has continued its established policy of giving informal notice of infractions to a firm when there is no indication of willful disregard of the law, and generally as a result of such notice the infractions are promptly discontinued and measures taken to prevent their recurrence. There are, of course, inspections in which acts and practices are discovered which represent such disregard of the interests of customers that investigations looking to appropriate action by the

Commission are undertaken. During the 1948 fiscal year 13 such investigations were undertaken.

Administrative Proceedings

Among the sanctions which the Commission is authorized to apply against brokers and dealers who violate the law are revocation of registration or denial of registration to a new applicant. The Commission may also take action to suspend or expel brokers and dealers from membership in the National Association of Securities Dealers and from membership on national securities exchanges.

A summary of the administrative proceedings instituted by the Commission during the 1948 fiscal year with respect to brokers and dealers is given below.

Record of broker-dealer proceedings and proceedings to suspend or expel from membership in a national securities association, instituted pursuant to section 15 of the Securities Exchange Act

Proceedings on revocation of registration pending at beginning of fiscal year: 4

Proceedings on revocation of registration and suspension or expulsion from NASD pending at beginning of fiscal year: 2

Proceedings on denial of registration pending at beginning of fiscal year: 1

Proceedings ordered during year on revocation of registration: 13

Proceedings ordered during year on revocation of registration and suspension or expulsion from NASD: 9

Proceedings ordered during year on denial of registration: 6

Total: 35

Denial proceedings dismissed, withdrawal of application being permitted: 3

Denial proceedings resulting in registration under terms and conditions: 2
Registration denied: 2

Registration revoked: 9

Revocation proceedings pending at end of fiscal year: 10

Revocation proceedings and proceedings to expel or suspend from NASD pending at end of fiscal year: 9

Total: 35

During the past 10 years a substantial number of administrative proceedings and several criminal prosecutions against brokers and dealers have involved the fraudulent practice of dealing in securities at prices not reasonably related to the prevailing market prices without disclosure of the current market, and of confirming transactions “as principal” when by its representations and conduct the firm in fact acted as the customer’s agent. Such practices, in part, resulted during the 1948 fiscal year in the revocation of the registration of May-Phinney Co. and in the denial of registration to Washington National Co., Inc., controlled by Herbert R. May who had been a general partner in the May-Phinney firm and before that had operated as a sole proprietorship under the name of Herbert R. Ma & Co. [Footnote: Securities Exchange Act release No. 4061 (1948).] By various artifices May sought and gained the trust and confidence of many customers who were uninformed in securities matters and relied on his representations and recommendations in the belief that he was acting in their behalf and for their best interests. Having thus insulated himself against any suspicion on the part of the customer, it was Mays practice to recommend that the customer purchase a particular security at a price which he knew, but did not disclose to the customer, was far in excess of the market price of that security and to confirm the transaction as a sale by him “as principal.” Similarly, he would recommend the sale by the customers of particular securities at prices far below the current market prices and again would confirm the transaction as a purchase by him “as principal.”

The Commission held that, by virtue of the trust relationship cultivated by him and the understanding reached by customers from his representations that he would act in their behalf and for them, he was under a duty not to deal with them for his own account (as principal) without their express consent. Furthermore, under these circumstances, he was obligated to obtain for them the best possible prices and to divulge all the profits he made. In violation of this duty May took large secret profits and without disclosing the facts charged customers prices greatly in excess of the current market prices, thereby violating the antifraud provisions of the statutes. But even assuming he had no duty to act as agent and assuming that he was in fact a principal, the Commission held that these transactions would also be fraudulent because the prices customers paid and received were not reasonably related to the prevailing market prices. The Commission also found that May violated the law in the sale of preferred stock of Washington Chemical & Salt Corp. which he organized and promoted. This stock was sold without registration under the Securities Act in violation of section 5 (a), and in the sale May made false and misleading representations with respect to

the company's financial condition and the value of its properties. This violation was all the more reprehensible because about 80 percent of the stock was sold to six widows, uninformed customers whose trust and confidence he had cultivated and who, from the very beginning of their dealings in securities with May, had indicated to him their need for nonspeculative investments which would produce a reasonable income.

In proceedings on the question of revocation of the broker-dealer registration of Arleen W. Hughes, doing business as E. W. Hughes & Co., the primary legal issue related to disclosures required of a fiduciary. [Footnote: Securities Exchange Act releases Nos. 4048, 4073, and 4080 (1948).] Mrs. Hughes, registered as both a broker and dealer and as an investment adviser, transacted business in securities with about 175 investment advisory clients with whom she had entered into a written contract winch purported to declare the respective rights and obligations of the parties. Under the contract Mrs. Hughes would act as a broker *or* dealer *and* investment adviser, and it provided that when acting as investment adviser, she should act as a principal "in every such transaction, except as otherwise agreed." The contract contained a schedule of "maximum rates and charges," expressed in points on a base-price formula, to be paid by the client on all purchases of securities. In the actual operation of her business, it was Mrs. Hughes' practice to handle the client's entire account, advising the client with reference to an investment program, furnishing information and making recommendations as to particular securities, and in connection with such recommendations she would give an approximate price that the securities would cost the client. If the client agreed to the purchase she would either supply it from inventory or purchase it to cover the sale and then, as principal, confirm the transaction as a sale of the security by her to the client at net price plus insurance and postage. The Commission's staff took the position that, because of the fiduciary relationship established by the contract, Mrs. Hughes was under a duty in each transaction to disclose the cost of the security to her and the best current market price. Mrs. Hughes, on the other hand, although admitting her fiduciary relationship to clients, contended that the disclosures made in the contract satisfied all of her fiduciary duties and obligations. The Commission, in its opinion and findings, held that her failure to disclose fully to her clients the nature and extent of her adverse interest in transactions with clients, including her cost of the security and the best price available on a purchase in the open market, constituted a violation of the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. Mrs. Hughes filed a petition with the Circuit Court of Appeals for the District of Columbia for review of the Commission's order revoking her broker-dealer registration and obtained a stay of the order pending such review.

In revoking the registration of Light, Wofsey & Benesch, Inc., and denying registration to Light Bros., the Commission considered certain activities of

Abraham Light, who was the dominant figure in both firms and also treasurer and a director of Seco Signal Corp. which he and his associates organized and promoted. [Footnote: Securities Exchange Act release No. 4052 (1948).] Securities of Seco had been sold to the public by a predecessor of Light, Wofsey & Benesch, Inc. The evidence disclosed certain instances in which Light made or was responsible for making express misrepresentations in offering Seco securities. In addition, it appeared that, before various contracts for the sale of the securities had been completed by delivery, Light and certain of his associates in at least two transactions obtained secret profits at the expense of Seco. At about the time of its formation Seco, acting through Light as treasurer and director, purchased a building and Light secretly received $500 of the commission from Herbert I. Benesch, the agent representing the seller of the building. Later, Light participated in the sale of electric storage batteries on behalf of Seco which resulted in a diversion from the company treasury of $25,000. This sum was divided among four persons, including Abraham Light, all of whom then made contributions to organize Light, Wofsey & Benesch, Inc. and became its officers. No disclosure was made of any of the facts relating to the diversions.

The Commission concurred in the finding of the hearing officer that the express misrepresentations and the diversion of funds from Seco without disclosure of the facts operated as a fraud on the public purchasers of the company's securities by Light and. his associates, and constituted willful violations of the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

The specter of the bucket shop appeared in three proceedings during the year in which the Commission ordered revocation of registration. [Footnote: *James E. Scott & Co*, Securities Exchange Act release No. 4088 (1948); *Louis J. Burns,* Securities Exchange Act release No. 4087 (1948); *Kenneth Lee Bauer* Securities Exchange Act release No. 4006 (1948).] The general pattern of conduct was substantially the same in all three instances. Customers were solicited to purchase particular securities which the firm highly recommended, and were induced by varying degrees of pressure and by various false representations to enter their orders. At the time a customer agreed to effect a purchase the firm would request payment of the purchase price, which would be made by the customer with the understanding, of course, that the transaction would be promptly executed. The firm, on the other hand, would not deliver the purchased securities nor would it return the cash it had received, but instead converted the cash paid by the customer to its own use. Similarly, customers who delivered securities to the firm for sale with the understanding that the proceeds of the sale would be promptly turned over to them received neither the proceeds nor the securities they had surrendered. Moreover, in the Barter proceeding the evidence showed that, contrary to the representations in the application, for registration, one D. W. Dawes, not K. L. Bauer, was the real owner and manager of the

business. Bauer, in street jargon, was merely a front for Dawes who, as his own convenience or necessity dictated, used various other names.

SUPERVISION OF NASD ACTIVITY

Membership

In the 1948 fiscal year membership in the National Association of Securities Dealers, Inc. (NASD), the only national securities association registered with the Commission, increased to a year-end total of 2,677, a gain of 63 during the year. At the same date 26,228 individuals, including generally all partners, officers, traders, salesmen, and all other persons employed by member firms in capacities which involved doing business directly with the public, were registered with the NASD as registered representatives, an increase of 655 during the year.

Disciplinary Actions

The Commission received reports from the NASD during the 1948 fiscal year on the dispositions of 10 disciplinary actions in which formal complaints had been filed against members. In three of these cases the complaints were dismissed. In the other seven cases the appropriate district business conduct, committee found that the NASD rules of fair practice had been violated by the accused members and imposed various penalties. The membership of one firm was suspended for 30 days; one member was fined $1,000 and censured and another was fined $250 and censured; in two cases members were censured and assessed costs of the proceedings; and in one case the member was censured. The seventh case involved a complaint filed jointly against a firm and one of its registered representatives, an officer and employee of the firm, charging the misappropriation of customers' funds and securities and the falsification of the books and records of the firm to conceal the misappropriations. The district business conduct committee having jurisdiction found that the registered representatives had violated the rules as alleged in the complaint and revoked his registration as registered representative. The committee found no fault with the employing firm and dismissed the complaint, as to it on a finding that the firm had brought to light the alleged violations, had promptly instituted a complete audit, had called the matter to the attention of the appropriate authorities, and had brought about full restitution to all customers injured by the misappropriations.

As is its custom the Commission referred to the NASD for appropriate action facts concerning the business practices of members where there were indications of possible violations of the NASD rules of fair practice. Seven such references were made in the 1948 fiscal year and one had been in process

before the NASD at the start of that year. Reports on six of these matters were received from the NASD during the year. Two of these involved formal complaint procedures in which violations were found, as reported above, and in which some penalty was imposed on the offending member. The other four cases had been disposed of by informal means. In these four cases the NASD undertook its own examination of the members cited in the reference. In two cases such examination, subsequent to the date of the facts referred to, showed a marked change in the practices of the member following the inspection by the Commission. Consideration of such correction and improvement led to the conclusion that no further action against the members was necessary. Independent examinations in the remaining two cases revealed other relevant facts or circumstances such as to convince the committees having jurisdiction that there was no basis for formal disciplinary action.

Commission Review of Actions on Membership

Under section 15A (g) of the Securities Exchange Act the Commission may review certain types of action by the NASD, including cases wherein membership is denied to an applicant. Such cases come before the Commission either on its own motion or on application by an aggrieved party. One such case, involving DeWitt Investment Co.. came before and was decided by the Commission during the year.

The petitioner had been denied membership on the grounds that (1) its principal officer, Paul K. Guthrie, had been suspended from the Philadelphia. Stock Exchange in 1922 for conduct inconsistent with just and equitable principles of trade, and (2) the petitioning firm was no. regularly engaged in the business of acting as a broker or dealer in securities.

After hearing, as well as on the record made before the NASD, the Commission held that inasmuch as the suspension by the exchange had occurred prior to the enactment of the Securities Exchange Act it was not a valid disqualification from membership in the NASD. On the second point the Commission stressed that, although the petitioner had theretofore effected only a few securities transactions, its stated purpose with respect to business proposed to be done if given the benefits of membership should also have been considered, particularly in the early stages of a new venture. Consideration of the firm’s past activities and professed intention led the Commission to find that the petitioner was actually engaged in the business of effecting transactions in securities and thus was not ineligible for membership under Section 1 of article I of the NASD bylaws. As required by statute under the circumstances, the Commission by order set aside the action of the NASD and required the NASD to admit the firm to membership. [Footnote: Securities Exchange Act release No. 4076 (1948).]

Under section 15A (b) (4) of the Securities Exchange Act, the Commission may be petitioned to determine whether it is in the public interest to approve or direct the admission to or continuation in membership of a firm if a partner, officer, director, or employee individually is disqualified from membership. Such petitions are in the first instance passed on by the NASD which, if it acts favorably to the applicant, becomes the petitioner before the Commission on behalf of the applicant. Should the NASD reject such an application, the applicant may directly seek a Commission order directing the NASD to admit or continue the applicant as a member.

The Commission gives public notice of the receipt]pt of applications under section 15A (b) (4) so that interested parties may present their views or request public hearings. In the absence of such a request the Commission either sets the matter down for hearing on its own motion or decides the question on the basis of the record without hearing. In addition the Commission will, upon request and under appropriate circumstances, keep confidential the identity of the employing firm, a procedure developed when it was advised that the publicity attendant upon a Commission proceeding had discouraged some members from taking the necessary legal steps to obtain approval of the employment of persons under some disqualification but who, with due regard. to the public interest, might appropriately be employed under supervision of an NASD member.

Two “approval” cases were decided by the Commission during the 1948 fiscal year and seven applications were in process or under advisement at the year end. One decision concerned Alois G. Scheidel, held by NASD to have been a “cause” for the expulsion in 1941 of A. G. Scheidel & Co., by and from the NASD under circumstances which required Commission approval or direction for the admission to or continuation in membership of any firm with which he later became associated. A petition was subsequently filed with the Commission by the NASD on behalf of Minnesota Securities Corp. who then employed Scheidel. The NASD found the firm ineligible for membership due to the employment of Scheidel, a disqualified person, but petitioned the Commission to approve the admission of the firm to membership. The Commission granted the application. [Footnote: Securities Exchange Act release No. 4033 (1947).]

A somewhat similar case involved John J. Bell, formerly a partner of W. F. Thompson & Co. and a “cause” for the expulsion of that firm by and from the NASD in 1942 for conduct inconsistent with just and equitable principles of trade. Bell subsequently obtained employment with a member firm which sought by petition to retain membership while employing a disqualified person. As in the former case the NASD acknowledged the disqualification but petitioned the Commission in Bell’s behalf and the Commission approved the application. [Footnote: Securities Exchange Act release No. 4034 (1947).]

CHANGES IN RULES AND FORMS

Rule X-3A12-2 -- Exemption for Municipally Guaranteed Securities

This rule was originally adopted to permit exchange trading without registration under the act in a security the income of which is substantially guaranteed by a State or political subdivision thereof. Under an amendment adopted during the fiscal year the exemption is extended to cover the period while a company previously exempted under the rule is in process of dissolution. [Footnote: Securities Exchange Act release No. 4077 (1948).]

Rule X-11D-1 -- Extension of Credit by Broker-Dealers

Section 11 (d) (1) generally prohibits a broker-dealer from effecting any transaction in connection with which he extends credit to a customer on any security which was part of a new issue in whose distribution he participated during the preceding 6-month period. In some cases the “new issue” subject to section 11 (d) (1) consists of additional shares of a class previously outstanding. In such cases old securities of the same class are not subject to the prohibition against extending credit. As a result it may be difficult during the 6-month period to distinguish between shares of the “new issue,” which are subject to the rule, and the previously outstanding shares, which are not. A purchaser’s ability to obtain credit from his broker in such a situation would depend therefore on the particular shares which the seller happened to deliver after the transaction. The problem was particularly difficult where the majority of the outstanding shares were “old” shares, not subject to the rule.

Under an amendment to rule X-11D1-1 during the year the problem was minimized by exempting a security of a mixed class, not predominantly “new,” provided that the particular security was sold to or purchased for the customer by the broker-dealer after he ceased to participate in the distribution of the “new issue.” [Footnote: Securities Exchange Act release No. 40443 (1948).] However, the proposal does not remove the prohibition against extensions of credit in connection with sales of “new” shares effected by a broker-dealer during the distribution of the “new issue.”

Rules X-12A-4, X-12D3-1 and X-12D3-2 -- Exemption From Listing for “When-Issued” Dealing

Holders of a security dealt in on an exchange are not afforded an exchange market for short-term warrants or subscription rights which have been issued to them unless such warrants or rights are registered on an exchange or each “subject security” (the security to be acquired by the exercise of the warrant or

subscription right) is admitted to dealing or is “in the process of admission to dealing on a national securities exchange”; and they are not afforded an exchange market; on a “when-issued” basis for such warrants or rights which are to be issued to them in the future, unless, among other prerequisites, each “subject security” is “in the process of admission to dealing on a national securities exchange.”

The three rules in question were amended by waiving the “in the process of admission” requirement to permit exempt trading in issued warrants and “when-issued” dealing in unissued warrants on national securities exchanges in certain cases where information regarding each subject security and its issuer is available from registration statements and periodic reports filed with the Commission under any of the statutes which it administers. [Footnote: Securities Exchange Act release No. 4053 (1948).]

Forms 12-K and 12A-K -- Annual Report Forms

Companies which report to the Interstate Commerce Commission on Form A are permitted, in connection with reports to the Securities and Exchange Commission on Forms 12-K and 12A-K, to file certain selected schedules in lieu of a complete Form A. Because of changes made in Form A by the Interstate Commerce Commission for the year ended December 31, 1947, the Commission revised the selected schedules to conform to these changes. Footnote: Securities Exchange Act release No. 4075 (1948).]

LITIGATION UNDER THE SECURITIES EXCHANGE ACT

Injunction and Appellate Proceedings Involving Brokers and Dealers

Most of the court cases under the act during the year were injunction actions against brokers and dealers who either were or should have been registered with the Commission under section 15 (a) of the act.

Three actions against registered brokers and dealers involved the financial responsibility of the defendants. In these three cases, *SEC v. Light, Wofsey & Benesch, Inc., et al.*, *SEC v. Raymond, Bliss, Inc.*, and *SEC v. York*, the Commission’s complaints charged that the defendants, in violation of the fraud provisions of the act, had accepted money and securities from customers without advising them that the defendants were insolvent. In addition, the *Light* complaint alleged a violation of rule X-15C3-1 of the act, which prohibits a broker-dealer from permitting his aggregate indebtedness to exceed 2,000 percent of his net

capital, and the *Raymond, Bliss* and *York* complaints alleged the hypothecation of customers' securities without their knowledge or consent.

In the *Light* case the Commission's complaint alleged that, except for furniture, fixtures, and certain other items which could not be readily converted into cash, the firm's assets consisted of a total of approximately $30 in cash and documentary stamps while it had liabilities in excess of $5,000. After the United States District Court at Baltimore had entered a preliminary injunction on this count, the Commission in an administrative proceeding revoked the firm's broker-dealer registration for violations including the insolvency count. The revocation of the firm's registration having rendered the court action moot, the Commission's complaint and the preliminary injunction were thereafter dismissed without prejudice. [Footnote: Civil No. 3645, D. Maryland, April 7, 1948.]

Both the *Raymond, Bliss,* and *York* cases were pending from the preceding fiscal year and are described in the Thirteenth Annual Report. In the *Raymond, Bliss* case a consent permanent injunction was entered on the Commission's complaint during the past fiscal year after the family of the registrant, who was deceased, had made an assignment of $30,000 for the benefit of creditors. Because of the assignment the Commission's request for the appointment of a receiver of the firm's assets was denied. However, the court reserved jurisdiction on the question to permit a future request by the Commission for a receiver should developments so require. [Footnote: Civil No. 5999, D. Massachusetts, Sept. 12, 1947.] The *York* case was dismissed during the past fiscal year after the defendant had been shot and killed by his principal creditor. [Footnote: Civil No. 894, W. D. Texas, July 31, 1947.] A concurrent administrative proceeding instituted by the Commission to revoke York's registration as a broker-dealer was also thereupon discontinued. [Footnote: Securities Exchange Act No. 3965 (1947).]

Two of the injunction actions involved persons conducting a business in securities without being registered with the Commission as required by section 15 (a) of the act. One was *SEC v. Atlas Investment Co., Inc., Anchor Investment Co., Inc., and John R. Jones*, filed in the United States District Court for the Western District of Missouri. The two corporations had been engaged in the securities business in St. Joseph, Mo., under the management and control of Jones, who was a stockholder in both corporations. The defendants admitted that they had defrauded their customers by misrepresenting the prices at which they were effecting securities transactions and by taking secret profits. In addition it was admitted that the corporations, not having registered as brokers and dealers, had neglected to keep proper records and to file reports of financial condition with the Commission, and had not given proper confirmations to their customers. The defendants consented to the entry of a final injunction as sought by the Commission. [Footnote: Civil No. 469, W. D. Missouri, June 24, 1948).]

The second of these actions was SEC v. Burmeister & Co., Inc., J. E. Burmeister, and Max Leiber, filed in the United States District Court at Nashville, Tenn. The Commission in its complaint charged that the corporation had been executing transactions in securities without being registered as a broker or dealer with the Commission and that the individual defendants had aided and abetted the corporation in this violation of section 15 (a) of the act. The complaint charged also that the defendants for several years had been selling securities consisting of fractional undivided interests in oil and gas leases and royalties in mineral rights in land in Texas without complying with the registration requirements of the Securities Act of 1933. A permanent injunction by consent was entered shortly after the close of the fiscal year. [Footnote: M. D. Tennessee, July 1948.]

With respect to appellate court proceedings to review Commission orders, only one new action was instituted during the past fiscal year. That case is *Arleen W. Hughes v. SEC*, filed in the Court of Appeals for the District of Columbia Circuit shortly before the close of the fiscal year. [Footnote: No. 9853, App. D. C.] The action is one to review the Commission's order revoking the broker-dealer registration of Mrs. Hughes. The basis of the appeal is that the Commission erred as a matter of law in finding that it was a willful violation of the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 for the registrant, who was registered both as a broker-dealer under the Securities Exchange Act and as an investment adviser under the Investment Advisers Act of 1940, to sell her own securities to her investment advisory clients without fully disclosing the nature and extent of her adverse interest. This disclosure, the Commission held, should have included the capacity in which she acted (i.e., whether as principal or agent) , the cost of securities to her, and the current market price of the securities. The appeal alleged also that it was unlawful discrimination on the part of the Commission to treat the registrant, who was registered as an investment adviser as well as a broker-dealer, differently from any other registered broker-dealer in imposing duties of disclosure.

A second appellate court action involving a broker-dealer was *Lann v. SEC*, pending from the preceding year. This appeal, described in the Thirteenth Annual Report, was the first petition for judicial review of a Commission finding of manipulation in the over-the-counter market. Lann was a partner of M. S. Wien & Co., whose registration as a broker-dealer the Commission had revoked for an over-the-counter manipulation in violation of sections 10 (b) and 15 (c) (1) of the Securities Exchange Act and rules X-10B-5 and X-15C1-2 thereunder. While the court review was pending Lann filed an application with the Commission for registration as a broker-dealer, Wien & Co. having been readmitted to registration after Lann's separation from the firm. The Commission, in view of Lann's having been out of business for a year and in consideration of his record both prior and subsequent to the revocation of the registration of Wien & Co.,

permitted Lann's application for registration to become effective. Lann's petition in the appellate court to review the revocation of Wien & Co. was thereupon dismissed. [Footnote: No. 9460, App. D. C., November 15, 1947.]

The final appellate court review proceeding during the year was *Norris & Hirschberg, Inc. v. SEC*, an appeal from a Commission order revoking the petitioner's registration as a broker-dealer for violation of the antifraud provisions of the Securities and Securities Exchange Acts. After the Commission had filed a transcript of its record in the court of appeals the petitioner raised numerous objections to a consideration of the case by the court upon that transcript. Some of those objections have been discussed in Twelfth and Thirteenth Annual Reports. During the past year an effort was again made to compel the Commission to include in the transcript of record a summary of the evidence which it was alleged the staff had prepared for the use of the individual Commissioners, and petitioner sought to inquire into the decisional process of the Commission to determine how various items in the record to which it objected were treated by the Commission. The petitioner filed a motion asking that a master be appointed, interrogatories framed and issued, or detailed statements concerning these matters certified by the Commission. The court of appeals denied the motion and denied a request for findings of fact and conclusions of law. The petitioner then applied to the United States Supreme Court for a writ of certiorari. This too was denied [333 U.S. 867 (1948)], and just before the close of the fiscal year the court of appeals heard argument on the merits of the case.

Injunction Actions Against Persons Other Than Broker-Dealers

One case in this category consummated during the year was *SEC v. Transamerica Corp.*, an action based on regulation X-14, comprising the Commission's proxy rules. This case was reported previously in the Twelfth Annual Report at page 106 and in the Thirteenth Annual Report at page 62. The action was brought by the Commission for the purpose, among others, of compelling the defendant corporation to resolicit proxies originally obtained as a result of solicitations which failed to include proposals which a minority stockholder sought to have brought before the annual meeting. These proposals were: (1) to permit the stockholders to amend the bylaws at any annual meeting without the requirement that such proposed amendments be contained in the corporation's notice of meeting; (2) to hold the annual meetings in San Francisco, Calif., instead of Wilmington, Del.; (3) to cause auditors to be elected by the stockholders and to have a representative of the auditors last chosen attend the annual meeting; and (4) to require that an account of the proceedings at annual meetings be sent to all stockholders. These proposals had been submitted to the corporation by the minority stockholder under rule X-14A-7 (since redesignated rule X-14A-8), which provides that, if a qualified security holder has given the management reasonable notice that he intends to present a proposal which is a

"proper subject for action" by security holders, the management shall set forth the proposal in the proxy soliciting material, and provide means by which the security holders can vote on the proposal as required elsewhere in the proxy rules.

The Commission supported the request of the minority stockholder on all four proposals. The district court sustained the position of the Commission on the proposal relating to the election of independent auditors by the stockholders, but held for the corporation on proposals (1) and (4). Proposal (2) had become moot by the corporation's changing the place of annual meeting to San Francisco. However, the court granted the Commission's request for an order enjoining the management from violating section 14 (a) of the Securities Exchange Act and rules X-14A-2 and X-14A-7 thereunder.

On appeals by both sides to the Court of Appeals for the Third Circuit, the district court's decision was modified to sustain the position of the Commission on the three proposals still in issue. The court of appeals found for the Commission on the ground that (a) each of the proposals was "a proper subject for action" by the stockholders under the law of Delaware, where the defendant was incorporated, and (b) the management's attempt to block any stockholder proposal by declining to include it in the notice of meeting was contrary to the purpose of Congress in the Securities Exchange Act to prevent the control of corporations by a very few persons. The corporation filed a petition for a writ of certiorari in the Supreme Court of the United States, which was denied. Thereafter, without submitting the matter to a vote of the stockholders, the board of directors adopted the proposals concerning the selection of the auditors' and the sending of reports to stockholders. The third proposal, designed to amend the bylaw provision relied upon by the management to preclude matters from being taken up at annual meetings, was abandoned by its stockholder sponsor as unnecessary in the light of the decision of the court of appeals.

Participation by the Commission in Private Actions

It is the usual practice of the Commission, where private litigation involves questions of construction of the statutes it administers, to seek leave of the court to express its views in a memorandum filed as amicus curiae. One case in which the Commission filed such a memorandum during the year was *Phillips v. The United Corp.*, in the United States District Court for the Southern District of New York. The Commission took the position that the court had jurisdiction to entertain an action by a complaining stockholder for an injunction and other equitable relief founded upon alleged violations of the Commission's proxy rules promulgated under the Public Utility Holding Company Act of 1935, provided that the stockholder had exhausted his administrative remedy by first bringing his complaint to the Commission for any action it might take in the exercise of its primary responsibility for securing enforcement of the statutes it administers. The

Commission conceded that the stockholder had satisfied this condition in the instant case, but expressed the view that the action was without merit because: (1) To the extent that it sought invalidation of a stockholder's vote on a management plan for the operation of The United Corp. as an investment company after it had ceased to be a holding company, a justiciable controversy was not before the court since the vote was without legal significance except as it might affect future discretionary action of the Commission; and (2) to the extent that the plaintiff sought invalidation of the election of United's board of directors on the ground of unlawful expenditures by the management in the solicitation of proxies in violation of the Commission's rule U-65, it did not appear from the circumstances that the rule had in fact been violated.

The court sustained the Commission's position that such a suit could be brought by a stockholder and indicated agreement with certain of the other views expressed by the Commission, but denied the defendants' motion for summary judgment on the ground that the plaintiff should be afforded an opportunity to prove certain of his charges at a trial. [Footnote: CCH Fed. Sec. Law Serv., par. 90, 395] Shortly before the close of the fiscal year, the issues as to the election of directors having been made moot by their uncontested reelection at a subsequent annual meeting of stockholders, the court stayed the cause pending such disposition as the Commission might make of an application by the corporation for an order declaring it no longer to be a public utility holding company. [Footnote: CCH Fed. Sec. Law Serv., par. 90, 412] Following the close of the fiscal year an appeal was taken by the plaintiff to the Court of Appeals for the Second Circuit, where it was heard together with a related appeal [*Phillips v. Securities and Exchange Commission*, No. 20, 523] taken directly to that court under section 24 (a) of the Public Utility Holding Company Act with respect to certain action of the Commission preliminary to the management's solicitation of proxies.

There were a number of additional actions during the year, involving sections 10 (b), 14, and 16 (b) of the act, in which the Commission either participated as amicus curiae or over which close observation was maintained. In none of these were there any particularly significant developments during the year.

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

The Public Utility Holding Company Act of 1935 was adopted following an extensive investigation by the Federal Trade Commission and after exhaustive

hearings and debates by the Congress. These inquiries disclosed a variety of abuses in public utility holding company finance and operations which the act was designed to correct. The more significant of these are enumerated in section 1 (b) of the act: (1) inadequate disclosure to investors of the information necessary to appraise the financial position and earning power of the companies whose securities they purchase; (2) the issuance of securities against fictitious and unsound values; (3) the overloading of the operating companies with debt and fixed charges thus tending to prevent voluntary rate reductions; (4) the imposition of excessive charges upon operating companies for various services such as management, supervision of construction and the purchase of supplies and equipment; (5) the control by holding companies of the accounting practices and rate, dividend and other policies of their operating subsidiaries so as to complicate or obstruct state regulation; (6) the control of subsidiary holding companies and operating companies through disproportionately small investment; (7) the extension of holding company systems without relation to economy of operations or to the integration and coordination of related properties.

The act covers all holding company systems which are engaged in the electric utility business or in the retail distribution of natural or manufactured gas. It was particularly designed to eliminate holding companies serving no useful purpose, and thus to afford to the operating companies the advantages of localized management and to strengthen local regulation. This objective finds its most direct expression in section 11 of the act. Section 11 (b) (1) requires the operations of holding company systems to be limited to one or more integrated systems and to such additional businesses as are reasonably incidental or economically necessary or appropriate to the operation of the integrated systems. Section 11 (b) (2) requires elimination of undue complexities in corporate structures of holding company systems and the redistribution of voting power among their security holders on a fair and equitable basis. The act provides also for the registration of holding companies (sec. 5); regulation of security transactions of holding companies and their subsidiaries (secs. 6 and 7); regulation of acquisitions of securities and utility assets by holding companies and their subsidiaries (secs. 9 and 10); regulation of sales of public utility securities or assets, payment of dividends. solicitation of proxies, intercompany loans and other intrasystem transactions (sec. 12) ; control of services, sales, and construction contracts (sec. 13) ; and the control of accounting practices (sec. 15).

COMPANIES REGISTERED UNDER THE ACT

As of June 30, 1948, there were registered under the act 46 public utility holding company systems comprising 73 holding and subholding companies, 309 electric

and gas subsidiaries, and 323 nonutility subsidiaries. The assets of these 705 companies aggregated approximately $14,488,000,000. On June 30, 1947, 52 holding company systems had been registered, with 89 holding and subholding companies, 336 electric and gas subsidiaries and 409 nonutility subsidiaries. The assets of those 834 companies aggregated about $15,350,000,000. The decrease of approximately $870,000,000 in assets subject to the statute reflects primarily the divestment of companies and properties under section 11 modified by a substantial expansion of assets of those companies remaining under the act, as indicated below.

(chart omitted)

As suggested by these figures, the task of administering the act during the past year has been concentrated in the integration and simplification of holding company systems and in the processing of a very heavy financing program for the operating utility subsidiaries.

INTEGRATION AND CORPORATE SIMPLIFICATION UNDER SECTION 11

Under standards requiting both the disposal of properties not retainable under the physical integration standards of section 11 (b) (1) and the elimination of undue corporate complexities as required by section 11 (b) (2), holding companies divested themselves of 39 direct subsidiaries with assets of $3,198,000,000 during the year. Twenty-nine of these companies with assets of $1,522,000,000 were released from the jurisdiction of the act and the remainder continued subject to the statute. This compares with the divestment of 31 subsidiaries with assets of $1,978,000,000 in the 1947 fiscal year, of which number 23 companies, with assets of $870,000,000, are no longer under the jurisdiction of the act. The total of subsidiaries divested since December 1, 1935 is 470, with total assets of $11,312,000,000, of which 395 companies with assets of $6,972,000,000 are no longer subject to the statute. A complete analysis of these divestments appears in the following tables.

(charts omitted)

Viewed from the standpoint of methods of disposition employed, the divestments of the past year have followed a pattern very similar to that of the 1947 fiscal year. Reflecting continuation of the less favorable markets for equity securities which have prevailed since the latter part of 1946, only four divestments were accomplished during the 1948 fiscal year by means of public offerings for cash. These involved common stock of the following companies:

Detroit Edison Co.

Northern Natural Gas Co.
Public Service Co. of New Mexico.
American Water Works Co., Inc.

Both the Detroit Edison and the Northern Natural Gas common stocks had previously enjoyed good markets, which facilitated their distribution. The American Water Works stock was sold subject to the prior exercise of subscription warrants and exchange rights.

Five divestments were effected by means of sales to cooperatives or public utility districts, 14 represented sales to other utilities, and 3 were private sales to individuals. The great bulk of the divestments took the form of outright distributions to security holders of the parent companies or of exchanges.

Stocks of the following companies were distributed directly to the common stockholders of the parent company:

Central Illinois Public Service Co. by Middle West Corp.

Conowingo Power Co. by Susquehanna Utilities Co.

East Coast Electric Co. by East Coast Public Service Co.

El Paso Electric Co. by Engineers Public Service Co.

Potomac Electric Power Co. by North American Co.

Southern Pennsylvania Power Co. by Susquehanna Utilities Co.

South Jersey Gas Co. by Public Service Co. of New Jersey.

Virginia Electric & Power Co. by Engineers Public Service Co.

West Penn Electric Co. by American Water Works & Electric Co., Inc.

Wisconsin Electric Power Co. by North American Co.

Other distributions to security holders of the parent companies or by exchanges for the securities, of parent companies were as follows:

Atlanta Gas Light Co. by Consolidated Electric & Gas Co.

Edison-Sault Electric Co. by American States Utilities Corp.

Hartford Gas Co. by Connecticut Gas & Coke Securities Co.

Interstate Power Co. by Ogden Corp.

Minneapolis Gas Light Co. by American Gas & Power Co.

New England Power Association by International Hydro Electric System.

New Haven Gas Light Co. by Connecticut Gas & Coke Securities Co.

Portland General Electric Co. by Portland Electric Power Co.

Public Service Electric & Gas Co. by Public Service Corp. of New Jersey.

Southern California Water Co. by American States Utilities Corp.

These data do not include a number of indirect divestments. In addition, simplification has resulted also from merger or consolidation of companies and many companies have been released from the jurisdiction of the act by exemption. Thus the over-all reduction in the number of companies subject to the act is much greater than has been indicated. From June 15, 1938, to June 30, 1948, a total of 2,145 companies had become subject to the act, whereas on June 30, 1948, only 714 remained thus subject. Two hundred and forty-nine companies were absorbed by merger or consolidation, 889 were sold, dissolved, or otherwise divested, and 149 were released from jurisdiction of the act by exemption under section 3 or declarations of status under sections 2 and 5. The following tables present the record for the entire period and for each of the past two fiscal years.

(charts omitted)

The changes in the aggregate assets of holding company systems subject to the act have not been as pronounced during the past 10 years as the sharp reduction in the number of companies. Comparable data for the smaller companies and for nonutility companies have not been assembled for the earlier years, but an analysis has been made of electric and gas subsidiaries with assets of $5,000,000 or over. This group constitutes the bulk of all assets subject to the act.

From December 31, 1938 to June 30, 1948, a total of 276 companies in this category had become subject to the Commission’s jurisdiction. On December 31, 1938, these companies had aggregate assets of approximately $14,000,000,000. Ninety two with assets of $4,100,000,000 on that date have been released from the jurisdiction of the act by divestment [Footnote: 72 companies with assets of

$3,700,000,000 on December 31, 1938.] or otherwise. [Footnote: 20 companies with assets of $400,000,000 on December 31, 1938.] One hundred and eighty-four companies, with assets of $9,900,000,000 on December 31, 1938, remained subject to the act. The 92 companies released from the jurisdiction of the act ultimately contracted by merger or consolidation into 62 companies by June 30, 1948, with assets of about $5,000,000,000. [Footnote: Assets calculated as of December 31, 1947.] The 184 companies still subject to the act became 155 companies by June 30, 1948, with assets of approximately $11,000,000,000. [Footnote: Assets calculated as of December 31, 1947.] Overall, the 276 companies originally subject to the act contracted in later years by merger or consolidation (but not by divestment) into 217 companies on June 30, 1948, with assets of approximately $16,000,000,000. [Footnote: Assets calculated as of December 31, 1947.]

Some of the effects of limiting interstate control by holding companies are indicated by a comparison of the geographical dispersion of the systems under the act today with the situation existing in 1940.

(chart omitted)

While, in past years, substantial emphasis has been placed upon the divestment of unretainable assets of holding companies, activity has centered also around retainable properties which are being knitted into integrated systems subject to the Commission's continuing jurisdiction. Divested companies remaining subject to the act have been fitted either into new integrated systems created from suitable portions of the old systems or into entirely different systems with which integration of the divested properties is found to be feasible, Thus, the reorganization of the former system of American Water Works & Electric Co., Inc. involved the segregation of the utility and miscellaneous properties under The West Penn. Electric Co., a former subsidiary which now is a top registered holding company under the act. The Commonwealth & Southern Corp. reorganization has produced the formation of The Southern Co., a registered holding company whose subsidiaries comprise the former southern utility properties of the old parent company. The so-called "Central System" of American Gas & Electric Co. system is being developed as an integrated utility system through various purchases and sales of properties, thus requiring the parent to remain registered as a holding company. Numerous other systems such as Central and South West Corp., Columbia Gas System, Inc., Consolidated Natural Gas Co., and New England Electric System might also be mentioned in this connection. Some problems of integration remain in many of these systems, but it is now readily apparent that a substantial number of new integrated systems are in the making.

STATUS OF INTEGRATION AND SIMPLIFICATION PROGRAMS

There has been activity during the 1948 fiscal year in nearly all of the public-utility holding company systems subject to the act. Principal developments, however, occurred in the following 15 systems, which are described in this section:

American Gas & Electric Co.

Cities Service Co.

The Commonwealth & Southern Corp.

Electric Bond & Share Co.

Engineers Public Service Co.

International Hydro-Electric System.

The Middle West Corp.

New England Public Service Co.

The North American Co.

Ogden Corp.

Standard Power & Light Corp.

Standard Gas & Electric Co.

The United Corp.

The United Light & Railways Co.

The West Penn Electric Co.

American Gas & Electric Co.

American Gas & Electric-Co. (American Gas) has proceeded during the past fiscal year with the divestment of its common stock holdings in Atlantic City Electric Co. (Atlantic City). This constitutes the only remaining holding which the Commission has held to be not retainable by this company under section 11. In September 1947 American Gas disposed of 343,106 shares, or 30 percent of its

common stock holdings in Atlantic City, by a sale to underwriters. [Footnote: Holding Company Act Release No. 7717.] An additional 448,232 shares has since been distributed as dividends by American Gas up to June 30, 1948. It is anticipated that similar stock dividend payments will complete the divestment of this holding by the close of 1948.

In April 1948 Indiana Service Corp., a subsidiary of American Gas, disposed of its transportation properties in Fort Wayne as required by previous order of the Commission. [Footnote: File No. 70-1777] Indiana Service Co. has since been merged, with Commission approval, into another subsidiary, Indiana & Michigan Electric Co. [Footnote: Holding Company Act Release No. 8325]

On August 10, 1948, approval was given to the acquisition by American Gas of the common stock of Citizens Heat, Light & Power Co. (Citizens) of Indiana from United Public Utilities Corp. [Footnote: Holding Company Act Release No. 8453] It was found that this acquisition tended toward the economical and efficient development of the so-called Central System. The approval was conditioned, however, so that American Gas was required to dispose of Citizens' water properties within 1 year from the acquisition date.

Cities Service Co.

Cities Service Co.'s (Cities) plan of corporate simplification filed pursuant to section 11 (e) was consummated in June 1947. Under that plan, new debentures were issued by Cities to holders of its outstanding preferred and preference stocks in a principal amount equivalent to their redemption prices plus accumulated dividend arrears, the latter totaling approximately $50,000,000. Provision was also made for the immediate retirement of about 40 percent of outstanding long-term debt and for application of anticipated proceeds from the disposition of utility subsidiary companies to the retirement of the remaining long-term debt and to the reduction in the amount of new debentures.

Federal Light & Traction Co. (Federal), a subsidiary holding company of Cities, was liquidated in October 1947 pursuant to a plan filed under section 11 (e). The plan was approved on September 11, 1947 [Footnote: Holding Company Act Release No. 7701], and provided, in part, for the immediate cash payment to preferred stockholders of the stated value ($100) of their stock plus accrued dividends and for a pro rata distribution to the common stockholders of shares in Public Service Co. of New Mexico (Public Service) and Federal Liquidating Corp., the latter formed as a vehicle for consummating the plan. The common stockholders of Federal also received an $11 per share cash distribution. An amount of cash covering the call premium on the outstanding shares of preferred stock was placed in escrow pending a determination of any additional amounts to which the preferred holders may be entitled. Reservation of jurisdiction over this

matter was expressly ordered. In April 1948, Cities disposed of its interest in the common stock of Public Service Co. of New Mexico, acquired by reason of the liquidation of Federal. Disposition was made by sale at competitive bidding. [Footnote: Holding Company Act Release Nos. 8067 and 8113]

An application was filed in. May 1948 by Arkansas Natural Gas Corp. (Arkansas), a holding company subsidiary of Cities, which involves the creation of two new corporations to which are to be transferred the pipe-line transportation system and the natural-gas producing properties, respectively, now owned by Arkansas Louisiana Gas Co. (Ark-Lou), a subsidiary of Arkansas. The capital stocks of the new corporations are to be acquired by Ark-Lou and distributed to its parent, Arkansas. This will leave Ark-Lou owning only gas distribution properties. After these transactions are completed all of the capital stock of Ark-Lou will be sold by Arkansas. Hearings on the application have not yet been concluded.

The Commonwealth & Southern Corp.

On August 1, 1947 [Footnote: Holding Company Act Release No. 7615], the Commission approved a plan, filed as a part of this company's over-all program under section 11, providing, in substance, for the transfer by Commonwealth of all of its interest in four southern operating companies to a new holding company, The Southern Co. (Southern). On the same date, pursuant to the standards of section 11 (b) (1), the Commission required the divestment from the Commonwealth holding company system of its northern subsidiaries, South Carolina Power Co., and. its interest in the nonelectric properties of the aforesaid four southern operating subsidiaries. In connection with this plan Commonwealth had agreed to dispose of all its interests in subsidiary companies, other than those transferred to Southern, and to dispose of its interest in Southern after the retirement of Commonwealth's preferred stock.

In accordance with Commonwealth's agreement, a new plan under section 11 (e) was filed by Commonwealth on July 30, 1947. [Footnote: Holding Company Act Release No. 7667] It provided, briefly, for: (a) The retirement of all of its outstanding preferred stock by the distribution in exchange therefor of its portfolio common stock holdings in two subsidiaries, Consumers Power Co. and Central. Illinois Light Co.; (b) the distribution of Commonwealth's remaining assets to the holders of its common stock; (c) the cancellation of Commonwealth's option warrants; and (d) the dissolution of Commonwealth.

Hearings on the plan were instituted in October 1947 and concluded in January 1948. Subsequently, representatives of substantial amounts of Commonwealth's preferred and common shareholders offered a "compromise proposal" which would alter somewhat the ratios of stock allocation and the amount of cash payment to the preferred stockholders. On June 11, 1948, the staff of the

Division of Public Utilities filed its proposed findings and opinion in which it found that the plan as filed was unfair to the preferred stockholders since it did not adequately compensate them for the surrender of their rights. It was stated, however, that the plan could be found fair if it were amended in a manner consistent with suggestions in the "compromise proposal." On July 7, 1948, Commonwealth amended its plan in a manner deemed by the company to be consistent with the "compromise proposal" and the staffs proposed findings. The hearings were reopened on the amended plan, further evidence taken, and the record closed. The case is now before the Commission for its decision.

During the fiscal year there have been various divestments from the Commonwealth holding company system pursuant to the terms of the statute. Commonwealth's interest in South Carolina Power Co. has been sold to a nonaffiliated company. [Footnote: Holding Company Act Release No. 8080] Additional divestments by companies in the Commonwealth system included the sale by Alabama Power Co. of its gas distribution properties at Phenix City, Ala. [Footnote: Holding Company Act Release No. 7565], and its transportation properties at Tuscaloosa, Ala. [Footnote: Holding Company Act Release No. 7730]; the sale by Gulf Power Co. of its gas properties in the city of Pensacola, Fla. [Footnote: Holding Company Act Release No. 8163] ; the sale by Southern Indiana Gas & Electric Co. of its transportation properties in Evansville, Ind. [Footnote: File No. 70-1880]; and the sale by Georgia Power Co. of its gas properties located in Columbus and Americus, Ga. [Footnote: Holding Company Act Release No. 8393]

Electric Bond & Share Co.

Electric Bond & Share Co. (Bond & Share) is continuing its program of reducing its holdings of utility stocks, looking toward the final divestment of all such investments in the United States and its emergence as an investment company. Bond & Share presently has four major subholding companies: American & Foreign Power Co., Inc. (Foreign Power); American Power & Light Corp. (American); Electric Power & Light Corp. (Electric) and National Power & Light Co. (National). American Gas & Electric Co., formerly a subholding company, ceased to be a statutory subsidiary of Bond & Share in March 1947. [Footnote: Holding Company Act Release No. 7285]

The plan of reorganization of Foreign Power was discussed in findings issued by this Commission on November 4, 1947 [Footnote: Holding Company Act Release No. 7815], and approved on November 19, 1947 [Footnote: Holding Company Act Release No. 7849], after the filing of certain modifications. Application was then made to the United States district court for enforcement. Under the plan, Foreign Power's corporate structure, presently consisting of two classes of debt securities, three series of preferred stock, common stock, and option warrants to

purchase common, would be recapitalized and simplified by the issuance and substitution of two debenture issues and common stock. On September 16, 1948, the court entered its decision approving the plan as submitted.

During November 1947, American, which is largest of the four Bond & Share subholding companies, advised the Commission that market conditions were such that its then pending plan was no longer feasible and that it proposed to file a new plan for disposition of its assets and readjustment of the rights of its security holders. The new plan pursuant to section 11 (e) was filed jointly by American and Bond & Share on April 8, 1948. [Footnote: Holding Company Act Release No. 8157] In general, the plan proposes the distribution, directly or indirectly, by American to its preferred and common stockholders of all its assets. Specific allocations of American's assets to its preferred and common stockholders were not included in the plan as filed. The joint applicants were not in agreement, at the time of filing, on such allocation. But the two companies expect to reach agreement after the conclusions of hearings on the application or to file separate amendments containing their individual allocation proposals at that time. Bond & Share has indicated that within 1 year after the effective date of the plan it will dispose of any securities received by it from American under the plan. Hearings before the Commission are presently in progress on this plan.

Electric, another subholding company of Bond & Share, also withdrew the section 11 (e) plan which it had on file with the Commission because of changes in market conditions. A new four-part plan was filed jointly by Electric and Bond & Share on March 25, 1948. [Footnote: Holding Company Act Release No. 8086] The plan provides for the transfer to a new company of securities of four of Electric's subsidiaries which operate in the Arkansas, Mississippi and Louisiana area. Electric will receive the common stock of the new company, which will register as an electric utility holding company. Provision is also made for the settlement of claims against Bond & Share and its subsidiaries by the payment of $2,200,000 to Electric. The third part of the plan contemplates an allocation of Electric's common-stock holdings in United Gas Corp. and the new holding company to the existing classes of preferred stock to effect a retirement of these shares. Finally, Electric is to be dissolved and its assets, consisting of the remaining shares of its holdings in United Gas Corp. and the new holding company, will be distributed among the common stockholders. Hearings on this program have been closed, briefs filed, and oral argument held. The matter is now before the Commission.

National, the fourth subholding company of Bond & Share, has already disposed of substantially all of its interests in utility subsidiaries. The consolidated book assets of this holding company have contracted from a figure of $570,000,000 at the date of initial registration with the Commission to approximately $45,000,000 at the present time. In 1947, National filed an amended plan under section 11 (e)

for the reorganization of Lehigh Valley Transit Co. (Lehigh), largest of its remaining subsidiaries. This is a further step looking toward the final distribution of National's remaining assets and its complete liquidation. Under this plan Lehigh would retire its outstanding bonds with cash or the delivery of Pennsylvania Power & Light Co. 4.5 percent preferred stock shares. The preferred stock of Lehigh would be retired by cash payment to the public holders and the issuance of new common shares for those preferred shares held by National. Additional new common would be issued to replace the old common, publicly held, on a share-for-share basis. This plan was approved with some modification by the Commission after the close of this fiscal year and the application for enforcement in the district court has also been approved. [Footnote: Holding Company Act Release Nos. 8445 and 8467]

Engineers Public Service Co., Inc.

Engineers Public Service Co., Inc. (Engineers) has progressed with its program under section it to the point where its consolidated assets have been reduced from $370,000,000 at the time of original registration to a current figure of approximately $5,000,000. Its eventual liquidation awaits the results of final court determination with respect to certain aspects of its plan of reorganization filed under section 11. This plan as amended was approved by this Commission on January 8, 1947 [Footnote: Holding Company Act Release No. 7119] and application for enforcement was made in the district court. On May 15, 1947, that court disapproved a part of the plan calling for the payment of the full voluntary redemption prices in retiring Engineers' preferred stocks. However, it permitted consummation of the plan by the payment of $100 plus accrued dividends to the preferred holders and the escrowing of an amount insufficient to cover the difference between the involuntary liquidation price and the voluntary redemption prices in the event that it should be determined on appeal that the preferred stockholders were entitled to the larger amounts.

On appeal from the decision of the district court, the circuit court of appeals on March 19, 1948, expressed agreement with the district court's conclusion that the plan of reorganization for Engineers was unfair and inequitable, but vacated that court's order, upon the ground that the district court should have entered an order disapproving the plan originally submitted to it, instead of modifying the plan as it had done. [Footnote: 168 F. (2d) 722]

On August 23, 1948, since the close of the fiscal year, this Commission has petitioned the United States Supreme Court for a review of the final order of the third circuit court. The Supreme Court has granted certiorari.

International Hydro-Electric System

This company (IHES) is presently under order of the Commission to liquidate and dissolve. On September 12, 1947, a plan toward this end was approved. The plan provided for the payment by IHES to its debenture holders of 30 percent of the principal, amount of its outstanding debentures. [Footnote: Holding Company Act Release No. 7714] The plan also received approval of the district court and has been consummated.

Additional plans providing for the complete liquidation of IHES have been filed by a number of parties, including the trustee for the company and various security holders. However, one such holder contends that due to changing circumstances the Commission's order for dissolution of the company should be altered to one requiring only its reorganization. Extended hearings on all such plans have been conducted since October 1947 and were not yet concluded at the close of the fiscal period.

The IHES holding company system has already been substantially contracted. At the time of initial registration there were 66 direct and indirect subsidiaries as against 10 at the close of the fiscal year. Consolidated assets likewise show a reduction of approximately $400,000,000.

The Middle West Corp.

In May 1947 the management of the Middle West Corp. (Middle West) deemed it advisable for the benefit of stockholders to dissolve the corporation. It presented an appropriate resolution to its stockholders who, in August 1947, voted in favor of this decision. Middle West has filed no overall plan of dissolution but has taken a number of steps tending toward that result. Its common stock holdings in Oklahoma Power & Water Co. were sold to another company in December 1947. [Footnote: Holding Company Act Release No. 7942] In February, it disposed of its common stock of Central Illinois Public Service Corp. by distribution to its own common stockholders. [Footnote: By Commission order dated January 23, 1948] A plan of its subsidiary, North West Utilities Co. (North West), approved by the Commission on December 31, 1947 [Footnote: Holding Company Act Release Nos. 7905 and 7951], was also carried to completion after receipt of the district court order of enforcement in March 1948. This plan, filed under section 11 (e), provided for the distribution, of cash and common shares of Wisconsin Power & Light Co. in exchange for the publicly held shares of North West preferred stocks. The remaining assets of North West consisting of additional common shares of Wisconsin Power & Light Co. plus cash were distributed to Middle West. Dissolution of North West is anticipated as soon as practicable.

New England Public Service Co.

In connection with the plan of reorganization described in the Thirteenth Annual Report, the Commission instituted enforcement proceedings in the district court and, on August 6, 1947, the court approved the plan and ordered it carried out. [Footnote: 66 F. Supp. 378] Thereafter, New England Public Service Co. elected to go forward with one of the alternative procedures permitted by the plan and gave notice of its adoption of the so-called "alternative 1," which gave to the prior lien preferred stockholders of New England Public Service Co. the option to take common stock of Public Service Co. of New Hampshire in lieu of cash. On September 15, 1947, the Commission approved the adoption of alternative 1 [Footnote: Holding Company Act Release No. 7713] and the plan has been carried out to the extent of the retirement of all of the prior lien preferred stock of New England Public Service Co. by the payment of $100 per share plus accrued dividends and the issuance of certificates of contingent interest. Accrued dividends included substantial amounts of arrearages on both classes of prior lien preferred. The certificates of contingent interest represent the holders' claims, as yet of undetermined value, to call premiums on the retired preferred shares.

A parent of New England Public Service Co., Northern New England Co., which owns 32.5 percent of the former company's common stock and is also a respondent in the section 11 (b) (2) proceedings instituted by the Commission, filed on January 30, 1948, a voluntary plan for its partial liquidation, which plan was still pending at the close of the fiscal year.

The North American Co.

The section 11 (e) dissolution plan of Washington Railway & Electric Co. (Washington Railway), a subsidiary of the North American Co. (North American) , was consummated in the fall of 1947. North American, by reason of its holdings of common stock of (Washington Railway, acquired directly 2,073,113 shares of common stock of Potomac Electric Power Co. (Potomac) and 106,456 shares of capital stock of Capital Transit Co. [Footnote: Holding Company Act Release Nos. 7747 and 7703.] By the end of the fiscal year, North American had disposed of all of its holdings of the common stocks of Potomac and of Wisconsin Electric Power Co. (Wisconsin Electric) constituting about 60 percent and 84 percent, respectively, of the outstanding common stock of these companies. [Footnote: Holding Company Act Release Nos. 7654 and 7846.]

After approval by the Commission of the amended section 11 (e) dissolution plan for North American Light & Power Co. (Light & Power) [Footnote: Holding Company Act Release No. 7515], the District Court of the United States for the Distinct of Delaware entered its order enforcing the plan. [Footnote: 74 F. Supp. 317 (Del. 1947).] The plan has been consummated as to the public preferred stockholders of Light & Power but certain common stockholders have appealed

from the decree of the court, and this appeal is now pending in the Circuit Court of Appeals for the Third Circuit. [Footnote: C. C. A. 3rd, No. 9593] In December 1947, Light & Power sold its entire holdings of common stock of Northern Natural Gas Co. by competitive bidding. [Footnote: Holding Company Act Release No. 7930]

North American remains with Light & Power, Union Electric Co. of Missouri, and several minor nonutility subsidiaries. Under the plan for the dissolution of Light & Power, North American will acquire directly all the common stock of the Kansas Power & Light Co. and Missouri Power & Light. Co., and up to approximately 35 percent of the common stock of Illinois Power Co. These holdings are required to be divested under the Commission's order of April 14, 1942, which requires that North American sever its connections with all subsidiaries except Union Electric and 60 Broadway Building Corp.

Ogden Corp.

Since the initial registration of Utilities Power & Light Corp., predecessor of Ogden Corp. (Ogden), consolidated assets of this system have been reduced from approximately $314,000,000 to less than $10,000,000 at the close of the fiscal year.

On July 20, 1947, an amended plan pursuant to section 11 (e) was approved which provided for the liquidation and dissolution of Ogden's subsidiary, Central States Utilities Corp. (Central Utilities), and the latter's subsidiary Central States Power & Light Corp. (Central States). Under the plan cash payments were made to the debt holders and the preferred stockholders of Central States other than Ogden and to the bondholders of Central Utilities other than Ogden. The residual net assets of both companies were transferred to Ogden Corp. Court approval of the plan was obtained on October 28, 1947, and liquidation of the two subsidiaries was commenced in April 1948.

Another subsidiary of Ogden completed an urgently needed financial reorganization during the past year. This action was taken after the Commission approved the sale of new bonds, debentures, and common shares by Interstate Power Co. to retire its outstanding mortgage debt. [Footnote: Holding Company Act Release Nos. 7955 and 8066] An amount of unsold common shares was placed in escrow in favor of the holders of Interstate's securities junior to the first mortgage bonds. This reorganization of Interstate constitutes a necessary step prior to the disposition by Ogden of its interest in the company.

On August 3, 1948, an order was entered by the Commission pursuant to section 5 (d) stating that Ogden has ceased to be a holding company. The order was made subject to certain conditions, however, which were necessary for investor

protection in connection with remaining unresolved problems related to Ogden's interest in Interstate Power Co. [Footnote: Holding Company Act Release No. 8402]

Standard Power & Light Corp. -- Standard Gas & Electric Co.

On October 3, 1947, Standard Gas & Electric Co. (Standard Gas) filed a plan to dispose of its holding of stock in a subsidiary company and to accomplish other corporate changes. The plan was not approved unanimously by all directors and two dissenting members of the board submitted a separate plan.

Shortly thereafter, on October 8, the Commission permitted a declaration to become effective allowing a protective committee for $7 and $6 cumulative prior preference stock of Standard Gas to solicit all such holders in connection with the reorganization of Standard Gas. [Footnote: File No. 68-93] This protective committee, on October 23, filed a petition which, among other things, requested that the Commission act to prohibit the holding of the annual meeting of stockholders of the company, the solicitation of proxies by Standard Gas for this meeting, and the election of directors for Standard Gas. The committee further requested the Commission to apply, under section 11 (d), to a court and to petition the court to appoint the Commission as trustee to hold and administer the assets of Standard Gas. It was also requested that the plan of the company, filed October 3, be dismissed.

A memorandum opinion and order of the Commission dated October 30, 1947, pointed out that the company plan was vague and indefinite and Standard Gas was required to show cause why the plan should not be dismissed. [Footnote: Holding Company Act Release No. 7811] In addition, Standard Gas was prohibited from soliciting proxies for the annual meeting unless prior approval of the Commission was received; Standard Gas, its parent Standard Power & Light Corp. (Standard Power), and their respective affiliates were prohibited from entering into new contracts without giving the Commission 10 days' notice of such intention; and pending the conclusion of hearings, Standard Power was prohibited from voting its stock holdings in Standard Gas. Standard Gas was directed also to show cause why it should not be ordered to liquidate or recapitalized on a one-stock basis.

Standard Gas subsequently filed a declaration regarding its proposal to solicit proxies for the annual meeting and a consolidated hearing was held to consider the matter specified in the Commission's memorandum opinion and order of October 30, 1947. While the hearings were in progress the Commission postponed the annual meeting [Footnote: Holding Company Act Release No. 7841] and subsequently, in its findings and opinion of February 17, 1948, permitted Standard to solicit proxies in connection with this deferred annual

meeting. Permission was conditioned so as to require Standard Gas to send a copy of the Commission's opinion to each stockholder at the time of solicitation. [Footnote: Holding Company Act Release No. 7983] In permitting this action the Commission took note of a program of action, approved by the board of Standard Gas on February 4, 1948, which included the following steps: (1) Selection of a new chief executive to serve as chairman of the board and president of the company and as a director to be elected by the holders of prior preference stock; (2) amendment of the certificate of incorporation and bylaws to provide for an increase in the board of directors from eight to nine members of whom three would be elected by holders of prior preference stock; (3) immediate consideration by the new board of steps to be taken to comply with section 11 of the act; (4) selection of new counsel for purposes of the section 11 proceedings; and (5) consent by the company to the entry of an order by the Commission pursuant to section 11 (b) (2) of the act requiring the dissolution and liquidation of Standard Gas or its recapitalization on a one-stock basis. On March 1, 1948, the Commission ordered the hearing reconvened to consider what action should be taken by Standard Gas to effect compliance with section 11 (b) (2) of the act. [Footnote: Holding Company Act Release No. 8004] A hearing has been held on this issue and the Commission has the matter under advisement.

The Philadelphia Co., a registered holding company and a subsidiary of Standard Gas, was ordered by the Commission on June 1, 1948, to dispose of its gas and transportation properties and, after completion of such dispositions, to liquidate and dissolve. [Footnote: Holding Company Act Release No. 8242] At present the system of the Philadelphia Co., aggregating $370,000,000 in assets, supplies electric, gas, and transportation services in the city of Pittsburgh, Pa., and its surrounding area. Petitions for rehearing, filed by Philadelphia Co., certain of its subsidiaries, and Standard Gas were denied by the Commission on June 30, 1948. [Footnote: Holding Company Act Release No. 8320] An appeal to the court of Appeals for the District of Columbia has been taken by Philadelphia Co. and Standard Gas since the close of the fiscal year.

Philadelphia Co. has also presented a plan of reorganization of its gas properties in Pennsylvania, and this plan was approved by the Commission on June 30, 1948. [Footnote: Holding Company Act Release No. 8326] Under the plan, all the gas properties of the Philadelphia Co. and its subsidiaries located in Pennsylvania will be brought under the ownership of Philadelphia Co.'s present subsidiary, Equitable Gas Co. Equitable Gas Co. is being recapitalized so that its outstanding securities will consist only of first mortgage bonds and common stock, the latter to be owned by Philadelphia Co. To this end, Equitable Gas Co. recently completed the sale of $14,000,000 of mortgage bonds and transferred the proceeds to Philadelphia Co. in payment for the gas properties received from that company. The Commission's order approving these transactions required

that the proceeds received by Philadelphia Co. be applied solely to the reduction of its own outstanding debt.

On October 28, 1947, the Commission approved a section 11 (e) plan of Louisville Gas & Electric Co. (Delaware), another subsidiary of Standard Gas. [Footnote: Holding Company Act Release No. 77895] The plan provides for the distribution by that company of its common-stock holdings in Louisville Gas & Electric Co. (Kentucky) and subsequent dissolution of the Delaware company. The distribution of these holdings, which constitute the Delaware company's principal asset, is to be made in the ratios of 1 1/14 shares of the Kentucky company common stock for each share of class A common stock of the Delaware company and 0.913 of a share of the Kentucky company common stock for each share of class B common stock of the Delaware company. The holdings of Standard Gas in the common shares of Kentucky are to be disposed of as soon as the dissolution of the Delaware company is accomplished.

Following its approval of the plan, the Commission applied to a Federal district court for enforcement of the plan. On May 13, 1948, the court remanded the case to the Commission in view of the court's opinion, contrary to that of the Commission, that the class A stock of the Delaware company has the right to cumulative dividends. [Footnote: In the Matter of Louisville Gas & Electric Co., 77 Fed. Supp. 176] Despite the court's different view on this point it nevertheless found the plan to be fair and equitable. Since the close of the fiscal year the Commission held oral argument on the cumulative feature and in supplemental findings reaffirmed its previous order, finding that the proposed allocations were still within the range of fairness. [Footnote: Holding Company Act Release No. 8404] Upon subsequent application for enforcement by the Commission the court issued its order providing that the plan be made effective on September 3, 1948.

Hearings were ordered and, since the close of the fiscal year, have been held on the section 11 (e) plan of Market Street Railway Co. (Market Street), a nonutility subsidiary company of Standard Gas. Included in the plan is an agreement among Standard Gas, Market Street, and a committee of prior preference stockholders designed to settle the open account indebtedness owed to Standard Gas by Market Street and pending litigation with respect thereto. It also provides for the settlement of other claims, distribution of remaining assets to the holders of its prior preference stock, and the dissolution of Market Street.

The United Corp.

The United Corp. (United) owned substantial amounts of the common stock of four major subholding companies: Public Service Corp. of New Jersey (Public

Service), Columbia Gas System, Inc. (Columbia), the Cincinnati Gas & Electric Co. (Cincinnati), and Niagara Hudson Power Corp. (Niagara Hudson).

On August 14, 1943, the Commission issued an order under section 11 (b) (2) directing that United change its existing capitalization to a single class of common stock and cease to be a holding company. [Footnote: Holding Company Act Release No. 4478] The Commission having subsequently approved two voluntary exchange plans for United's preference stock under the terms of which approximately 54 percent of that stock was eliminated, United filed, in July 1947, a plan under section 11 (e) for the mandatory retirement of the remaining shares in exchange for a package of $6 in cash, one share of common stock of Public Service Electric & Gas Co. (PEG) -- as reorganized according to the plan described in the following paragraph -- one share of common stock of Columbia, one-fourth of a share of common stock of Cincinnati, and one-tenth of a share of common stock of South Jersey Gas Co. (South Jersey). On April 9, 1948, after appropriate hearings, the Division of Public Utilities filed its recommended findings and opinion recommending approval of the plan if modified in certain minor aspects, which include the elimination of the South Jersey stock from the package because of the character and small size of that company and the fractional interest to be distributed. On August 9, 1948, the plan was approved after being amended by the company in accordance with modifications indicated by the Commission in its previously issued findings and opinion. Application has been made to the appropriate court for enforcement of the Commission's order, arguments have been heard, and the matter has been taken under advisement.

PEG was one of three public-utility subsidiaries of Public Service Corp. of New Jersey which, together with a transportation holding company subsidiary, made up the Public Service subholding company system. Pursuant to a plan approved by the Commission and enforced by the district court on December 30, 1947, and March 19, 1948, respectively, the ownership of the transportation holding company was transferred to PEG, the holders of perpetual certificates of Public Service received debentures of PEG in exchange, the public holders of Public Service noncallable preferred received PEG preference stock in exchange, and the common stock of PEG and another subsidiary of Public Service, South Jersey Gas Co., was distributed to the common-stock holders of Public Service. The third utility subsidiary of Public Service was sold to nonaffiliated interests. [Footnote: Holding Company Act Release No. 8164]

The Columbia Gas System, Inc., formerly Columbia Gas & Electric Corp., has divested itself of its electric utility subsidiaries and now comprises, except for a minor part of the system, only gas utility and related properties which the Commission had declared to be retainable.

Niagara Hudson, another of United's subholding companies, owns all the common stock of Buffalo Niagara Electric Corp., Central New York Power Corp., and New York Power & Light Corp., and, directly or indirectly, of seven smaller companies. Niagara Hudson has on file with the Commission two plans under section 11 (e) looking toward its elimination as a holding company. The first plan, filed May 19, 1948, provides for the consolidation of Niagara Hudson's three major subsidiaries. Under the provisions of the plan the debt of the three companies will be assumed by the consolidated company and the holders of preferred stocks of the three companies will receive in exchange therefor preferred stock of the consolidated company. Niagara Hudson, which owns all the outstanding shares of common stock of the three companies, will receive the common stock of the consolidated company. A hearing on this plan was held on June 29, 1948. Proceedings are also pending concerning the merger of two of the seven, smaller subsidiaries of Niagara Hudson, Northern Development Corp., and Union Bag & Paper Power Corp., into two of the companies which are to be consolidated, either before or after consolidation.

On June 23, 1948, Niagara Hudson filed the second plan, which provides that Niagara Hudson will substitute 3 percent debentures, maturing 10 years from the date of issue, for its outstanding preferred stock and will distribute to its common stockholders for each share of its common stock tendered, together with a cash payment of $7.50 one share of common stock of the consolidated company. Under the plan, net income of Niagara Hudson and cash received by it in the exchange will be applied to the payment of the bank loans of Niagara Hudson presently outstanding in the amount of $21,370,000. Niagara Hudson will accept for exchange its new debentures at face value in amounts up to $4 per share toward payment of the $7.50. The offer will remain open until all bank loans and debentures are retired through application of the funds received from stockholders and from corporate net income. Upon the retirement of the debentures, Niagara Hudson will distribute the remaining shares of common stock of the consolidated company to the remaining holders of common stock of Niagara Hudson on a share-for-share basis, transfer all its remaining assets to the consolidated company, and thereafter Niagara Hudson will dissolve. While the plan is still formally on file, discussions are being held with respect to revisions therein.

The United Light & Railways Co.

On December 31, 1947, the Commission approved a plan filed by the United Light & Railways Co. (Railways) and its subsidiary American Light & Traction Co. (American) which proposes that Railways will dispose of its interest in American and in any stocks transferred by American to it. American will continue to operate a separate integrated gas production, transmission, distribution, and storage system.

Details of the plan include, in part, the following procedures. American will continue as parent company of a gas utility system including a group of pipe line and gas distribution subsidiaries, but will dispose of its holdings in Detroit Edison Co. and Madison Gas and Electric Co. by public sale or distribution to its stockholders. In this connection it is noted that, up to June 30, 1948, American had already disposed of 969,160 shares of common stock of Detroit Edison by sales at competitive bidding or as dividends on its common stock. Proceeds from the sale of the Detroit Edison stock by American are to be invested primarily in the equity of Michigan-Wisconsin Pipe Line Co., a new long-distance line designed to bring gas from the Texas area to the distributing subsidiaries of American. Under the plan, American will also purchase all shares of its outstanding preferred stock tendered to it during a specific period. The offer to purchase has been fixed at $33 per share plus accrued dividends. As holder of a substantial block of these shares, Railways will make disposition of its holdings through this offer.

Railways also proposes to dispose of its interests in Madison Gas & Detroit Edison (shares received from American) and will also divest itself of its holdings in American through the payment to its own stockholders of dividends of stock of this company or by sale through a rights offering. Proceeds of stock sales made by Railways will then be applied against its outstanding bank loan. The proceeds of new serial note borrowing by Railways will be used to retire the prior preference stock of Railways and to make an additional cash investment in its subsidiary, Continental Gas & Electric Corp., enabling the latter company to retire a similar amount of its own outstanding bank loans. Review proceedings with respect to certain aspects of this approved plan are still pending.

The West Penn Electric Co. [Footnote: Formerly a subsidiary of American Water Works & Electric Co., Inc.]

American Water Works & Electric Co., Inc. (American) was dissolved during the past fiscal year. This was in accordance with. the two-plan program filed by the company under section 11 (e) and approved after some modification by the Commission in its findings and opinions of December 23, 1946, and February 17, 1947. [Footnote: Holding Company Act Release Nos. 7091 and 7208]

Plan I, designed to establish an exempt holding company to acquire and hold the water properties of American, was brought to completion with the sale of 2,687,069 shares of common stock of the American Water Works Co., Inc. (Water Works), a nonutility holding company, at competitive bidding on September 25, 1947. The sale was subject to a 10-day stand-by arrangement permitting the exercise of subscription warrants by common stockholders of

American and acceptance of an exchange arrangement by certain public stockholders of Community Water Service Co. and Ohio Cities Water Corp., two intermediate holding companies which were to be dissolved. Under these purchase and exchange rights 784,593 shares were taken up; the balance of the common went to underwriters.

Transfer of the water properties by American to the other holding company and receipt of proceeds from the stock sale permitted American to go forward thereafter with plan II looking toward its own liquidation and dissolution. To this end, the outstanding debt and preferred stock of American were retired, but an escrow fund of $2,200,000 was established to provide for such additional payments to the preferred holders, over and above par plus accrued dividends, as the Commission and the courts may finally determine to be fair and equitable. The common-stockholders of American received shares of the reclassified common stock of The West Penn Electric Co. (West Penn) which has now become the senior company of the utility system remaining under the jurisdiction of this Commission. American contributed all its remaining assets to West Penn., which also assumed whatever liabilities were not otherwise provided for. Final dissolution of American occurred in January 1948. It is noted that when American originally registered under the act it had a total of 142 utility and nonutility subsidiaries. West Penn which now succeeds it as the registered parent holding company had 25 subsidiaries on June 30, 1948.

FINANCING UNDER SECTIONS 6 AND 7

The postwar expansion program of the electric and gas industry, which experts estimate will require an average expenditure of more than $2,000,000,000 a year for the next 5 years, went into full swing during the 1948 fiscal year. Reports indicate that about $2,200,000,000 was spent during that period with indications that expenditures in the 1949 fiscal year will exceed that amount. In 1941 they amounted to only $700,000,000 and in the peak years of the twenties never exceeded $1,000,000,000. That the scale of expansion of the utility industry is fully in step with that in other sectors of the economy is indicated by the fact that capital expenditures for the country as a whole are running at a dollar rate twice that of the peak years of the 1920's. Furthermore, this increase in expenditures is not wholly due to price advances but represents an increase in the rate of expansion in physical facilities as is shown by the fact that private electric utilities plan to install 17,000,000 kilowatts of capacity during the 4 years 1948-51, as against 9,000,000 kilowatts installed in the previous 4-year period of peak installation, 1925-28.

To finance this huge volume of capital expenditures the gas and electric industry drew on the capital markets for about $2,000,000,000 of new money, the largest

amount ever raised for new construction by the electric and gas utilities in any one year. The remainder of the funds required, about $200,000,000, came from internal sources. To obtain the funds raised from outside sources they sold approximately $1,400,000,000 of bonds and debentures, placed about $300,000,000 of short-term notes with banks and other financial institutions, and sold approximately $100,000,000 of preferred and $200,000,000 of common stocks. Since more than $600,000,000 of securities were sold for refunding and other purposes, total issues for all purposes during the year totaled over $2,700,000,000.

This trend was reflected fully in the financing operations of the holding company systems subject to the act as evidenced by the fact that applications and declarations for security issues approved under sections 6 (b) and 7 rose from $1,200,000,000 in the fiscal year ending June 30, 1947, to $1,900,000,000 in the 1948 fiscal year. This level was only $400,000,000 below the figure for 1946, which represents the all-time peak for financing under the act. Fifty percent of the dollar amount of financing approved in 1948 took the form of bonds and debentures, 24 percent was in short-term notes sold primarily to banks, and 26 percent in stock, of which 22 percent was represented by common and 4 percent by preferred.

The dollar volume of refunding issues was slightly higher, $573,000,000 as against $557,000,000 in 1947. But the percentage to the total declined from 49 percent to 31 percent. In 1946 refunding accounted for 85 percent of the total, amounting to over $2,000,000,000. The factors accounting for the continued decline in the importance of refunding issues since 1946 are the same as were pointed out in last year's report, namely, that most companies had already completed their refunding. Furthermore, money rates have continued to harden and other costs of refunding have remained on a more expensive plane. All of the increase in financing during the past year can be accounted for by issues for new money. The dollar volume of new money issues rose from $287,000,000 in 1947 to almost $1,000,000,000 in 1948. In 1946 new money issues accounted for only $2,000,000 of the total and in the previous peak year, 1942, it totaled only $90,000,000. Issues for new money accounted for over 50 percent of the total dollar value of applications and declarations approved in 1948, as against 25 percent in the previous year and less than one-tenth of 1 percent in the 1946 fiscal year. Two hundred and twenty-six of the 285 issues approved during the year were for this purpose in whole or in part. The significance of these data is enhanced when considered in the light of the fact that, during the period in question, a substantial number of companies have been released from jurisdiction of the act by divestment under section 11.

Bonds and notes were the principal vehicle employed to raise this new money, accounting for 40 percent and 27 percent, respectively, of the total applications

and declarations authorized in 1948. In the previous year notes and common stock predominated. Of the 56 bond issues approved, 42 were sold at competitive bidding in an aggregate amount of $338,000,000; 13 issues totaling $47,000,000 were placed directly with banks and insurance companies; and 1 issue of $14,000,000 was taken by the parent company. With respect to the 106 note issues authorized 98, amounting to $222,000,000, were placed with banks and insurance companies and 8 issues totaling $46,000,000 were taken by parent companies. Of nine debenture issues approved in the 1948 fiscal year eight, with a dollar volume of $118,000,000, were offered to the public through underwriters, and one, amounting to less than $500,000, was taken by an insurance company.

The most striking change in the pattern of financing from the previous year was in the increase in the percentage of notes and common stock and the decline in preferred stock. However, the proportion of new money financing reflected in authorizations of preferred and common stocks was relatively low. The 44 common-stock issues representing approximately $117,000,000 of new money financing accounted for only 12 percent of the total dollar volume of new money offerings. This relatively minor proportion of common financing is considered due to the combined effect of several factors. In part, it reflects the less favorable market conditions prevailing since 1946 and the relatively high-yield rates necessary to generate public buying interest. The influence of these two elements is, of course, heightened by the continued existence of a strong market appetite for bonds, debentures, and notes at very attractive rates of interest. It is recognized, however, that common capital is being increased in many instances by retention of a portion of earnings, which thus assists in preserving balanced capital structure.

Of the common stock financing authorized during the year, over 90 percent represented sales of stock by subsidiaries to their parent companies. Thus, utility holding companies have purchased over $100,000,000 of such common stock offerings, to this extent facilitating the growth of equity capitalization. Of the total amount, $32,000,000 was taken by American Light & Traction Co., $25,000,000 by American Gas & Electric Co., $13,000,000 by Electric Power & Light Corp., $11,000,000 by the North American Co.; $8,000,000 by The Middle West Corp., and the remainder in lesser amounts by other registered holding companies. In a number of instances funds used to make such stock purchases have been derived from the sales of the stock of other subsidiaries by the holding company parent pursuant to divestment programs approved by this Commission under section 11 (e). In other cases the holding companies have resorted to public financing in order to provide the funds required by their subsidiaries.

There has been little marked change in the lack of public appetite for preferred stocks. This trend has accentuated the reliance upon debt securities and is

sufficiently important to merit some discussion at this point. Yields on preferred stocks were driven to record lows (3.25 percent to 3.35 percent for electric utilities) early in 1946 as a result of heavy buying by institutions, induced by the pressure of idle funds. With the postwar development of broad outlets for funds such as mortgages and privately placed industrial construction loans, the institutional market for preferred stocks narrowed. Since yields on preferred stocks had for some years been too low to interest individual investors, the contraction in the institutional demand was immediately felt in the form of increased yields. A large portion of medium grade stocks was forced into the individual investor market al yields sometimes in excess of 5 percent. The sale of preferred stocks, particularly the medium grade issues, may also have suffered from the less favorable trend of earnings displayed by many companies in recent months.

Since institutions were no longer under any particular pressure to buy preferred issues, they were in a position to demand certain concessions in the terms of security. In this way the sinking fund came into use in connection with utility preferred stocks. These provisions were initially set up on a 2 percent basis, although some later issues have carried requirements of 2 1/2 percent or 3 percent. Thus preferred stock ceases to be permanent capital. A variation of this arrangement is the purchase fund, which typically operates only when the security is selling at less than a specified price, usually par or the offering price. While a sinking fund or purchase fund appeals to institutional investors, it places an additional cash requirement upon the issuer and has undoubtedly led some companies to seek other means of financing.

The declining interest in preferred stock has rendered more difficult the problem of maintaining an adequate proportion of equity security in the capital structure. This is particularly true in view of the large sums still to be raised for construction purposes. However, we are continuing our attempts to encourage equity financing as a means of preserving that strength of the operating companies which has been achieved through several years' work of overhauling their financial structures and property accounts. [Footnote: Attention is invited to the Tenth Annual Report in which these developments were discussed.]

OTHER ACTIVITIES UNDER THE ACT

The remainder of the Commission's work load under the Public Utility Holding Company Act relates principally to the administration of sections 2, 3, 11 (g), 12 (b), 12 (e), 12 (f), and 13. The cases arising under these sections are numerous, but few are of an involved nature. A number, particularly exemptions, received little attention during the war due to shortages of personnel but with the return of

experienced veterans this backlog has been substantially reduced and reattainment of a current status is in view.

(chart omitted)

The Commission's task of administering the Public Utility Holding Company Act of 1935 has been performed in the past year with approximately 158 man-years of personnel. Following is a record of personnel employment for this phase of the Commission's work for each of the past 5 years:

Division Employment in man-years

Fiscal year end June 30, 1944: 193.3

Fiscal year end June 30, 1945: 172.6

Fiscal year end June 30, 1946: 172.4

Fiscal year end June 30, 1947: 172.5

Fiscal year end June 30, 1948: 157.9

STATISTICS OF LITIGATION UNDER THE ACT

(charts omitted)

PART IV
PARTICIPATION OF THE COMMISSION IN CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT

Chapter X of the Bankruptcy Act, as amended in 1938, in setting up appropriate machinery for the reorganization of corporations (other than railroads) in the Federal courts provides for participation by the Commission in proceedings thereunder at the request of or with the approval of the court for the purpose of providing independent expert assistance to the court and to investors and for the preparation by the Commission of formal. advisory reports on plans of reorganization submitted to it by the courts in such proceedings. The Commission's functions in chapter X proceedings are of a purely advisory character. The Commission has no authority to veto or to require adoption of a plan of reorganization or to render a decision on any other issue in the

proceedings. It has no right to appeal in such proceedings, although it may participate in appeals taken by others and has, as a matter of fact, participated in many appeals as a party or as amicus curiae.

SUMMARY OF ACTIVITIES

The Commission actively participated during the year in 84 reorganization proceedings involving the reorganization of 105 companies (84 principal debtor corporations and 21 subsidiary debtors). The aggregate stated assets of these 105 companies amounted to $1,744,674,000 and their aggregate indebtedness was $1,130,548,000. During the year the Commission filed its notice of appearance in 10 new proceedings under chapter X, two of which were filed, at the request of the court and the remaining eight upon approval by the court of the Commission's motion to participate. These 10 new proceedings involved 11 companies (10 principal and 1 subsidiary debtor) with aggregate stated assets of $28,487,000 and aggregate stated indebtedness of $32,620,000. Proceedings involving 13 principal debtors and 4 subsidiary debtors were closed during the year. At the close of the year, the Commission was actively participating in 71 reorganization proceedings involving 88 companies (71 principal debtors and 17 subsidiary debtors), with aggregate stated assets of $1,562,053,000 and aggregate stated indebtedness of $1,063,632,000.

COMMISSION'S FUNCTIONS UNDER CHAPTER X

A detailed discussion of the Commission's duties and policies in Connection with its functions under chapter X appeared in the Tenth and Twelfth. Annual Reports of the Commission. To carry out its advisory functions under chapter X, the Commission maintains expert staffs of lawyers, accountants, and financial analysts in various regional offices where they keep in close touch with all, matters arising in the proceedings and with the parties in the case, and are readily available to the courts. As a statutory party in interest in a chapter X proceeding, the Commission is concerned not only with proposed plans of reorganization but also with the many diverse and complex legal and financial problems that usually arise in the proceeding. Frequently these problems are met through informal conferences and discussions, in which the Commission's staff participates, in an endeavor to work out solutions in advance of litigation in order to avoid needless delay and expense. Some of the legal and financial questions encountered in typical reorganization proceedings are described in the following paragraphs.

Problems in the Administration of the Estate

The Commission has continued as always to scrutinize the qualifications of trustees in the light of the standards prescribed by the statute. Since the independent trustee has the duties of examining into the history and affairs of the debtor, ascertaining its financial and managerial problems, and formulating the plan of reorganization, it is obvious that the success of the reorganization depends largely upon his thoroughness and skill and freedom from adverse or conflicting interests. During the past fiscal year, in an important case the Commission concluded that certain conduct and affiliations of the so-called disinterested trustee required that he be removed from office. [Footnote: *In re Pittsburgh Railways Co*., W. D. Pa.] In its petition seeking such removal the Commission alleged, among other matters, that the trustee had permitted a director and officer of the debtor, who had been connected with the parent company for many years, to assume a leading role in the preparation of a report by the trustee as to whether claims existed against the parent company or whether grounds existed for equitable limitation or subordination of claims filed by the parent company in the proceeding. The report involved was favorable to the parent company. The matter is pending before the district court.

The responsibilities of an additional, or operating, trustee, who may be an officer, director, or employee of the debtor, do not, of course, assume the proportions of those of the disinterested trustee. Nevertheless, where the additional trustee's interests are adverse to those of the estate or any class of security holder, his key position together with the independent trustee in exercising responsibility for operations makes it essential that he be removed from office. In several cases during the 1948 fiscal year, the Commission had occasion to take steps to have the additional trustee resign or to bring about his removal because of conflicting or adverse interests or because of the existence of causes of action against him by the debtor. In all of these cases, the trustee tendered his resignation after informal. conferences.

In connection with the independent trustee's investigation of the debtor's operations and the reasons for its financial ills, the Commission has frequently found it necessary to advocate the retention by the trustee of an independent expert, qualified to appraise the debtor's property, make valuations, or report upon the efficiency of the debtor's operations. In one case, during the fiscal year, the Commission objected to reliance for purposes of valuation upon an appraisal of the debtor's assets made by an officer of the majority stockholder of the debtor. [Footnote: *In re Van Sweringen Corp*., N. D. Ohio, E. Div.] In a memorandum filed with the special master, the Commission pointed out the conflicting interests of the appraiser, among other matters, and urged that a qualified and independent appraiser be retained. As a result steps have been taken toward the selection and appointment of such an appraiser.

In another case, involving a large transit system, the Commission petitioned the court to direct the trustee to employ engineering experts to advise whether, and the extent to which, bus routes should be substituted for trolley routes which by far predominated in the system. [Footnote: *In re Pittsburgh Railways Co*., W. D. Pa.] The Commission argued that most large cities had made increasing use of busses to replace trolleys in the interests of economy and efficiency and that it was important, for purposes of determining the fairness and feasibility of a plan, to ascertain whether the property was being operated economically. The Commission also pointed out that the management showed an apparent predilection for street railway operations and that an independent, unbiased survey by experts would provide answers to many operating problems. Despite the special master's adverse recommendation on the ground that, prima facie, no one would be wronged by adherence to the same business in which security holders invested and which came into control of the court or by refusal to spend a substantial sum to learn whether a "different" business would be better, the district court granted the Commission's petition. The court stated that it was evident from the facts that a survey should be made whether used in the reorganization or not, and that it might be of value in the proceedings.

One of the fundamental reasons' for the mandatory requirement of the statute that a disinterested trustee be appointed in the larger cases was to assure a thorough exploration, not solely of the causes of financial difficulties, but of the possibility of claims against the old management or other persons and their diligent prosecution. In. view of this precept, the Commission has in various cases urged that the facts warranted a thorough investigation of possible causes of action by the trustee against persons controlling the debtor. In two of these cases the trustee, with the assistance of the Commission, prepared and made available to security holders a detailed report of the results of his investigation, including a report on various misrepresentations and omissions in the prospectus under which stock had been sold to the public. [Footnote: *In re Cosmo Records, Inc.*, E. D. N. Y.; *In re American Acoustics, Inc.*, D. N. J.] These reports included a reference to the possible rights that purchasers of the stock might have under section 12 (2) of the Securities Act of 1933 and the time limitations of any action thereunder contained in section 13 of that act. In another case, the Commission's motion to require an investigation was denied. [Footnote: *In re Kellett Aircraft Corp.*, E. D. Pa.] In still. another case, the investigation, sought and obtained by the Commission as to the grounds for equitable limitation to cost of certain bonds acquired by insiders prior to reorganization but during a period when the debtor was insolvent, resulted in a compromise favorable to the estate and to the public bondholders. [Footnote: *In re Gramott Corp.*, S. D. N. Y.]

Responsibilities of Fiduciaries

Trading in securities of a debtor in reorganization by trustees, directors, attorneys, committee members, or other fiduciaries is a practice which has generally been condemned by the courts and the Commission in opinions and reports. The access to inside information and, frequently, the control or influence ever the course of reorganization which are possessed by these insiders are urgent considerations for enforcing judicial sanctions against them strictly. One such sanction which has been used during the fiscal year in several cases in winch the Commission participated is the prohibition against payment of any fees or reimbursement of any expenses where a fiduciary bought or sold securities of the debtor. Another sanction is the prevention of any prefiling by such a fiduciary through the limitation of his securities to the cost thereof or requiring him to account for any profits from securities sold by him. A compromise entered into in one case where the purchase of securities occurred prior to the reorganization but when the corporation was insolvent has been mentioned. [Footnote: *In re Gramott Corp.*, S. D. N. Y.] In another case, a committee member had purchased securities of the debtor and of its two subsidiaries, which were also in reorganization under the Bankruptcy Act. The Commission contended that the committee member as a fiduciary should be limited to cost or account for the profit on the purchased securities of the subsidiaries as well as of the debtor under section 212 of the statute and equitable principles applicable to the situation. A satisfactory compromise of the issues was entered into and approved by the court.

In its Thirteenth Annual Report, the Commission referred to the reorganization proceedings involving National Realty Trust and Federal Facilities Realty Trust and to objections filed to the final accounts of a former trustee of the debtors based upon charges that he had permitted certain employees of his to trade freely in securities of the debtors and their subsidiaries. The special master has since ruled in favor of practically all of the Commission's contentions and the matter is pending before the district court for decision.

Activities With Respect to Allowances

The Commission has actively participated in the matter of allowances of compensation to those claiming to have rendered services and incurred expenses in a proceeding. In granting allowances the courts seek to protect the estate from exorbitant charges, while at the same time providing equitable treatment to the applicants. The Commission has continued to provide the courts with considerable assistance in this matter.

The Commission itself receives no allowances from estates in reorganization and is able to present a wholly disinterested and impartial view. The Commission has endeavored to obtain a limitation of the aggregate fees to an amount which the estate can feasibly pay. In each case, the applications are carefully studied and

recommendations are made to the end that unnecessary duplication of services and nonbeneficial efforts shall not be recompensed and that applicants shall be rewarded on the basis of their relative contribution to the administration of the estate and the adoption of a plan of reorganization. Specific recommendations are made to the courts in cases in which the Commission has been a party throughout the proceeding and is fully familiar with the activities of the various parties and all significant developments in the case.

The Commission has contended consistently that fees be granted only for disinterested and loyal services rendered to the estate. In several cases during the past year the Commission opposed the allowance of fees to persons having interests adverse to those of the estate or the security holders. In one case, applicants were attorneys for a bondholder who in, effect purchased the debtor's property through a new corporation. The Commission opposed the granting of any fee out of the estate to these attorneys on the ground that their services were rendered for the purpose of advancing the individual interests of their client which were distinct and different from that of other bondholders in view of his objectives in the reorganization. Hence, while their services may have contributed to the plan of reorganization, it was contended that they should look to their client for compensation. The district court denied applicants' request for a fee and, on appeal, the Circuit Court for the Eighth Circuit affirmed the decision. [Footnote: In re Congress & Senate Co., 163 F. (2d) (C. C. A. 7, 1947)]

In a similar case, the Commission opposed the granting of a fee to attorneys who represented the lessee of property leased from the debtor. During the proceedings the lessee had resisted efforts of the trustee to secure possession of the property despite large arrears of rent. A compromise was eventually effected which was incorporated in a plan of reorganization and the applicants requested compensation out of the estate for their contributions to the plan of reorganization. The district court upheld the Commission's position that the services were rendered on behalf of a client whose special interests were adverse to those of the estate and should therefore not be compensated by the debtor. On appeal, the Circuit Court for the Seventh Circuit affirmed. [Footnote: In re 32-36 North State Building Corp., 164 F. (2d) 205 (C. C. A. 7, 1947)

In the proceedings for reorganization involving Pittsburgh Terminal Coal Corp., the Commission took the position that the chapter X court had jurisdiction to pass upon the reasonableness of all fees in connection with the reorganization even though such fees were to be paid by a stockholders' committee and not out of the estate. The Commission argued that under the specific language of section 221 (4) the court was required to pass upon all payments made or promised by any person for services in connection with the proceeding. The district court did not agree with this position and concluded that it was without jurisdiction to pass upon the agreement between the stockholders' committee and its counsel. An

appeal to the Circuit Court for the Third Circuit was taken by the committee but was not prosecuted and the appeal was dismissed. Subsequently action was brought in the State court by the attorneys against the preferred stockholders' committee to enforce the agreement. The Commission participated, as amicus curiae, in an appeal to the Court of Appeals of the State of New York from the denial of a motion to dismiss the complaint on the ground that the chapter X court had exclusive jurisdiction over the fee agreement. In upholding the contention of the Commission, the court of appeals held that the chapter X court had the statutory duty to determine reasonable compensation for all services rendered by the attorneys for the committee and to determine whether the payment of the fee under the agreement was reasonable. [Footnote: Lieman v. Guttmann, N. Y. 78 N. E. (2d) 472 (1948).]

INSTITUTION OF CHAPTER X PROCEEDINGS AND JURISDICTION OF THE COURT

The Commission has striven for a liberal interpretation of the provisions of the Bankruptcy Act so that the benefits of chapter X may be made fully available to security holders in accordance with the spirit and intent of the statute. In accordance with this policy, the Commission has participated heretofore in various cases involving the question of "good faith" in the filing of a petition. During the past fiscal year the Commission participated in another case involving the "good faith" of the filing of the petition, the proceeding involving Diversey Hotel Corp. The district court approved the petition as having been properly filed and in good faith. In supporting the decision on appeal, the Commission urged that the debtor could not pay its debts (primarily a large mortgage bond indebtedness) as they matured and that there was a need for a plan of reorganization to avoid sacrifice of values through a forced sale. The Commission pointed out the safeguards and flexibility of chapter X and urged that a plan of reorganization could involve either a sale of the property at a fair price and a distribution of the proceeds or the issuance of new securities in a new or reorganized company which would acquire the assets of the debtor. The Circuit Court for the Seventh Circuit affirmed the decision. of the lower court. [Footnote: In re Diversey Hotel Corp., 165 F. (2d) 655 (C. C. A. 7, 1948]

Shortly after the enactment of chapter X, the possibility arose of an improper use of chapter XI when was intended only for the small corporation with no publicly held securities. Obviously the safeguards to investors of chapter X could be evaded if a corporation were permitted to effectuate a plan of arrangement affecting public investors under chapter XI. In the case of *Securities and Exchange Commission v. United States Realty and Improvement Co.*, the Supreme Court established the rule that chapter XI was inadequate to assure to

public investors the safeguards necessary for a fair, equitable, and feasible plan and that the Congress intended the reorganization of debtors with publicly held securities to take place under chapter X. The Supreme Court also held that the Commission could intervene in a chapter XI proceeding for the purpose of having it dismissed as improperly commenced. [Footnote: 310 U.S. 434 (1940)]

During the past fiscal year, the Commission intervened in a chapter XI proceeding and was successful in having it dismissed. [Footnote: In re American Silver Corp., S. D. Cal., C. D.] In that case, the promoter of the debtor corporation, which had leased some old mining claims of undetermined value, had been unsuccessful in raising new funds for his project. An attempt to sell stock under the exemption afforded by regulation A under the Securities Act of 1933 had ended when the Commission began an investigation into charges of fraud and misrepresentation. The promoter then conceived the scheme of selling stock to raise money through the device of a plan of arrangement under chapter XI without compliance with the requirements of the Securities Act of 1933. Alleging the need of funds to pay creditors, the debtor filed a petition under chapter XI and a plan pursuant to which a new corporation was to be formed to take over the assets of the debtor. Rights to subscribe to the assessable stock of the new company were offered to old stockholders in exchange for the nonassessable stock of the debtor. Failure to subscribe meant, of course, that the stockholders would remain with shares of a defunct corporation. The Commission moved to dismiss the proceeding, contending that chapter XI is not available for a corporation seeking to alter the rights of publicly held securities, that chapter XI is available only for the adjustment of unsecured obligations and not for the modification of stockholders' rights, and that the proposed issuance of stock violated the provisions of the Securities Act of 1933. The referee dismissed the proceeding and, at the instance of the Commission, funds collected from stockholders were returned to them. Subsequently the corporation filed a petition under chapter X.

PLANS OF REORGANIZATION UNDER CHAPTER X

The ultimate objective of a reorganization is the formulation and consummation of a fair and feasible plan of reorganization. Accordingly, the most important function of the Commission under chapter X is to aid the courts in achieving this objective.

Fairness

In appraising the fairness of reorganization plans under chapter X the Commission has at all times taken the position that full recognition must be accorded claims in order of their legal and contractual priority, either in cash or

new securities or both, and that junior claimants may participate only to the extent that the debtor's properties have value after the satisfaction of prior claims or to the extent that they make a fresh contribution necessary to the reorganization of the debtor. Hence, a valuation of the debtor is necessary to provide the basis for judging the fairness as well as the feasibility of proposed plans of reorganization. In its advisory reports, in hearings before the courts, and in conferences with parties to proceedings, the Commission has consistently stated that the proper method of valuation for reorganization purposes is primarily an appropriate capitalization of reasonably prospective earnings. These principles as to the recognition of priorities and as to valuation are now firmly established as a result of Supreme Court decisions.

In connection with the fairness of plans, the Commission has been concerned among other matters with situations where mismanagement or other misconduct on the part of a parent company or controlling person requires that the claim of such person be subordinated to the claims of the public investors or, where a fiduciary's activities require that he be limited to the cost of his claims. Such matters must be given full consideration since they form an integral part of the concept of the "fair and equitable" plan. Likewise the Commission is concerned with the treatment of causes of action against the former management or other parties. Unless such claims have been disposed of by litigation or settlement during the proceeding or as part of a plan of reorganization, the Commission has argued that the plan provide for the retention and prosecution of such causes of action by the trustee. In this way litigation in favor of the estate need not delay the consummation of the reorganization.

Where operations of the debtor result in the accumulation of cash, the Commission has generally successfully urged that cash distributions be made to creditors whenever it is feasible to do so, even though in advance of the plan of reorganization. This position was taken in several cases during the past fiscal year. In one case, junior creditors affiliated with the management of the debtor and its principal stockholders opposed any distribution to bondholders because certain issues in the case were still undetermined. Emphasizing the tentative nature of interim distributions, the Commission argued that the order for distribution would preserve all the rights of the parties in the case and that it would be inequitable to withheld partial payment until final adjudication of all issues where such rights could be preserved. [Footnote: In re Industrial Office Building Corp., D. N. J.] The district court upheld the Commission's position and directed a partial distribution to bondholders. An appeal is pending from this decision to the Circuit Court for the Third Circuit but that court denied a request for a stay of the judge's order.

Feasibility

Although the representatives of security holders frequently regard the fairness of the plan as their principal concern, the provisions of the statute and the protection of investors' interests require also that the plan be feasible. To be feasible, a reorganization must be economically sound and workable. It must not hamper future operations or lead to another reorganization. The extent to which current reorganizations are attributable to lack of feasibility in previous reorganizations is indicated by the fact that numerous chapter X proceedings involved companies which had already undergone reorganization in equity receivership proceedings or under section 77B of the Bankruptcy Act. In order to avoid a similar record as to chapter X cases some years hence, with its attendant expense and injury to investors, the Commission gives a great deal of attention to the factors affecting feasibility. In this connection, the Commission is particularly concerned with the adequacy of working capital, the relationship of funded debt and of the capital structure as a whole to property values, the adequacy of corporate earning power in relation to interest and dividend requirements, and the effect of the new capitalization upon the company's prospective credit.

In recent years the Commission has encountered difficulties because the parties are disposed to base values and capital structures upon inflated earnings, either because they overlook the extent to which earnings are inflated or hope such earnings will continue long enough to permit debt to be scaled down to manageable proportions. Another obstacle to the formulation of feasible plans in the current period of high tax rates is the reluctance of investors to scale down debt and thereby lose the deduction for interest payments.

Consummation of Plan

The Commission also gives its attention to the drafting and preparation of corporate charters, bylaws, trust indentures, and other instruments which are to govern the internal structure of the reorganized debtor. The Commission strives to obtain the inclusion of various previsions in these instruments which will assure to the investors a maximum of protection, adequate information with regard to the enterprise, and a fair voice in the management. The Commission has generally opposed the control device of a voting trust except when its use has been justified by the special circumstances of the case; and, when adopted, the Commission has sought to have the voting trust agreement contain appropriate provisions in the interests of the investors.

Rights to Interest

Creditors' rights to interest on secured claims were the subject of several decisions rendered by the Circuit Court of Appeals for the Second Circuit during the past year, in cases in which the Commission was an active participant. In *In*

re Realty Associates Securities Corp. [163 F. 2d 387 (1947), cert. denied, 332 U.S. 836 (1947).] a majority of the court held that interest on the principal amount of a claim continued to accrue after the institution of chapter X proceedings at the contract rather than the legal or "judgment" rate. The debtor in this case had covenanted to pay 5 percent interest "until the reduced principal * * * shall be duly paid," which was held to be the contractual post-maturity rate. Citing the ruling of the Supreme Court in *Vanston Bondholders Protective Committee v. Green*, 329 U. S. 156 (1946), the court held also that no interest was payable on that portion of the claim which represented unpaid interest accrued prior to the date of the chapter X petition. In *Empire Trust Co. v. Equitable Office Building Corp.* [167 F. (2d) 346 (1948], a debenture provision for the payment of interest at 5 percent "until such principal shall be paid" was likewise construed as fixing the post-maturity rate applicable during the pendency of the reorganization proceeding and as negativing the 6 percent legal rate which might otherwise have been applicable. The court held also that an express covenant to pay simple interest on overdue and unnegotiated interest coupons is invalid in New York. In *Delatour v. Prudence Realization Corp.* [167 F. (2d) 621 (1948)], where guaranteed certificates of participation in a 6 percent mortgage issued by the debtor provided for the remission of only 5.5 percent interest to the public certificate holders by the guarantor servicing-agent, the former were nevertheless allowed the 6 percent mortgage interest to the exclusion of the guarantor following default on the guaranty. The court held that the 1/2 percent interest represented compensation due the guarantor for its guaranty and agency for servicing the mortgage, both of which terminated upon default.

ADVISORY REPORTS

Although the preparation. of an advisory report is not the major part of the activity of the Commission in any particular case, such reports, because of their wide distribution, form one of the primary means of contact between the Commission and the public in chapter Xl matters. Generally speaking, an advisory report is prepared only in connection with a proceeding involving significant problems and a relatively large company in which the investing public has a substantial interest. Even though the Commission in some cases does not file a formal advisory report, it does, in all cases in which it is a participant, advise the court of its opinion with respect to any plan of reorganization under consideration by the court.

During the past fiscal year the Commission prepared two supplemental advisory reports with respect to a proposed plan of reorganization involving Childs Co., the owner and operator of a large chain of restaurants. Previously the Commission had submitted an advisory report and two supplemental reports on a plan of reorganization which failed to receive the required percentage of approval

of common stock holders. The trustee's revised plan was considered to be feasible in that it provided for adequate working capital and a sound capitalization. It was also considered to be fair in its treatment of creditors and its allocation of new securities between preferred and common stock holders, which fell within a range previously stated by the Commission to be fair. The Commission suggested, however, certain protective provisions for the preferred-stock holders in respect of pre-emptive rights, a cumulative sinking fund and a two-thirds approval of any extraordinary borrowing. Several of these suggestions were adopted in the revised plan. After court approval, the plan was accepted by stockholders and confirmed by the court and it has now been consummated.

PART V
ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

The Trust Indenture Act of 1939 outlaws the exculpatory clauses used in the past in trust indentures underlying corporate debt securities. Many of these clauses eliminated liability of the trustee for misconduct to such an extent that the word "trustee" was meaningless as applied to indenture trustees. The act is designed to insure that the trustee will act in the interest of the bond or debenture owners and to insure his complete independence of the issuer and the underwriters. To secure its objectives, the act requires that bonds, notes, debentures, and similar debt 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 are so integrated that registration pursuant to the Securities Act of 1933 of securities to be issued under a trust indenture is not permitted to become effective unless the indenture conforms to the requirements expressed in the Trust Indenture Act of 1939, and such an indenture is automatically "qualified" when registration becomes effective as to the securities themselves. An application for qualification, of an indenture covering securities not required to be registered under the Securities Act of 1933, which is filed with the Commission under the Trust Indenture Act, is processed substantially as though such application were a registration statement filed pursuant to the Securities Act of 1933.

STATISTICS OF INDENTURES QUALIFIED

While the dollar amount involved in all indentures filed with the Commission last year for qualification under the act again aggregated more than 2.5 billions of debt securities, this value shows a reduction of $138,000,000 from the prior year.

At the same time there was an increase in the number of indentures filed from 108 to 121. Other significant details concerning indentures examined last year for qualification and the disposition thereof are shown below.

(chart omitted)

During the past year the following additional material relating to trust indentures was also filed, in a volume somewhat above that of the preceding year, and examined by the staff for compliance with the appropriate standards and requirements of the act:

One hundred forty-three statements of eligibility and qualification under the Trust Indenture Act;

Twenty-four amendments to trustee statements of eligibility and qualification;

One hundred eight supplements S-T, covering special items of information concerning indenture securities registered under the Securities Act of 1933;

Forty-three amendments to supplements S-T;

Seventeen applications for findings by the Commission relating to exemptions from special provisions of the Trust Indenture Act; and

Three hundred ninety-three annual and interim reports of indenture trustees pursuant to section 313 of the Trust Indenture Act.

PART VI
ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 requires the registration and provides for the regulation of investment companies, which are, generally, companies engaged primarily in the business of investing, reinvesting, owning, holding, or trading in securities. Among other things, the act requires disclosure of the finances and of the investment policies of these companies to afford investors full and complete information with respect to their activities; prohibits such companies from changing the nature of their business or their investment policies without the approval of the stockholders; bars persons guilty of security frauds from serving as officers and directors of such companies; prevents underwriters, investment bankers, and brokers from constituting more than a minority of the directors of such companies; requires management contracts in the first instance

to be submitted to security holders for their approval; prohibits transactions between such companies and their officers and directors and other insiders except on the approval of the Commission; forbids the issuance of senior securities of such companies except in specified instances; prohibits pyramiding of such companies and cross ownership of their securities; and requires face-amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

UNLAWFUL ACQUISITION BY INVESTMENT COMPANY OF INSURANCE COMPANY STOCK

A registered, diversified management-investment company of the open-end type acquired shares representing 50 percent of the voting stock of an insurance company when it had no interest in the insurance company. The acquisition contravened section 12 (d) (2) of the act which provides that it shall be unlawful, with exceptions not pertinent here, for a registered investment company to acquire more than 10 percent of the outstanding voting stock of an insurance company, unless the investment company owned at least 25 percent of such securities at the time the purchase is made. Section 47 of the act declares contracts made in violation of the act void, as regards the rights of any person who shall have made or engaged in the performance of such contract or of any person, though not a party, who shall have acquired any right thereunder with knowledge of the pertinent facts.

After conferring with the staff, the investment company filed an application under section 6 (c) of the act for an order of the Commission exempting the acquisition from the provisions of section 12 (d) (2). It was stated therein that the vendors had been apprised of the violation and of their possible rights to rescind but had indicated a desire to reaffirm the transaction. In its disposition of the case, the Commission issued an order of exemption conditioned upon divestment of the insurance company stock by the investment company and other terms intended to insure that neither the investment company nor its management would derive any benefit as a consequence of the violation which had occurred. (Investment Company Act release No. 1189.)

CHANGES IN RULES

A number of changes were made last year further to simplify the Commission's rules and regulations under this act.

Rule N-17A-2 -- Exemption of Transactions by Banks

During the fiscal year the Commission amended rule N-17A-2 which exempts from section 17 (a) of the act certain purchase, sale, or borrowing transactions. Prior to the amendment the exemption was limited to a transaction between a bank and a person engaged principally in the business of installment financing. The amendment expanded the exemption provided by the rule so that it would also apply to certain transactions between banks.

Rule N-17A-4 -- Exemption of Contracts With Nonaffiliates

During the fiscal year the Commission adopted rule N-17A-4 to exempt from section 17 (a) of the act transactions pursuant to a contract where, at the time the contract was made and for a period of 6 months prior thereto, no affiliation or other relationship existed which would bring the transaction within the purview of section 17 (a). The purpose of this amendment was to provide an automatic exemption for such transactions since they are effected pursuant to a contract presumably entered into upon the basis of arm's-length negotiations.

Rule N-17F-2 -- Custody of Securities

Rule N-17F-2 specifies the conditions under which registered management investment companies may lodge their securities and similar investments in their own custody. During the fiscal year the Commission revised this rule in the interest of clarification. The revision specifically made clear that such investments deposited with a bank or other company under any arrangements which permit the withdrawal of such investments by directors, officers or employees upon their mere receipt are deemed to be in the custody of the registered company and may be maintained only in accordance with the terms and conditions of the rule.

Rule N-17G-1 -- Bonding of Officers and Employees

During the fiscal year the Commission circulated for public comment and later adopted rule N-17G-1. This rule implements the provisions of section 17 (g) of the act regarding the bonding of officers and employees of registered management investment companies who have access to securities or funds of the company. The rule permits the management to determine initially the amount of the bond required, but reserves to the Commission an opportunity, after appropriate notice and opportunity for hearing, to fix a minimum reasonable amount, as well as the type, form and coverage, of such bond.

STATISTICS RELATING TO REGISTERED INVESTMENT COMPANIES

As of June 30, 1948, there were 359 companies registered under the Investment Company Act of 1940. During the fiscal year 18 companies registered under the

act, and the registration of 11 companies was terminated. The assets of the 359 registered investment companies aggregated approximately $3,825,000,000, an increase of $225,000,000 over the corresponding figure for 352 companies so registered a year before. These companies are classified under the act as follows:

Management open-end: 134

Management closed-end: 114

Unit: 95

Face amount: 16

Total: 359

The 18 companies that registered during the fiscal year are classified under the act as follows:

Management open-end: 11

Management closed-end: 7

Total: 15

The 11 companies whose registrations were terminated during the fiscal year were classified under the act as follows:

Management open-end: 2

Management closed end: 8

Unit: 1

Total: 11

During the fiscal year 73 applications were filed under various provisions of the act, 61 of these for orders of the Commission relating to exemption from requirements of the act and the remaining 12 for a determination of the Commission that the applicant had ceased to be an investment company within the meaning of the act. At the beginning of the fiscal year, 50 applications were pending. These pending applications, together with the 73 filed during the year, totaled 123 applications which required the appropriate examination and consideration of the Commission during the year. As a result of the

Commission's action, 79 of those applications, were disposed of during the year and 44 were pending on June 30, 1948. The various sections of the act under which these applications were filed, and the disposition of the applications during the fiscal year, are shown in the following table.

(chart omitted)

The number of documents filed under the act by registered investment companies during the fiscal years ended June 30, 1947 and 1948, together with other related statistics, are tabulated below.

(chart omitted)

PART VII
ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

The Investment Advisers Act of 1940 requires the registration of investment advisers, persons engaged for compensation in the business of advising others with respect to securities. The Commission is empowered to deny registration to or revoke registration of such advisers if they have been convicted or enjoined because of misconduct in connection with security transactions or have made false statements in their applications for registration. The act also makes it unlawful for investment advisers to engage in practices which constitute fraud or deceit; requires investment advisers to disclose the nature of their interest in transactions executed for their clients; prohibits profit-sharing arrangements; and, in effect, prevents assignment of investment advisory contracts without the client's consent.

Investment advisers' registration statistics, 1948 fiscal year

Effective registrations at close of preceding fiscal year: 952

Applications pending at close of preceding fiscal year: 19

Applications filed during fiscal year: 166

Total: 1,137

Registrations canceled or withdrawn during year: 73

Registrations denied or revoked during year: 0

Applications withdrawn during year: 1

Registrations effective at end of year: 1,048

Applications pending at end of year: 15

Total: 1,137

Approximately 222 of these investment advisers represent in their applications that they engage exclusively in supervising their clients' investments on the basis of the individual needs of each client. The services of about 224 others are chiefly through publications of various types; 237 investment advisers are registered also as brokers and dealers in securities. Most of the remainder offer various combinations of investment services.

PART VIII
OTHER ACTIVITIES OF THE COMMISSION UNDER THE VARIOUS STATUTES

THE COMMISSION IN THE COURTS

Civil Proceedings

Complete lists of all cases in which the Commission appeared before a Federal or State court, either as a party or us amicus curiae, during the fiscal year, and the status of such cases at the close of the year, are contained in appendix tables 21 to 33. In addition, appendix table 34 contains a list of all those cases involving the statutes administered by the Commission (including chapter X cases) which have been decided by the courts during the fiscal year, including the official citation of each case and the sections of the statutes involved. The only cases omitted are those in which no opinion was rendered and which, in addition, did not involve a novel legal problem.

At the beginning of the 1948 fiscal year 23 injunctive and related enforcement proceedings instituted by the Commission in connection with fraudulent and other illegal practices in the sale of securities were pending before the courts; 25 additional proceedings were instituted during the year and 27 cases were disposed of, so that 21 of such proceedings remained pending at the end of the year. In addition, the Commission participated in a large number of reorganization cases; in 19 proceedings in the district courts under section 11 (e)

of the Public Utility Holding Company Act of 1935; and in 28 miscellaneous actions, usually as amicus curiae or intervenor, to advise the court of its views regarding the construction of provisions of statutes administered by the Commission which were involved in private lawsuits. The Commission also participated in 64 appeals. Of these, 23 came before the courts on petition for review of an administrative order; 23 arose out of corporate reorganizations in which the Commission had taken an active part; 4 were appeals in actions brought by or against the Commission; 12 were appeals from orders entered pursuant to section 11 (e) of the Public Utility Holding Company Act; and 2 were miscellaneous appeals.

The civil proceedings in which the Commission participated during the fiscal year are discussed at length in the sections of this report devoted to the respective acts involved in the proceedings.

Criminal Proceedings

The statutes administered by the Commission provide for the transmission of evidence of statutory violations to the Attorney General who, in his discretion, may institute appropriate criminal proceedings. As a matter of practice the Commission, largely through its 10 regional offices, thoroughly investigates suspected violations and, in cases where the investigation appears to disclose a foundation for criminal proceedings, prepares detailed reports of investigation which are forwarded to the Attorney General. When it is decided to institute criminal proceedings, the Commission may assign such of its employees as have participated in the investigation to assist in the preparation of the case for presentation to the grand jury, in the conduct of the trial, and in preparing briefs on appeal. Parole reports on convicted offenders are prepared also by members of the Commission's staff. Where the investigation discloses violations of statutes other than those administered by the Commission, reference is made to the appropriate Federal or State agency.

Up to June 30, 1948, indictments had been obtained against 2,517 defendants in 412 criminal cases developed by the Commission. By the end of the 1948 fiscal year, 385 of these cases had been disposed of as to one or more defendants, and convictions had been obtained in 344, or over 89 percent of such cases, against a total of 1,235 defendants. During the 1948 fiscal year 14 indictments were returned against 33 defendants. Convictions were obtained against 16 defendants in 11 cases during the year. [Footnote: Including pleas of guilty or nolo contendere. Two of these cases are still open as to other defendants.]

In the criminal appeals decided during the past year judgments of conviction were affirmed as to three defendants and reversed as to one defendant, whose

case was remanded for a new trial. [Footnote: These appeals involved four separate cases.] Upon retrial this defendant pleaded guilty.

As in prior years, the criminal cases developed by the Commission and prosecuted during the past fiscal year continued to be extremely varied in nature. Generally they include fraudulent promotions of a variety of mining ventures, new businesses, and inventions; fraud in the sale of securities relating to oil and gas properties; fraudulent schemes employed by securities brokers and dealers and their representatives; fraudulent practices by corporate "insiders"; and the unlawful manipulation of stock on a securities exchange.

Cases prosecuted during the year involving the fraudulent promotion of a variety of mining ventures included *U. S. v. Magnus G. Thomle et al.* (Mass.); U. S. v. Bennett S. Dennison (S. D. Cal.); *U. S. v. F. E. Nemec et al.* (E. D. Wash.) ; *U. S. v. Wallace B. O'Keefe* (W. D. Wash.) ; and *U. S. v. James A. Allen et al.* (E. D. Wash.).

In the *Thomle* case two defendants were convicted for a fraudulent promotion in connection with the sale of stock of a silver-mining company and for selling such stock in violation of the registration provisions of the Securities Act of 1933. The defendants were charged, among other things, with employing the "Ponzi" type of swindle, wherein purported dividends were paid to investors out of the capital funds of the mining corporation which was the subject of the promotion. Another conviction for a fraudulent mining promotion was obtained in the *Dennison* case, where the defendant was charged with selling stock of a gold-mining corporation by means of false representations including, among others, that the company owned valuable mining properties on which rich gold ore deposits had been discovered and that the company had ample capital to put its mining properties into successful commercial production. Dennison was also found guilty on another indictment which charged him with the fraudulent sale of securities relating to the promotion of a new business, a proposed corporation which purportedly was to engage in the production and sale of building materials.

In the *Nemec* and *O'Keefe* cases the defendants were charged with fraudulently selling securities in connection with the promotion of various gold mining ventures. The indictments in these cases charged, inter alia, that the defendants made false representations as to the ownership of the mining properties which were the subject of the promotion. It was also charged in the Nemec case that the defendants fraudulently claimed that they had acquired the exclusive rights to a secret process for the recovery of gold and other metals, which process purportedly had been invented by one of their associates who was falsely represented to be a nuclear physicist, eminent chemical engineer, and key atomic scientist in the development of the atomic bomb at the Hanford project. After the close of the fiscal year convictions were obtained in both of these

cases. [Footnote: In the *Nemec* case one defendant pleaded guilty at the opening of the trial, four others were found guilty after trial, and two others were acquitted, one by the jury and one by direction of the court. In the *O'Keefe* case, O'Keefe, who was the sole defendant, entered a plea of guilty to one of the two counts of the indictment.]

In the *Allen* case the defendants are charged with fraudulently selling the stock of two silver mining corporations. The indictment charges, in addition to other things, that the defendants falsely represented that the proceeds received front the sale of stock would be used for the exploration and development of the corporations' mining properties, whereas according to the indictment the defendants appropriated and diverted a large amount of such proceeds to their own use and benefit. [Footnote: Pending.]

Convictions in connection with the fraudulent promotion of new businesses were obtained during the past year in *U. S. v. Thomas A. Neely* (N. D. Ill.) and *U. S. v. John H. Boat* (N. D. Cal.). The *Neely* case involved the fraudulent sale of securities of various corporations which were organized or to be organized for the purported purpose of providing barge-transportation facilities to a number of prominent steel and oil companies. In the *Boat* case the defendant was convicted for fraudulently selling various securities in connection with the promotion of a corporation which purportedly was to engage in the manufacture of artificial gas from hydro-carbon oils.

A promotion relating to the development of various oil and gas properties was involved in *U. S. v. Cactus Oil Co. et al.* (Del.), in which an indictment was returned during the year charging violations of the registration and antifraud provisions of the Securities Act of 1933 in the sale of preorganization subscriptions and stock of the defendant corporation. The defendants are charged with making various false representations as to the size and value of the oil and gas properties owned by the corporation and the quantity of oil and gas being produced from such properties. The indictment further charges the defendants with employing the "Ponzi" and "reloading" fraud techniques in that they are alleged to have caused purported "dividends" to be paid by the corporation out of capital for the purpose of inducing investors to make repeated purchases of stock. [Footnote: Pending.]

The indictment in *U. S. v. Chester S. Plasket* (W. D. Texas) alleges that the defendant fraudulently sold royalty interests and other securities in connection with the promotion of two inventions, known as the "Magic Fountain Shaving Brush" and the "Magicflo Siphon Jigger," a plastic liquor dispensing device. [Footnote: Pending.]

Several cases involved charges of fraud and unlawful conduct on the part of securities brokers and dealers and their representatives. These were *U. S. v. Wells E. Turner* (W. D. Wisc.); *U. S. v. Kenneth Leo Bauer et al.* (N. J.); *U. S. v. Arthur L. Augustine* (N. D. Iowa); and *U. S. v. Clarence Everett March* (N. D. Ill.). Convictions were obtained in the Turner, Bauer [Footnote: Bauer pleaded guilty; pending as to two other defendants], and Augustine cases, in which the indictments charged, inter alia, that the defendants converted and appropriated to their own use and benefit securities and funds belonging to their customers. The indictment in the Martin case charges the defendant with employing a scheme to defraud representatives of the estates of deceased and incompetent persons in connection with, the purchase and sale of various securities owned by such estates. According to the indictment, Martin represented that he would dispose of the securities owned by the estates at the current market prices and instead concealed the true current market value of such securities and purchased them for his own account at prices less than the prevailing market prices. [Footnote: Pending.]

Fraudulent sales of securities of an alleged fraternal association resulted in the conviction of the defendant in *U. S. v. Preston E. Douglass* (N. D. Ill.). According to the indictment Douglass, by means of various false representations, induced investors to purchase stock purportedly issued or to be issued by the Frederick Douglass Afro-American Cooperative Industry Builders Association, Inc., a non-profit Illinois corporation (which was by statute prohibited from issuing stock), which association had been organized by Douglass supposedly for the purpose of improving the economic status and welfare of the Negro race and to furnish investors with employment in cooperative stores and on farms which the association would develop and establish.

Fraudulent practices by corporate “insiders” were involved in *U. S. v. Alfred Epstein et al.* (E. D. Mich.), in which three defendants were found guilty of mail fraud violations in connection with the operation of two brewery corporations. The defendants were alleged to have siphoned off to themselves substantial sums of moneys from these brewery corporations through the medium of a number of other companies which they had organized for the purpose of reselling brewing materials to the brewery corporations. [Footnote: Appeals pending.]

In *U. S. v. Albert B. Windt et al.* (N. D. Cal.), the defendants were convicted of manipulating and conspiring to manipulate the stock of a mining company listed on the San Francisco Mining Exchange. According to the indictment, the defendants conspired to and did raise the market price of such stock on the exchange by a series of manipulative transactions designed to create the appearance of active trading and to raise the price of such stock for the purpose of inducing others to purchase the stock at the higher prices.

In a number of cases Canadian mining company stocks were sold to residents of the United States by persons residing in Canada who operated 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 secure a treaty with Canada which would permit the extradition of persons violating Federal and State securities laws. The treaty was ratified by the United States Senate in May 1942, but has not yet been ratified by the Canadian Parliament. Numerous cases of this type have been the subject of investigation by the Commission and indictments have been obtained in a number of these cases. One such case is *U. S. v. Albert E. Broadley et al*. (W. D. N. Y.), in which an indictment was returned during the 1948 fiscal year charging the defendants with employing a scheme to defraud in the sale of stock of two Canadian corporations in connection with the promotion of gold and nickel mining ventures. In part, the indictment charges that the defendants rendered a purported free investment advisory service, the sole purpose of which was to sell the stock of these corporations, and that they falsely represented that the moneys received from the sale of such stock would be used for the development of the corporations' mining properties. [Footnote: Pending.]

Constant vigilance is maintained by the Commission in order to cause the apprehension of the defendants in these Canadian cases if they should enter the United States. During the past year such efforts were successful in causing the apprehension of the defendants in two such cases, *U. S. v. Albert Edward DePalma* (N. D. Ohio) and *U. S. v. Noel H. Knowles et al.* (E. D. N. Y.). The indictments in these cases, which had been impounded by the Federal district courts at the time of their return, were made public after the defendants had been apprehended. DePalma, who was released on $50,000 bail, failed to appear for arraignment and forfeited his bail. He is presently a fugitive in Canada. The defendants in the other case are awaiting trial.

The criminal appeals decided during the 1948 fiscal year were: *Kaufman v. U. S.*, 163 F. (2d) 404 (C. A. 6, 1947), certiorari denied, 333 U. S. 857 (1948), in which a conviction for the fraudulent sale of stock of Devon Gold Mines, Ltd., a Canadian corporation, was affirmed; *U. S. v. Freeman*, 167 F. (2d) 786 (C. A. 7, 1948), wherein the court sustained the conviction of the appellant for conspiracy and using the mails to defraud in connection with transactions involving the exchange of whisky warehouse receipts for bottling contracts; *Reining v. U. S.*, 167 F, (2d) 362 (C. A. 5, 1948), in which the court affirmed the defendant's conviction on four counts [Footnote: The court reversed on two other counts on which the defendant had also been convicted.] charging violation of the Mail Fraud Statute in the fraudulent sale of various oil and gas leases; *U. S. v. Grayson*, 166 F. (2d) 863 (C. A. 2, 1948), wherein the court reversed the conviction of Grayson for conspiracy and fraud violations in connection with the sale of various oil and gas interests. In the latter case, the court found that the

evidence supported the jury's verdict but remanded the case for a new trial because of certain errors committed during the trial. Upon retrial Grayson pleaded guilty.

COMPLAINTS AND INVESTIGATIONS

During the 1948 fiscal year the Commission received 5,921 items of mail concerned, with alleged securities violations. These communications are classified administratively as "complaint enforcement" correspondence. While they relate to complaints and alleged violations of various laws administered by the Commission, the bulk of them deals with the enforcement of the Securities Act of 1933 and the registration provisions of the Securities Exchange Act of 1934.

This material constitutes an important source of information concerning possible securities violations. Investigations made by the Commission's staff, and contacts maintained with other governmental or private agencies provide additional sources of such information. Where it appears on the basis of any such data that any securities violation may have occurred, the Commission conducts appropriate investigations by means of correspondence or the assignment of cases to field investigators to ascertain the facts of the particular case.

The extent of the investigatory activities of the Commission during the past year under the Securities Act of 1933, the Securities Exchange Act of 1934; sections 12 (e) and (h) of the Public Utility Holding Company Act of 1935; the Investment Company Act of 1940; and the Investment Advisers Act of 1940 is reflected in the following table:

(chart omitted)

Securities Violations File

To assist in the enforcement of the various statutes which it administers, and to provide a further means of preventing fraud in the purchase and sale of securities, the Commission has established a securities violations file. This file constitutes a clearinghouse of information concerning persons who have been charged with violations of various Federal and States securities statutes. It is kept up to date by the Commission in cooperation with the United States Post Office Department, the Federal Bureau of Investigation, parole and probation officials, State securities commissions, Federal and State prosecuting attorneys, police officials, members of the National Association of Better Business Bureaus, Inc., and members of the United States Chamber of Commerce. By the end of

the 1948 fiscal year this file contained data, concerning 49,100 persons against whom Federal or, in the majority of cases, State action had been taken in connection with securities violations. During the past year alone additional items of information relating to 2,771 persons were added to these files, including information concerning 1,170 persons not previously identified therein.

Extensive use is made of this clearinghouse of information by the Commission and the cooperating agencies. During the past year, in connection with the maintenance of the files, the Commission received 2,619 “securities violations’’ letters or reports (apart from those mentioned above which are classified as “complaint enforcement’’) and dispatched 2,424 communications in turn to cooperating agencies.

ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

The importance of adequate financial statements and their certification by independent public accountants in ensuring information necessary for the protection of investors is recognized in the detailed provisions of the several acts administered by the Commission. These acts grant the Commission broad authority to prescribe uniform systems of accounts for registrants subject to the Public Utility Holding Company Act of 1935, to provide for a reasonable degree of uniformity in accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required by the Investment Company Act of 1940, and to prescribe the form and content of financial statements required to be filed by registrants subject to the Securities Act of 1933 and the Securities Exchange Act of 1934. Acting under this authority the Commission has proscribed uniform systems of accounts for certain public utility holding companies and for public utility mutual and subsidiary service companies. The principal accounting requirements prescribed under the acts of 1933, 1934, and 1940 are set forth in regulation S-X, which governs the form and content of most financial statements filed under these acts. In addition, under the Securities Exchange Act, rules have been adopted governing record keeping, financial reporting, and the auditing of the books of exchange members, brokers, and dealers.

Recognizing the pervasive nature of accounting in many of the Commission’s activities under all of the acts and in all of its major operating divisions, the Commission organized its accounting staff to facilitate the handling of day-to-day accounting problems and to ensure reasonable uniformity of treatment of such problems. To this end the chief accountant acts as the Commission’s chief adviser and consulting officer on accounting matters and exercises general supervision over the establishment and execution of Commission policy with respect to accounting and auditing principles and practices. Assisting him directly

is an assistant chief accountant and a small staff whose principal functions are to procure studies of current problems and to draft necessary rules and opinions. In addition, there are three other assistant chief accountants, each of whom is assigned to and is directly responsible for the examination of financial data and other accounting work in one of the three operating divisions of the Commission, namely, the Divisions of Corporation Finance, Public Utilities, and Trading and Exchanges.

Although the Commission's accounting requirements, as they exist in rules, regulations, and forms in use today, reflect nearly 15 years' experience involving both formal and informal decisions rendered in the daily work of the divisions, and although they exhibit the influence of valuable counsel of independent accountants and accounting and financial officers of registration as well as the advice of committees of professional and business organizations, other Government agencies, and numerous public-spirited individuals, those requirements do not constitute a completely integrated body of accounting principles. It was recognized, however, early in the handling of the Commission's accounting work that decisions would necessarily be made which would be of general application. To make these decisions readily available, a program of publication of accounting series releases was inaugurated in 1937. In release No. 4 of this series the Commission, recognizing that differences of opinion with respect to accounting principles existed in the professional circles, announced its administrative policy that, in the absence of substantial authoritative support for accounting principles employed, financial statements were to be presumed to be misleading or inaccurate despite disclosures contained in the certificate of the accountant or in footnotes to the statements, provided that the matters involved were material. In the event of a difference of opinion between the Commission and the registrations to the proper principles of accounting to be followed, disclosure would be accepted in lieu of correction of the financial statements only if there was substantial authoritative support for the practices followed by the registrant and the position of the Commission had not previously been expressed in rules, regulations, or other official releases of the Commission, including the published opinions of its chief accountant. The complete texts of a preseries release and the first 63 releases in the accounting series were republished in one handy volume at the close of the present fiscal year. It is contemplated that subsequent releases as they are promulgated will be printed in the same convenient form.

Examination of Financial Statements

The material referred to above comprises the necessary guides to persons contemplating filing financial statements with the Commission. In addition, all members of the Commission's accounting staff are available to advise prospective registrants and their accountants, in conference or by

correspondence, prior to filing. Experienced practitioners who recognize unique problems regularly follow this procedure and save valuable time for themselves and their clients. The public accountant without experience with the Commission should not hesitate to do likewise. Although many problems are encountered and solved in this way, a substantial part of the Commission's accounting work lies in the examination of financial statements after filing. In the event that the examination discloses lack of compliance with the rules or regulations or a failure to apply generally accepted accounting principles the customary procedure is to advise the registrant by letter. The problems raised may then be resolved either by correspondence or conference, which may result in corrections in the financial statements. It is only in the rarest cases that formal procedures are necessary to effect a solution. It is appropriate to observe again this year that numerous inquiries on accounting subjects were received from companies and accountants not involved in proceedings before the Commission. A growing practice not mentioned heretofore in these reports is the request from teachers and students of accounting for assistance in research projects or for copies of accounting series releases and regulations for use in university classes -- some devoted especially to the study of Commission procedures.

Proposed Amendment of Regulation S-X

During the 1948 fiscal year the Commission requested public comment on several proposals to amend regulation S-X. These proposals are discussed below.

Article 6B for face-amount certificate companies. -- In connection with the development of rules relating to face-amount certificate companies under the investment Company Act of 1940, the Commission on August 5, 1947, announced that there was under consideration a proposal for the adoption of a new article 6B in regulation S-X to prescribe the form and content of financial statements to be filed with the Commission by face-amount certificate companies. [Footnote: Accounting Series release No. 63] The article as proposed gives appropriate recognition to the special provisions of section 28 of the act relating to certificate reserves and "qualified investments." The proposal has been discussed with officials of the principal companies concerned and their independent accountants in a series of conferences.

Article 5A for commercial, industrial, and mining companies in the promotional, exploration or development stage. -- Since the adoption in 1936 of Form A-O-1 for securities of corporations organized within 2 years to engage in the exploitation of mineral deposits other than oil or gas, the Commission has prescribed one or more forms containing provisions for special presentation of financial statements to be used instead of the conventional balance sheets and profit and loss statements. Form A-O-1 since has been superseded. The

currently effective Forms S-2, S-3, and S-11 provide for separate statements of assets and capitalized expenses, liabilities, capital shares, other securities, and cash receipts and disbursements. Except for immaterial differences in captions the general form and content of these financial statements are the same for the three forms. The purpose of the present proposal is to include these alternative forms of financial statements in regulation S-X and to extend their use to applications for registration on Form 10 and to annual reports on Forms 10-K and 1-MD for companies of the type described. Prior to publishing the proposal for general comment the staff had the valuable assistance of the American Institute of Accountants' Accounting Procedure Committee Subcommittee on Mine Accounting in a series of conferences to explore the desirability of the proposal and thereafter to comment on a series of preliminary drafts.

Revised Form S-2

In connection with the proposed article 5A of regulation S-X it should be noted that Form S-2 was revised so that its requirements are substantially the same as Form S-12, subsequently rescinded. The revised form provides for commercial and industrial companies still in the development stage and prescribes financial statements of the type described above. Certain established companies which, heretofore used Form S-2 now use Form S-1.

Amendment of Form S-3

Of interest to accountants serving small mining companies is the amendment of Form S-3 announced in Securities Act release No. 3269 (1947). Prior to the amendment the form required certified financial statements as of a date within 90 days prior to the date of filing. The amendment provides that these statements need not be certified if there are also filed corresponding certified statements as of a date within 1 year prior to the date of filing.

Simplified Records for Brokers and Dealers

In an effort to assist brokers and dealers operating on a limited scale and with a minimum of office staff, the National Association of Securities Dealers during the past year prepared a simple set of bookkeeping forms and illustrations depicting the proper recording of transactions of a small over-the-counter business. Members of the Commission's staff were consulted during the preparation of the material and the finished project was submitted for comment. It was the opinion of the staff that if the use of the forms was confined to those members of the NASD whose business ordinarily involved the kinds of transactions comprehended by the forms submitted, the records thus maintained should comply with the requirements of rule X-17A-3, assuming, of course, that in individual cases the firm reflected the information contemplated by the rule. It

was observed that the forms submitted did not provide for certain complex types of transactions for which records would have to be maintained pursuant to the rule and for which the individual broker-dealer engaging in such transactions would have to provide the necessary records.

Commission Cases of Particular Interest to Accountants

Tobey Royalties Co., Inc. [Footnote: Securities Exchange Act release No. 3982] -- The broker-dealer in this case was one of a class required by section 17 (a) (1) of the Securities Exchange Act of .934 and rule X-17A-5 thereunder to file annual reports of financial condition. After appropriate hearing the Commission revoked the company's registration for its failure to file such reports for 1943, 1944, and, 1946, for filing a false and misleading report for 1945, and for refusing to permit representatives of the Commission to examine its books. Prior to taking this action the Commission had made repeated suggestions to the company regarding the proper manner of compliance with the requirements of the act and the rule.

Globe Aircraft Corp. [Footnote: Securities Act release No. 3255] -- In its accounting aspects this case is particularly interesting because of the significance of conditions arising after the date of the certified financial statements included in the registration statement but before the effective date of the registration statement. These undisclosed adverse financial developments led to the bankruptcy of the corporation and the Commission suspended the effectiveness of the registration statement. As originally filed the registration statement included an audited profit-and-loss statement for the last 4 months of 1945 which showed a loss of $540,000 as compared with net income of $53,000 for the full year. Of the $540,000 loss $439,000 represented a write-down of inventories from cost to replacement value. At the request of the Commission a profit and loss statement for the following January was included in an amended prospectus. While disclosing a loss of $17,000 for the month this unaudited statement made no reference to additional inventory write-downs necessitated by the continuation of excess costs for work-in-process inventory incurred throughout January and February 1946. Despite an assertion that there was a probability that a tax refund would offset a substantial part of the indicated inventory losses, the Commission held that the failure to disclose the situation made the January profit-and-loss statement materially false and misleading. The registration statement was also found materially false and misleading in that (1) it failed to disclose material increases in outstanding note liabilities between the date subsequent to the balance sheet as of which such liabilities were shown and the effective date of the registration statement, and (2) misstated the issuer's working capital needs by stating that the issuer intended to use the proceeds from the sale of the securities being registered for the payment of an outstanding loan and the purchase of a plant, when in fact the company's financial condition

was such that it could not have intended so to apply the proceeds since such proceeds were required for working capital.

Thomascolor, Inc. [Footnote: Securities Act release No. 3267] -- This case is fully discussed at page 13 of this report. It will be recalled that the registration statement showed “Patents and patent applications” amounting to $2,000,000 in total assets of $2,500,000. Although the intangible item was supported by a footnote disclosing the number of shares of capital stock of the registrant issued for assets acquired from predecessor interests and presenting a comparison of the resulting valuations with amounts earned on predecessor balance sheets, the presentation was considered misleading in two basic respects. The amounts shown as patents and patent applications included some $700,000 representing promotion stock to be acquired by the registrant for a nominal amount, and a substantial amount which was actually promotion expense. The amended balance sheet clarified the presentation, segregated the promotional items and more adequately disclosed the effect of the agreement, by which the registrant would receive the promotional stock. This case is the latest in a long series of cases involving promotional enterprises in which the Commission has held that values assigned to intangible assets acquired in exchange for stock must be scrutinized with care to avoid a misleading result in the financial statements due to the presence of inflated or improperly classified asset accounts.

Drayer-Hanson, Inc. [Footnote: Securities Act release No. 3277, Accounting Series release No. 64] -- In a report on an investigation it was determined that a registration statement which had become effective contained untrue statements of material facts and omitted to state material facts necessary to make the facts disclosed in the statement not misleading. The registration statement when it became effective on December 11, 1946, contained a certified balance sheet for the predecessor partnership as of April 30, 1946, and a certified profit-and-loss statement for the 10 months then ended. In June 1947 the company and its independent public accountants informed the Commission that the controller of the company had discovered an overstatement in the inventory of work-in-process and fabricated parts of approximately $97,000 which resulted in a similar overstatement of partnership net worth and net income reflected in the statements referred to above. Reexamination by the auditors indicated the overstatement to be approximately $85,000 in an inventory item of $244,000 and in the net income of $181,000 shown in the erroneous statements. The company had not taken a physical inventory of work in process since December 31, 1941; hence the auditors had not been able to employ the generally accepted auditing procedure of observing the inventory taking, but stated in their certificate that they had made tests of selected items subsequently to assure themselves of the existence of the inventory and of the adequacy of the related accounting data. However, the alternative procedures employed by the auditors did not disclose the failure of the registrant to give effect to all partial shipments from work in

process. The Commission concluded that under the circumstances of this case there was no justification for the omission of the inventory taking. It was concluded further that in view of the manner in which the audit work was done the accountants were not justified in stating in their certificate that they had no reason to believe that the inventories as set forth in the statements were not fairly stated.

Developments in Accounting Principles and Procedures

During the year the high level of prices and of business activity stimulated an unusual amount of discussion in financial and professional circles of certain basic problems in corporate accounting and financial reporting. These problems have been reflected in many of the registration statements and annual reports filed with the Commission.

One of the problems discussed during the year was the accounting treatment of general purpose contingency reserves and reserves designated for special purposes. One aspect of the subject, that of the disposition of war reserves, was mentioned last year. It appears that with few exceptions these reserves were eliminated during the year by charges of the type anticipated when the reserves were created and by the return of unabsorbed balances to earned surplus.

Another facet of the reserve question mentioned in the Thirteenth Annual Report was the propriety of creating, from income, reserves for future inventory price declines. Publication early in the 1948 fiscal year by the American Institute of Accountants of a research bulletin on the subject of “Inventory Pricing,” followed a few months later by a bulletin on “Inventory Reserves,” is a contribution to the solution of the problem substantially in accord with the views set forth in our last report. The Institute’s bulletin on the “Accounting Treatment of General Purpose Contingency Reserves” furnished support for the position that the creation and subsequent elimination of such reserves have no part in the determination of income.

In the examination of financial statements it has been necessary in some cases to take exception to profit-and-loss statements reflecting an optional presentation permitted by both of the reserve bulletins referred to in the preceding paragraph. Both of the bulletins express a preference for creating the reserves in question by a segregation or appropriation of surplus but permit their creation by appropriation of net income disclosed on the profit-and-loss statement, provided net income is first determined and clearly designated. Experience has shown that this last admonition has not been adequately observed in all cases. Even when applied meticulously in the financial statements, officers of the corporations and financial writers in referring to “net income for the year” frequently emphasize the final figure after deduction of the reserve appropriation rather than the designated

net income. It is for this reason that our chief accountant has taken the position that appropriations of the type in question should be reflected only in the surplus statement and should not be shown on the profit-and-loss statement. The Commission is advised that the American Institute of Accountants' committee on accounting procedure, having recognized the unsatisfactory results from the optional treatment, has adopted a bulletin prescribing alternate methods of presenting information as to the disposition of income which would prohibit the form of dubious reporting discussed above.

One old problem in accounting cropped up with renewed vigor early in the fiscal year. This is the theory that depreciation of fixed assets is related directly to replacement and that reserves for depreciation are inadequate if they are not equal to replacement cost of the property at the time of its retirement from service. One of the country's largest corporations applied this theory in its reports to stockholders in 1947 by including an extra charge for depreciation in its profit-and-loss statements on the grounds that replacement cost of the assets would be greater than recorded cost and that the procedure adopted was consistent with their accounting for inventories on the last-in-first-out basis. The company's independent accountants expressed an exception in their certificate by stating that the procedure followed by the corporation was not in accordance with generally accepted accounting principles. This example is cited because it is perhaps the most clearly presented and most vigorously defended of a number of efforts that have come to the Commission's attention to deal with the effects of the present high price levels. The problem is being given serious consideration and will be the subject of continuing study to determine whether there is justification for the substitution of new procedures for the presently accepted basis of recording fixed assets at cost and allocating appropriate portions of that cost to expense during the anticipated useful life of the assets.

A problem which has been under consideration and which has been the subject of repeated exchanges of views between the Commission's staff and representatives of the American Institute of Accountants and other interested parties is the concept of income and the proper form of income or profit-and-loss statement most informative to investors. At the close of the last year the discussion had progressed to a point where it was the general opinion, that a representative body of accountants or this Commission should publish conclusions on the subject in the near future. The result was the publication in December 1947 by the committee on accounting procedure of the American Institute of Accountants of Accounting Research Bulletin No. 32, on "Income and Earned Surplus." The bulletin presents the opposing views of the advocates of the "all-inclusive" and "current operating performance" types of income statements, reiterates the committee's opinion that "it is plainly desirable that over the years all profits and losses of a business be reflected in the net income," and emphatically expresses the opinion that "there should be a general

presumption that all items of profit and loss recognized during the period are to be used in determining the figure reported as net income." It then proceeds to enumerate certain extraordinary items which should be excluded from such determination of income "when their inclusion would impair the significance of net income so that misleading inferences might be drawn therefrom." Believing that the purposes desired to be served by this exception to the general presumption of the bulletin can best be served by proper presentation in an "all-inclusive" type of income statement, the Commission authorized the staff to take exception to financial statements which appear to be misleading, even though they reflect the application of the bulletin. It also authorized the chief accountant to address a letter to the Institute's director of research expressing the view that the procedures recommended in the bulletin seemed to be susceptible to abuse and might result in misleading income and earned surplus statements in conflict with published rules and opinions of the Commission. Through the courtesy of the director of research of the Institute and the editor the letter was given wide publicity in accounting circles by publication in the Journal of Accountancy immediately following the pages whereon the bulletin was reproduced. [Footnote: January 1948, p. 25] Experience since publication seems to indicate little attempt to apply the exceptions to which the Commission objected. In this connection it may be noted that the American Accounting Association has just published a revision of its 1941 statement of "Accounting Principles Underlying Corporate Financial Statements" in which its endorsement of the all-inclusive form of income statement and the principle of matching costs against revenues as the basis for the determination of income is reasserted (Accounting Concepts and Standards Underlying Corporate Financial Statements -- 1948 Revision).

Developments in Auditing Procedures and Professional Practice

The annual reports of the last 3 years have referred to the financial questionnaires of broker-dealers prescribed by rule X-17A-5 and Form X-17A-5 and to the minimum audit requirements specified in the form as applicable to those broker-dealers whose reports must be certified under the rule. As in these past years many of these reports are filed by small companies employing public accountants who have had no other experience with Commission requirements. In recognition of this situation the Commission staff, through correspondence and direct contact by regional office representatives, has devoted considerable time to explaining the requirements as to the content of the questionnaires to registrants and their accountants where it was apparent that inexperience rather than deliberate evasion was the cause of the unsatisfactory reports filed. It is believed, that in these cases a policy of education is more in the public interest than the imposition of sanctions would be.

It will be recalled that two of the accounting cases described herein involved inventories of work-in-process as the principal element. In both cases an

overstatement of the work in-process inventories resulted in corresponding overstatements of the capital stock equity and of the profit for the period, in this connection it is appropriate to recall that early in the war period the Commission established, regarding companies engaged in war work, a liberalized policy with respect to its requirements as to physical inventory verification by independent public accountants in order to avoid any possible interruption in the production or delivery of war materials. [Footnote: Accounting Series Release No. 30 (1942)] Following the disclosures in the *McKesson & Robbins, Inc.* case, the American Institute of Accountants adopted certain extensions of auditing procedure, including the requirement that if "inventories are a material factor, it should be generally accepted auditing procedure that, in addition to making auditing tests and checks of the inventory accounts and records * * * [the independent certified public accountant shall, wherever practicable and reasonable, be present, either in person or by his representatives, at the inventory taking and by suitable observation and inquiry satisfy himself as to the effectiveness of the methods of inventory taking and as to the measure of reliance which may be placed upon the client's representations as to inventories and upon the records thereof. In this connection the independent certified public accountant may require physical tests of inventories to be made under his observation." [Footnote: Statements of Auditing Procedure No. 1, October 1939] In announcing its waiver of this requirement and the acceptance of substitute procedures during the war the Commission said:

"It is implicit that, at the earliest opportunity, every reasonable effort will be made to take physical inventory with normal observation and test checking by the certifying accountants, and that any practicable improvements in the accounting records and controls of inventory will be undertaken. Finally, it should be understood that waiver of objections with respect to the current annual report will not necessarily constitute a basis for similar action in respect of annual reports for subsequent years or statements filed in registrations for the sale of securities. [Footnote: Accounting Series release No. 30 (1942)]

Current representations with respect to the auditing of inventory accounts are being scrutinized with care in the light of this admonition and the experience reflected in the cases cited.

Previous annual reports have commented upon the Commission's practice of cooperation with various accounting groups in the development of accounting and auditing standards of practice. This cooperation has taken the form of interchange of ideas and the institution of a practice of submitting for comment proposed changes in Commission rules to the several accounting organizations and others interested long prior to the adoption of the Administrative Procedure Act. In return, the organizations have referred their proposed public announcements in the field of accounting and auditing to the Commission's

accounting staff for comment. In addition to the pronouncements referred to above in the field of accounting principles and procedures, a special report by the committee on auditing procedure of the American institute of Accountants should be mentioned. The report published under the title “Tentative Statement of Auditing Standards -- Their Generally Accepted Significance and Scope” is a substantial contribution to a general understanding of the responsibilities of independent public accountants. The statement sets forth standards of field work and reporting; it recognizes that examinations of financial statements must be performed with due professional care by persons having adequate technical training and proficiency and an independence in mental attitude.

DIVISION OF OPINION WRITING

The Division of Opinion Writing aids the Commission in the preparation of findings, opinions, and orders promulgated by the Commission in contested and other cases and controversies arising under the Securities Act of 1933, the Securities Exchange Act of 1934, the Holding Company Act of 1935, the Trust Indenture Act of 1939, the investment Company Act of 1940, and the Investment Advisers Act of 1940. These statutes provide for a wide variety of administrative proceedings which require quasi-judicial determination by the Commission. Formal opinions are issued in all cases where the nature of the matter to be decided, whether substantive or procedural, is of sufficient importance to warrant a formal expression of views.

The Division of Opinion Writing is an independent staff office which is directly responsible to the Commission. It receives all assignments and instructions from and makes recommendations and submits its work to the Commission directly. It is headed by a director, who is assisted by an assistant director, supervising attorneys and a staff of drafting attorneys and a financial analyst. While engaged in the preparation of opinions assigned to the Division of Opinion Writing, the members of this Division are completely isolated from members of the operating division actively participating in the proceedings and it is an invariable rule that those assigned to prepare such an opinion must not have had any prior participation in any phase of the proceedings with respect to which the opinion is to be prepared.

The director or assistant director of the Division of Opinion Writing, together with the members of the staff of the Division who are assigned to work on a particular case, attend the oral argument of the cases before the Commission and frequently keep abreast of current hearings. Prior to the oral argument, the Division makes a preliminary review of the record and prepares and submits to the Commission a summary of the facts and issues raised, in the hearings before the hearing officer, as well as in any proposed findings and supporting briefs, the

hearing officer's recommended decision, and exceptions thereto taken by the parties. Following oral argument or, if no oral argument has been held, then at such time as the case is ready for decision, the Division of Opinion Writing is instructed by the Commission respecting the nature and content of the opinion and order to be prepared. In preparing the draft of the Commission's formal opinion, the entire record in the proceedings is read by a member of the staff of the Division of Opinion Writing and in some cases he also prepares a narrative abstract of the record. Upon completion of a draft opinion and abstract of the record, and after their review and revision within the Division of Opinion Writing, they are submitted to the Commission. If the study of the record in the case by the Division of Opinion Writing has revealed evidence of violations warranting a reference to the Attorney General for criminal prosecution, or has disclosed the desirability or the need for any changes in administrative procedures or techniques, appropriate recommendations are made to the Commission at the time the draft opinion in the case is submitted.

The draft opinion as submitted may be modified, amended, or completely rewritten in accordance with the Commission's final instructions. When the opinion accurately expresses the views and conclusions of the Commission, it is adopted and promulgated as the official decision of the Commission, in some cases concurring or dissenting opinions are issued by individual Commissioners who wish to express their separate views on matters covered by the opinion adopted by the majority of the Commission. In such cases the Division of Opinion Writing is occasionally instructed to prepare drafts of such concurring or dissenting opinions and confers respecting them with the individual Commissioners involved, submits drafts directly to them, and makes such modifications and revisions as are directed.

The findings of fact, opinions, and orders adopted and promulgated by the Commission serve as an aid and guide to the bench and bar. With minor exceptions (e. g., certain opinions dealing with requests for confidential treatment) all are publicly released and distributed to representatives of the press and persons on the Commission's mailing list. In addition, the findings and opinions are printed and published by the Government Printing Office in bound volumes under the title "Securities and Exchange Commission Decisions and Reports."

The foregoing represents the primary function of the Division of Opinion Writing -- to aid in the preparation of findings, opinions, and orders promulgated by the Commission in contested cases arising under the statutes it administers. This function has been assigned to an independent division so that those who assist in the preparation of the Commission's decision in a contested case are in no way connected with or participants in the preparation and presentation of the case at the hearings. In addition to this primary function, the Division is also

given many assignments of a general nature which are not inconsistent with the objective of the separation of the investigatory and quasi-judicial functions. Thus, the Division has been assigned continuing joint responsibility with the office of the general counsel in dealing with problems arising under the Administrative Procedure Act. It has also been given the responsibility of preparing a compilation of annotations of the various statutes administered by the Commission, and from time to time it is given other special assignments by the Commission.

The Division of Opinion Writing also assists the operating divisions of the Commission in the preparation of opinions in certain uncontested cases where participation by the operating division in the decisional process is proper under the Administrative Procedure Act. In some instances members of the Division of Opinion Writing are also assigned to assist the office of the general counsel in connection with court appeals taken from Commission decisions initially drafted in the Division. Some of the more significant opinions issued by the Commission during the year are commented upon in this report under the discussions of the various statutes.

INTERNATIONAL FINANCIAL AND ECONOMIC MATTERS

Foreign issuers, private and governmental, who seek to make public offerings of their securities in the United States are required to register those securities under the Securities Act of 1933. Often such issues involve preliminary discussions with representatives of the issuer as well as other United States agencies prior to registration. Among the significant issues registered during the year was one covering bonds of a par value of $131,971,700 to be issued by the Italian Government in exchange for the outstanding dollar bonds of the Kingdom of Italy. This issue was registered after a series of conferences between the staff of the Commission and representatives of the Italian Government. The Italian Government filed also an application for registration of the new bonds under the Securities Exchange Act of 1934 and for listing of the bonds on the New York Stock Exchange.

On the effective date of the registration the Commission, after consultation with the Departments of State and Treasury, withdrew the request it had made at the outbreak of the war that brokers and dealers in this country refrain from making a market in Italian securities. The Italian issue was the only foreign governmental issue registered during the year. Foreign private registrations of securities during the year amounted to $18,040,890. [Footnote: During the 1947 fiscal year foreign governments registered $333,557,590 of securities; and private foreign issuers registered $62,930,640. S. E. C. Thirteen Annual Report p 140. The

figures for private issues for this and the preceding year do not include offerings of securities of Canadian mining companies.]

The Commission maintains, through its Adviser on Foreign Investment, facilities for liaison with other agencies which might have jurisdiction over or interest in problems of foreign finance. The Commission has continued its representation on the Staff Committee of the International Advisory Council on International Monetary and Financial Problems. It has continued to cooperate with other agencies concerned with the development of the Government's foreign economic program through the Executive Committee on Foreign Economic Policy and its subcommittees on Foreign Investment Policy, Private Monopolies and Cartels, and the United Nations Economic Subcommittee. The Commission is represented also on the Federal Committee on International Statistics formed to advise and assist the United States member of the United Nations Statistical Commission.

Among the projects involving the foreign economic field in which the Commission participated during the year the following may be listed. In furtherance of the European recovery program the Commission submitted a report and analysis of the volume, kind, and liquidity of United States assets held by countries participating in the European relief program and by their citizens including a review of the steps which those countries have taken to utilize these assets. In this connection, the Commission participated in the preparation of the European recovery program through membership on the Financial Policy Committee of the Steering Committee of the European recovery program, which formulated the policy and prepared the documents for presentation to the Congress of all financial problems involved in the program. The Commission contributed to and participated in a report on "Foreign Assets and Liabilities of the United States and Its Balance of International Payments" submitted to the Committee on Finance of the United States Senate at the request of that committee. This report was transmitted by Secretary of the Treasury Snyder as Chairman of the National Advisory Council as the work of a committee composed of representatives of the Departments of State, Treasury, and Commerce, the Federal Reserve Board, the Export-Import Bank, and the Securities and Exchange Commission. Similarly we participated in the formulation of a "Statement of the Foreign Loan and Investment Policy of the United States" prepared by a joint subcommittee of the National Advisory Council and of the Executive Committee on Foreign Economic Policy. This statement has been approved, by the President and the Secretary of State as a guide to the executive agencies of our Government in the further development of foreign lending programs, to our foreign missions and to executive agencies in their consultations with foreign governments and with private investors, and wherever appropriate to our representatives on international bodies.

The Inter-American Economic Agreement signed on May 2, 1948, a.]t the Ninth, International Conference of American States at Bogota, Colombia, includes a complete chapter on private investments. The Commission's representative took an active part in the formulation of several of the articles in the chapter, in particular with respect to that portion of the agreement which declares that the policy of the states is in favor of the development of uniform accounting and disclosure principles. The Commission is lending its technical assistance in the implementation of the agreement.

Upon the request of the International Monetary Fund and of representatives of the Economic Secretariat of the United Nations, representatives of the Commission have held a number of conferences for the purpose of helping to develop uniform and current methods of presenting information with respect to foreign investments and capital markets. Upon invitation of the United States Governor of the International Bank and the Monetary Fund, the Chairman of the Commission attended the second annual meetings of these institutions held in London in September 1947.

At the request of the Chairmen of the Banking and Currency Committee of the Senate and of the Interstate and Foreign Commerce Committee of the House of Representatives, the Commission considered the proposal of the International Bank for Reconstruction and Development that it be granted exemption from the Securities Act of 1933 and the Securities Exchange Act of 1934 respecting securities issued or guaranteed by it. [Footnote: This proposed legislation contemplated exemption of the above-mentioned securities from the Securities Act and the Securities Exchange Act. The Thirteenth Annual Report contains a full discussion of the problems involved and of the events leading to the adoption by the Commission of certain rules and forms specifically designed either to grant exemption from or to facilitate registration under the Securities Act at 1933 for securities issued by the International Bank.] In a letter, and in a subsequent statement to the House committee, the Chairman of the Commission indicated the views of the Commission on these proposals. In effect the Commission stated that, insofar as these proposals affected the country's international economic relations, the Commission was not in a position to make policy recommendations.

Pursuant to an invitation, extended by the Foreign Bondholders' Protective Council, Inc., the Secretary of State and the Chairman of the Securities and Exchange Commission constitute a board of visitors to the Council. On September 26, 1947, a member of the Commission and a representative of the Department of State visited the Council and reviewed its financial operations, its receipts and, expenditures, the nature and the sources of its fees, and discussed several problems upon which the advice of the visitors was requested by the officers of the Council. During the year the Council has asked the advice of the

Board of Visitors on several matters involving the interests of United States holders of foreign dollar bonds.

The Commission, through the office of its Adviser on Foreign Investments, maintains a constant surveillance of foreign exchange regulations and capital controls of other countries, noting particularly the effect of such regulations and controls upon United States investors in foreign securities. One of the Commission's purposes in making this review is to be assured that full and accurate disclosure of these regulations and controls is made in registration statements and prospectuses used in connection with public offerings of foreign securities in the United States. The Commission has also on occasion brought to the notice of the Department of State instances in which the administration of these controls seemed to involve discriminatory treatment of United States investors. The Commission also maintains a constant surveillance of the transactions effected by foreigners in the securities markets under its jurisdiction.

ADVISORY AND INTERPRETATIVE ASSISTANCE

References are made throughout this report to the informal assistance rendered by the staff to the public in connection with the statutes administered by the Commission. Such assistance is usually given by the staff in connection with specific matters involving the filing of a registration statement, proxy statement, annual report, and so on. Mention has been made of the prefiling conference and the deficiency letter in connection with registration statements. These represent only a small part of the total of informal assistance given the public by the staff. It is not possible to determine the exact amount of assistance made available to the public by the staff by means of conference and letter. At the least, such conferences run into the thousands, and their number is more than equaled by the number of advisory letters prepared by the staff during the 1948 fiscal year.

In addition to the above assistance rendered by the staff in connection with specific matters, a great amount of assistance was provided the public by a special interpretative section in the office of the chief counsel, of the Division of Corporation Finance. This section is staffed with lawyers prepared to give expert advice as to all questions of interpretation arising under the Securities Act of 1933, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and parts of the Securities Exchange Act of 1934. Upon presentation of all pertinent facts involved in a particular problem, the section will furnish a detailed and informed opinion as to the application of a particular statute in a specific situation.

During the 1948 fiscal year, the section prepared 5,847 letters furnishing this highly technical assistance at the request of interested lawyers, accountants, and students. In addition, the section rendered like assistance in many hundreds of

conferences held, in person or by telephone, with other such members of the public.

CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

The Commission is empowered to grant confidential treatment, upon application by registration to information contained in reports, applications, or documents which they are required to file under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Under the Securities Act of 1933 the Commission has adopted rule 485 (redesignation as of July 15, 1947, of former rule 580), which provides that information as to material contracts, or portions thereof, will be held confidential by the Commission if it determines that disclosure would impair the value of the contracts and is not necessary for the protection of investors. The other four statutes referred to are, in general, without specific restriction in this respect and empower the Commission to hold confidential under certain conditions any information contained in any reports required to be filed under those statutes. Disclosure of information filed confidentially under the latter statutes is made only when the Commission determines that disclosure is in the public interest.

The following table indicates the number of applications for confidential treatment received and acted upon during the year, together with the number pending at its close:

(chart omitted)

Although registrants may seek judicial review of adverse decisions by the Commission, no petitions for such judicial review were filed in any of these cases during the 1948 fiscal year.

STATISTICS AND SPECIAL STUDIES

Saving Study

The Commission 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' saving, that is, the increase in their assets less the increase in their liabilities, exclusive of gains or losses from revaluation of assets. The figures also show the components contributing to this total, such

as changes in securities, cash, insurance, consumers' indebtedness, and consumers' durable goods.

Financial Position of Corporations

The series of quarterly releases on the working capital position of all United States corporations, exclusive of banks and insurance companies, was continued. These releases show the principal components of current assets and current liabilities and an abbreviated analysis of the sources and uses of corporate funds. Semiannual supplementary tables were also released showing a detailed break-down of current assets and liabilities for various industry and size groups of corporations registered with the Commission. It is intended in subsequent reports to present more detailed data on the sources and uses of corporate funds, thus giving an up-to-date analysis of the financial condition of corporations as well as a complete picture of the volume and composition of corporate saving.

During the 1948 fiscal year the Commission, together with the Federal Trade Commission, inaugurated a series of quarterly industrial financial reports. These reports developed as an extension of the working capital series and present a complete balance sheet and abbreviated income account for all manufacturing corporations in the United States. In addition the data are shown for various single groups of corporations and for minor industry groups. It is planned that this report be extended to cover manufacturing corporations as well.

The Commission, together with the Department of Commerce, also continued the series of quarterly releases on the plant and equipment expenditures by United States businesses other than agriculture. Shortly after the close of each quarter, these releases present industry totals on the actual capital expenditures of that quarter and anticipated expenditures for the next two quarters. It is intended in future reports to present additional data showing more detailed classifications of industry groups and a size of-company break-down. These data provide a useful index of present and future activity in the capital goods industries and capital markets and a valuable barometer of business activity in general.

Stock Market Statistics

Certain releases to the public, supplanted during the war by press releases because of the manpower and paper shortage, were reinstated toward the end of the fiscal year. Round-lot trading and odd-lot trading releases were consolidated into one weekly public release and a special mailing list was established for persons desiring these data. The releases also cover, with a 2-week lag, daily total round-lot sales in odd lots on the New York Stock Exchange, as well as the odd-lot dealers' round-lot purchases and sales for their odd-lot accounts. The

releases also cover, with a two-week lag, daily total round-lot transactions on the New York Stock Exchange and on the New York Curb Exchange and the round-lot purchases, total sales, and short sales of exchange member groups, as well as the numbers of reports received weekly from each class of member.

The Commission continued publication of indexes, by industries, of weekly closing prices of common stocks on the New York Stock Exchange; and the monthly dollar value and volume of sales of stocks, bonds, rights, and warrants on registered and exempted securities exchanges. A number of these series are presented in the appendix tables of this report.

The Commission's staff continued its studies of various aspects of trading in securities, including floor trading, purchases and sales of domestic securities for foreign account, purchases and sales of security options, and general research on exchange rules and practices.

Survey of American Listed Corporations

During the 1948 fiscal year, the Commission. again released for public and Government use statistical data filed with the Commission by registrants under the Securities Exchange Act of 1934 and the Securities Act of 1933. These data are summarized in a series of reports known as the ''Survey of American Listed Corporations'' showing individual data for each company as well as industry totals for 1,825 registered companies in 156 industry groups.

One of the series of reports "Data on Profits and Operations Including Surplus, 1945-46" was completed in the fiscal year. This series, consisting of seven volumes (divided according to industry groups), is published annually. The data included are presented on an over-all basis, covering all registration and are then presented on an individual basis for each of the registrants constituting the group with all figures given on a comparative basis with the preceding year. Principal items furnished in these reports on profits and operations including surplus are annual data on sales; costs and/or operating expenses; operating profits; net profit before income taxes; net profit after income taxes; depreciation, depletion, amortization, etc.; maintenance and repairs; selling, general and administrative expenses; earned surplus at the beginning of the period; additions to earned surplus (including net profit after income taxes); deductions from earned surplus (other than dividends); dividends charged to earned surplus; and earned surplus at the end of the period. Also included are capital surplus at the beginning of the period; capital surplus at the end of the period; and net worth at the beginning of each period covered, in addition each item in the profit and loss account is shown as a percentage of net sales and a ratio of the net profit before income taxes as a percentage of net worth and a ratio of the net profit after income taxes as a percentage of net worth. The data presented for the manufacturing industry

groups supplement previous reports on “Data on Profits and Operations” beginning with the year 1936. The data for the nonmanufacturing industry groups supplement previous reports beginning with the year 1942. Surplus is presented for the first time in this series. A summarization of data on profits and operations for the period 1937-46 was also publicly released for all manufacturing companies as well as a summarization of all nonmanufacturing companies for the period from 1942-46. All of these data for registered corporations, both on an individual company and industry basis, are currently being carried through 1947.

Investment Company Data

Data for closed-end and open-end management investment companies were compiled and released to the public quarterly. These reports show data for the purchases and sales in both shares and dollars of the registration capital stock and of their own funded debt; portfolio changes during the period showing purchases, sales and balance of change in their portfolio; and the nature of their assets at the close of the quarter. The items included in these assets are cash and cash items; Government securities; securities of other investment companies; other securities; other assets; and total assets.

Brokers and Dealers

During the 1948 fiscal year, a study was made of the financial condition of 3,284 registered brokers and dealers reporting under rule X-17A-5 under the Securities Exchange Act of 1934 covering the years 1946-47. The study consists of tables summarizing the data for all registration for in embers of the New York Stock Exchange, and for each of the 10 regions of the Commission. The items covered in each of the tables include net capital; aggregate indebtedness; cash in banks; funds segregated pursuant to Commodity Exchange Act requirements; cash and exempt securities segregated; firms’ inventory of exempt securities at market value; firms’ inventory of nonexempt securities at market value; and customers’ debit balances in margin accounts. Also included are customers’ free credit balances; customers’ credit balances in cash accounts; customers’ credit balances in accounts with open contractual commitments; customers’ credit balances in margin accounts; money borrowed from banks on customers’ securities; and money borrowed from banks on firms’ and partners’ securities. The study is being carried through 1948 and the results to date are included as appendix table 6.

Quarterly Sales Data

Data showing quarterly sales of registrants under the Securities Exchange Act of 1934 have been released by the Commission. These releases have been made in two forms, covering approximately 1,400 corporations in 156 industry groups.

The data have been released each quarter, first in the aggregate showing the total for all companies, with a break-down of manufacturing and retail trade for the last five quarters, and secondly for each individual company and for each industry group for the current quarter, the previous quarter, and the comparable quarter of the previous year.

Distribution of Registrants by Independent Accounting Firms

During the 1948 fiscal year, a study was made of the distribution of registrants by independent public accounting firms certifying financial statements for 1946. The study included 2,265 registration with aggregate assets of 100 billion dollars, filing annual reports with the Commission under the Securities Exchange Act of 1934 and the Securities Act of 1933. These firms' reports were certified by 416 independent public accounting firms. The study classified the accounting firms by aggregate assets of registrants served, showing the number of registrants, number of industry groups, and the percentage of total number of registrants covered. Also shown are a break-down of accounting firms by interval, the number of firms certified to, and the aggregate assets of these registrants.

Registrants and Subsidiaries

Another report in the series entitled "Registrants and Subsidiaries" is currently being carried through 1948. This study shows the relationship between about 2,100 registered companies and their 14,000 subsidiaries.

ANALYSIS OF THE STOCK MARKET DECLINE OF SEPTEMBER 3, 1946

On August 21, 1947, the Commission released a report of the Division of Trading and Exchanges giving the results of a study started in October 1946 of stock trading on the New York Stock Exchange on September 3, 1946. On that day, stock prices experienced the sharpest break in 9 years. The study was undertaken to determine the causes of the break and to ascertain whether there had been any planned or concerted action by any group in violation of the Securities Exchange Act of 1934 or its rules.

The study analyzed the buying and selling of various types of buyers and sellers in 15-minute (and, in some cases, shorter) periods throughout the day. It traced prices for each minute of the day and described the buying and selling in all stocks traded in 100-share lots and in various classifications of these stocks. It showed what was being done at given times by public traders, foreigners, banks, investment trusts, odd-lot dealers, member and nonmember firms (for firm and individual accounts and for wives and dependents), and by floor traders and specialists. These activities were in turn subdivided into transactions in all stocks,

in stocks graded according to activity and price, according to their use in standard indices, in stocks with different rates of decline throughout the day, and in stocks of various industrial classifications.

For this analysis, two major types of data were collected. First, every transaction in round lots on the New York Stock Exchange on September 3 was reconstructed from the brokers' records, Comprehensive information was obtained from New York Stock Exchange member firms and other brokers and dealers and banks which effected transactions through the facilities of the Exchange on that day. For each round-lot purchase and sale, these data included the name of the stock, price, and volume, and the name and address of the customer. The sales data also included information with respect to short sales and stop-loss orders. Second, a number of public customers who either bought or sold on September 3 were interviewed to obtain further details on their trading, including their reasons for buying or selling. Six hundred and twenty-two interviews were conducted, covering practically all of the largest public purchasers and sellers on that day, as well as a random sample of all other public transactions.

The study was limited to an analysis of market activity and did not deal with the general domestic and international economic background of the day's market. Based on a voluminous collection of detailed information, the report gave the most comprehensive picture of a day's market yet presented. While the report reached no specific conclusions, no group or individual, professional or public, nor any single market factor, plainly appears as exclusively or primarily accountable for the character of the trading on the day in question.

In its release accompanying the report, the Commission stated that, although the study should be helpful in the formulation and evaluation of standards designed to maintain fair and orderly markets, it alone did not show what further controls, if any, are necessary or desirable.

PERSONNEL

As of June 30, 1948, the personnel of the Commission consisted of the following:

Headquarters Office:
Commissioners: 5
Staff: 813
Total: 818

Regional offices: 381

Total: 1,149

This represents a reduction of 10 employees from the total personnel on June 30, 1947. Of the 1,144 employees of the Commission at the end of the current year, 416 or 36 percent were veterans of World War I or World War II.

In January 1948 the headquarters Office of the Commission was removed to Washington, D. C., from Philadelphia, Pa., where it had been located for nearly 6 years. Among the administrative problems presented by the return to Washington was the necessity for the maintenance of operations during the period of the move notwithstanding a considerable turn-over in clerical and stenographic positions. The replacement of those employees unable to move to Washington with the Commission constituted one of the major functions of the Division of Personnel during the 1948 fiscal year. It is noteworthy, however, that the Commission lost very few of its professional employees during this period. As a matter of fact, approximately 41 percent of the total professional and technical staff has been with the Commission for 10 years or more.

FISCAL AFFAIRS

(chart omitted)

PUBLICATIONS

Public Releases

Releases of the Commission consist primarily of official announcements of Commission actions taken and filings made under the several acts which it administers. These include decisions, regulations, orders for hearings, notices of filings, and related matters issued by the Commission.

During the 1948 fiscal year releases issued under the several acts and in connection with Chapter X of the Bankruptcy Act were as follows:

Securities Act of 1983: 62

Securities Exchange Act of 1934: 143

Public Utility Holding Company Act of 1935: 792

Trust Indenture Act of 1939: 4

Investment Company Act of 1940: 116

Investment Advisers Act of 1940: 4

Chapter X, Bankruptcy Act: 3

Total: 1,124

The following break-down of these releases for the month of June 1948 is illustrative of their general nature:

Decisions and orders: 63

Announcements of regulations adopted and proposed to be adopted: 2

Announcements of accounting opinions and instructions: 1

Announcements of filings, orders for hearing, and notices giving opportunity to request hearing: 55

The balance of the Commission's releases are of an informational nature, the following having been issued during the year:

Announcements of publication of reports on corporate survey and statistical studies: 44

Reports of court actions in injunction and criminal prosecution cases initiated by the Commission: 62

Miscellaneous (announcements regarding appointments of Commissioners, staff officials, and other matters) : 8

Total: 114

In all, a total of 1,238 releases were issued during the 1948 fiscal year.

Other Publications

Daily Registration Record.

Monthly Statistical Bulletin.

Bound volume 14 of the Decisions and Reports, August 15, 1943, to December 15, 1943.

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

The Thirteenth Annual Report of the Commission.

List of Securities Traded on Exchanges under the Securities Exchange Act of 1934, as of December 31, 1947.

Securities Issues of Electric and, Gas Utilities, 1935-47.

Working Capital of 1,169 Registered Corporations, December 1939 to June 1947.

Survey of American Listed Corporations, Data on Profits and Operations, 1944-45, parts 6 and 7.

Survey of American Listed Corporations, Data on Profits and Operations, 1945-46, parts 1, 2, 3, 4, and 5.

Survey of American Listed Corporations, Investment Companies, Quarterly Data, 1947-48.

Survey of American Listed Corporations, Brokers and Dealers Resources and Liabilities, 3,276 Companies for 1946.

Survey of American Listed Corporations, Quarterly Sales Data, 1948

Work of Securities and Exchange Commission, as of January 1, 1947.

Accounting Series Releases, 1 to 63, August 1947 (compilation).

INFORMATION AVAILABLE FOR PUBLIC INSPECTION

The Commission maintains public reference rooms at the central office in Washington, D. C., and in its regional offices in New York City and Chicago, Ill.

Copies of all public information on file with the Commission, contained in registration statements, applications, reports, declarations, and other public documents, are available for inspection in the public reference room at Washington. During the fiscal year 1948, 2,016 persons visited this public reference room seeking such information. In addition to providing facilities for personal inspection of registered public information, there were received in the

public reference rooms thousands of letters and telephone calls from persons requesting registered information. (This does not include requests for copies of releases, forms, publications, etc.) Through the facilities provided for the sale of copies of public registered information, 2,131 orders, involving a total of 173,488 pages, were filled.

In its New York regional office, located at 120 Broadway, the Commission provides facilities for the inspection of certain public information on file with the Commission. This includes copies of (1) applications for registrations of securities on all national securities exchanges except the New York Stock Exchange and the New York Curb Exchange, together with copies of annual reports, supplemental reports, and amendments thereto; and (2) annual reports filed pursuant to the provisions of section 15 (d) of the Securities Exchange Act of 1934 by issuers having securities registered under the Securities Act of 1933. During the 1948 fiscal year 12,965 persons visited the New York public reference room and more than 6,782 telephone calls were received from persons seeking registered public information, copies of forms, releases, and other material.

In the Chicago regional office, located at 105 West Adams Street, copies of applications for registration of securities on the New York Stock Exchange and the New York Curb Exchange, together with copies of all annual reports, supplemental reports, and amendments thereto, are available for public inspection. During the 1948 fiscal year 3,215 members of the public visited this public reference room, and approximately 1,500 telephone calls were received from persons seeking registered public information, forms, releases, and other material of a public nature.

In addition to the material which is available in the New York and Chicago public reference rooms, there are available in each of the Commission's regional offices copies of all prospectuses used ,in public offerings of securities effectively registered under the Securities Act of 1933. Duplicate copies of applications for registration of brokers or dealers transacting business on over-the-counter markets filed under the Securities Exchange Act of 1934 and duplicate copies of applications for registration of investment advisers filed under the Investment Advisers Act of 1940 are available for inspection in the regional office having jurisdiction over the zone in which the registration principal office is located. Also, copies of letters of notification filed under regulation A (which exempts small issues of securities from the registration requirements of the Securities Act of 1933) are available for inspection at the regional office where filed and in Washington, D. C.

In the Commission's San Francisco office, where complete facilities are provided for the registration of securities and qualification of indentures, copies of registration statements and applications for qualification of indentures filed at that

office are available for public inspection. Copies of all applications for the registration of securities on national securities exchanges are available for public inspection at the respective exchange upon which the securities are registered.

PUBLIC HEARINGS

The following number of public hearings were held by the Commission under the various acts during the 1948 fiscal year:

Securities Act of 1933: 4

Securities Exchange Act of 1934: 19

Public Utility Holding Company Act of 1935: 102

Trust Indenture Act of 1039: 0

Investment Advisers Act of 1940: 0

Investment Company Act of 1940: 9

Total: 134

A total of 49,168 pages of testimony were taken at these hearings, an increase over the 1947 fiscal year.

In addition to the above hearings, the Commission conducted a public investigation in the matter of Kaiser-Frazer Corp., Otis & Co., First California Co., and Allen & Co., under the Securities Act of 1933 and the Securities Exchange Act of 1934, taking a total of 4,902 pages of testimony during the fiscal year.