

**Sixteenth Annual Report**

**of the**

**Securities and Exchange**

**Commission**

**Fiscal Year Ended June 30, 1950**



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**SECURITIES AND EXCHANGE COMMISSION**

**Headquarters Office**

**425 Second Street NW.**

**Washington 25, D. C.**

**COMMISSIONERS**

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**DONALD C. COOK, *Vice-Chairman***

**RICHARD B. McENTIRE**

**PAUL R. ROWEN**

**EDWARD T. McCORMICK**

**ORVAL L. DuBois, *Secretary***

## LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,  
*Washington, D. C., January 31, 1951.*

SIR: I have the honor to transmit to you the Sixteenth 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, section 216 of the Investment Advisers Act of 1940, approved August 22, 1940, and section 3 of the act of April 25, 1949, amending the Bretton Woods Agreements Act.

Respectfully,

HARRY A. McDONALD,  
*Chairman.*

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



## TABLE OF CONTENTS

	Page
Foreword.....	XI
Commissioners and staff officers.....	XVI
Regional and branch offices.....	XV

### PART I

#### ADMINISTRATION OF THE SECURITIES ACT OF 1933

The registration process.....	1
Purpose of registration.....	1
Examination procedure.....	2
Effective date of registration statement.....	3
Time required for registration.....	3
The volume of securities registered.....	4
Volume of all securities registered.....	4
Volume of securities registered for cash sale.....	4
A. All securities.....	4
B. Stocks and bonds.....	4
C. All securities registered for cash sale for the accounts of issuers—by type of issuer.....	5
D. Use of investment bankers as to securities registered for cash sale for the accounts of issuers.....	6
All new securities offered for cash sale.....	7
Registered securities.....	7
Unregistered securities.....	7
Corporate.....	7
Noncorporate.....	8
Total registered and unregistered securities.....	8
Registration statements filed.....	8
Disposition of registration statements.....	8
Other documents filed under the act.....	9
Exemption from registration under the act.....	9
Exempt offerings under regulation A.....	9
Exempt offerings under regulation A-M.....	10
Exempt offerings under regulation B.....	10
Confidential written reports under regulation B.....	11
Oil and gas investigations.....	11
Formal actions under section 8.....	12
Stop-order proceedings under section 8 (d).....	12
Deficiencies discovered in examination of registration statements.....	15
Changes in rules, regulations and forms.....	18
Regulation BW—Reports of International Bank for Reconstruction.....	18
Regulation A—General exemption of small issues.....	19
Litigation under the act.....	20

### PART II

#### ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

Regulation of exchanges and exchange trading.....	23
Registration of exchanges.....	23
Disciplinary actions by exchanges against members.....	26
Registration of securities on exchanges.....	26
Examination of applications and reports.....	26
Statistics of securities registered on exchanges.....	28
Temporary exemption of substituted or additional securities.....	28
Special offerings on exchanges.....	29
Secondary distributions approved by exchanges.....	30

## PART II—Continued

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF  
1934—Continued

	Page
Termination of registration under section 19 (a) (2).....	31
Unlisted trading privileges on exchanges.....	31
Applications for unlisted trading privileges.....	34
Delisting of securities from exchanges.....	35
Securities delisted by application.....	35
Securities delisted by certification.....	35
Securities removed from listing on exempted exchanges.....	36
Manipulation and Stabilization.....	36
Manipulation.....	36
Trading investigations.....	38
Stabilization.....	38
Security transactions of corporation insiders.....	39
Reports of transactions and holdings.....	39
Publication of data reported.....	40
Preventing unfair use of inside information.....	40
Statistics of ownership reports.....	41
Solicitations of proxies, consents, and authorizations.....	41
Statistics of proxy statements.....	42
Examination of proxies.....	42
Regulation of brokers and dealers.....	43
Registration.....	43
Administrative proceedings.....	44
Record of broker-dealer proceedings.....	45
Broker-dealer inspections.....	50
Pricing practices.....	51
Financial reports.....	51
Supervision of NASD activity.....	52
Membership.....	52
Disciplinary actions.....	52
Changes in rules, regulations, and forms.....	53
Form 10.....	53
Form 10-K.....	53
Form 8-K.....	54
Form 9-K.....	54
Form 8.....	54
Rule X-12A-4.....	54
Litigation under the act.....	54
Injunction actions.....	55
Participation as <i>amicus curiae</i> .....	56
Appellate proceedings.....	58
Kaiser-Frazier investigation and litigation with Otis & Co.....	58

## PART III

ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COM-  
PANY ACT OF 1935

The public utility industry under the act.....	60
Progress under section 11—over-all summary.....	62
Progress under section 11—survey of individual systems.....	65
Cities Service Co.....	65
The Commonwealth & Southern Corp.....	67
Electric Bond and Share Co.....	68
American & Foreign Power Co., Inc.....	69
American Power & Light Co.....	70
Electric Power & Light Corp.....	71
National Power & Light Co.....	72
General Public Utilities Corp.....	73
International Hydro-Electric System.....	74
Long Island Lighting Co.....	76
The Middle West Corp.....	77
National Gas & Electric Corp.....	78

## PART III—Continued

## ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY

## ACT OF 1935—Continued

	Page
New England Public Service Co.....	79
Niagara Hudson Power Corp.....	80
North Continent Utilities Corporation.....	82
Standard Power and Light Corp.—Standard Gas and Electric Co.....	83
The United Corp.....	85
The United Light & Railways Co.....	86
The continuing holding company systems.....	87
American Gas and Electric Co.....	88
American Natural Gas Co.....	89
Central and South West Corp.....	90
The Columbia Gas System, Inc.....	90
Consolidated Natural Gas Co.....	91
Delaware Power & Light Co.....	92
Interstate Power Co.....	92
Middle South Utilities, Inc.....	93
National Fuel Gas Co.....	94
New England Electric System.....	94
New England Gas & Electric Association.....	95
Northern Natural Gas Co.....	96
Northern States Power Co.....	97
Ohio Edison Co.....	97
The Southern Co.....	98
Utah Power and Light Co.....	99
The West Penn Electric Co.....	100
Issues of securities, assumptions of liabilities and alterations of rights.....	101
Competitive bidding.....	104
Cooperation with State and local regulatory authorities.....	106
Litigation under the act.....	109
Actions to enforce voluntary plans under section 11 (e).....	110
Petitions to review orders of the Commission under section 24 (a).....	110
Enforcement proceedings under section 11 (e).....	110
Petitions to review orders of the Commission.....	113
Petitions for intervention.....	114

## PART IV

## PARTICIPATION OF THE COMMISSION IN CORPORATE RE-ORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT, AS AMENDED

Commission's functions under chapter X.....	115
The Commission as a party to proceedings.....	115
Summary of activities.....	116
Activities relating to the trusteeship.....	116
Problems in the administration of the estate.....	117
Responsibilities of fiduciaries.....	118
Activities with respect to allowances.....	120
Institution of chapter X proceedings.....	124
Plans of reorganization under chapter X.....	124
Fairness of plan.....	125
Feasibility of plan.....	128
Consummation of plan.....	128
Advisory reports.....	130

## PART V

## ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

Nature of trust indenture regulation.....	138
Integration with Securities Act of 1933.....	138
Statistics of indentures qualified.....	139

## PART VI

## ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

Registration under the act.....	140
Types and investment policies of companies formed.....	141
Selling literature.....	141
Data on investment companies.....	142
Applications filed.....	142
Litigation under the act.....	143

## PART VII

## ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

Registration statistics.....	145
Administrative proceedings.....	145

## PART VIII

## OTHER ACTIVITIES OF THE COMMISSION UNDER THE VARIOUS STATUTES

The Commission in the courts.....	147
Civil proceedings.....	147
Criminal proceedings.....	147
Complaints and investigations.....	151
Investigations of securities violations.....	152
Canadian situation.....	152
Securities violations file.....	153
Activities of the Commission in accounting and auditing.....	153
Examination of financial statements.....	155
Proposed amendment of regulation S-X.....	156
Other developments in accounting and auditing.....	156
Division of opinion writing.....	160
International Bank for Reconstruction and Development.....	162
Advisory and interpretative assistance.....	165
Confidential treatment of applications, reports or documents.....	165
Statistics and special studies.....	166
Saving study.....	166
Financial position of corporations.....	166
Capital markets.....	167
Personnel.....	167
Fiscal affairs.....	168
Publications.....	169
Public releases.....	169
Other publications.....	169
Information for public inspection.....	170
Public hearings.....	172

## PART IX

## APPENDIX—STATISTICAL TABLES

Table 1. Registrations fully effective under the Securities Act of 1933...	174
Part 1. Distribution by months.....	174
Part 2. Breakdown by method of distribution and type of security of the volume proposed for cash sale for account of issuers.....	175
Part 3. Purpose of registration and industry of registrant.....	176
Table 2. Classification by quality and size of new bond issues registered under the Securities Act of 1933 for cash sale to the general public through investment bankers during the fiscal years 1948, 1949, and 1950.....	177
Part 1. Number of bond issues and aggregate value.....	177
Part 2. Compensation to distributors.....	178

TABLE OF CONTENTS

IX

PART IX—Continued

APPENDIX—STATISTICAL TABLES—Continued

	Page
Table 3. New securities offered for cash sale in the United States.....	179
Part 1. Type of offering.....	179
Part 2. Type of security.....	180
Part 3. Type of issuer.....	181
Part 4. Private placements of corporate securities.....	182
Table 4. Proposed uses of net proceeds from the sale of new corporate securities offered for cash sale in the United States.....	184
Part 1. All corporate.....	184
Part 2. Public utility.....	185
Part 3. Industrial.....	187
Part 4. Railroad.....	189
Part 5. Real estate and financial.....	190
Table 5. A 17-year summary of corporate bonds publicly and privately placed in each year—1934 through 1950—by calendar year....	191
Table 6. A 17-year summary of new securities offered for cash in the United States.....	192
Table 7. Brokers and dealers registered under section 15 of the Securities Exchange Act of 1934—effective registrations as of June 30, 1950, classified by type of organization and by location of principal office.....	193
Table 8. Market value and volume of sales effected on securities exchanges for the three 6-months periods ended June 30, 1950.....	195
Part 1. Six months ended June 30, 1949.....	195
Part 2. Six months ended December 31, 1949.....	196
Part 3. Six months ended June 30, 1950.....	197
Table 9. Special offerings effected on national securities exchanges for fiscal year ended June 30, 1950.....	198
Table 10. Secondary distributions of listed stocks approved by national securities exchanges for fiscal year ended June 30, 1950.....	198
Table 11. Classification by industry of issuers having securities registered on national securities exchanges as of June 30, 1949 and as of June 30, 1950.....	199
Table 12. Number and amount of securities classified according to basis for the admission to dealing on all exchanges as of June 30, 1950....	199
Table 13:	
Part 1. Number and amount of securities classified according to the number of registered exchanges on which issue was admitted to dealing as of June 30, 1950.....	200
Part 2. Proportion of registered issues that are also admitted to unlisted trading privileges on other exchanges as of June 30, 1950.....	200
Part 3. Proportion of issues admitted to unlisted trading privileges that are also registered on other exchanges as of June 30, 1950.....	201
Part 4. Proportion of all issues admitted to dealing on registered exchanges that are admitted to dealing on more than 1 registered exchange as of June 30, 1950.....	201
Table 14. Number of issuers having securities admitted to dealings on exchanges as of June 30, 1950, classified according to the basis for admission of their securities to dealing.....	201
Table 15. Number of issuers having stocks only, bonds only, and both stocks and bonds admitted to dealings on exchanges as of June 30, 1950.....	201
Table 16. For each exchange as of June 30, 1950, the number of issuers and securities, basis for admission of securities to trading, and the percentage of stocks and bonds admitted to trading on one or more other exchanges.....	202
Table 17. Number of issues admitted to unlisted trading pursuant to clauses 2 and 3 of section 12 (f) of the Securities Exchange Act of 1934 and volume of transactions therein.....	203

## PART IX—Continued

## APPENDIX—STATISTICAL TABLES—Continued

	Page
Table 18. Reorganization cases instituted under chapter X and section 77-B in which the Commission filed a notice of appearance and in which the Commission actively participated during the fiscal year ended June 30, 1950.....	204
Table 19. Reorganization proceedings in which the Commission participated during the fiscal year ended June 30, 1950.....	204
Table 20. Summary of cases instituted in the courts by the Commission 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.....	206
Table 21. Summary of cases instituted against the Commission, cases in which the Commission participated as in intervenor or <i>amicus curiae</i> , and reorganization cases on appeal under chapter X in which the Commission participated—pending during the fiscal year ended June 30, 1950.....	206
Table 22. Injunctive proceedings brought by Commission, under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935 and the Investment Advisers Act of 1940, which were pending during the fiscal year ended June 30, 1950.....	207
Table 23. Indictments returned for violation of the acts administered by the Commission, the Mail Fraud statute (sec. 333, title 18, U. S. C.), and other related Federal statutes (where the Commission took part in the investigation and development of the case) which were pending during the 1950 fiscal year.....	210
Table 24. Petitions for review of orders of Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Holding Company Act of 1935, and the Investment Company Act of 1940, pending in circuit courts of appeals during the fiscal year ended June 30, 1950.....	215
Table 25. Contempt proceedings pending during the fiscal year ended June 30, 1950.....	216
Part 1. Civil contempt proceedings.....	216
Part 2. Criminal contempt proceedings.....	216
Table 26. Cases in which the Commission participated as intervenor or as <i>amicus curiae</i> , pending during the fiscal year ended June 30, 1950.....	217
Table 27. Proceedings by the Commission, pending during the fiscal year ended June 30, 1950, to enforce subpoenas under the Securities Act of 1933 and the Securities Exchange Act of 1934.....	224
Table 28. Miscellaneous actions against the Commission or employees of the Commission during the fiscal year ended June 30, 1950....	225
Table 29. Actions to enforce voluntary plans under section 11 (e) to comply with section 11 (b) of the Public Utility Holding Company Act of 1935.....	226
Table 30. Actions under section 11 (d) of the Public Utility Holding Company Act of 1935 to enforce compliance with Commission's order issued under section 11 (b) of that act.....	228
Table 31. Reorganization cases under chapter X of the National Bankruptcy Act in which the Commission participated when appeals were taken from district court orders.....	229
Table 32. A 17-year summary of criminal cases developed by the Commission—1934 through 1950, by fiscal year.....	230
Table 33. Summary of criminal cases developed by the Commission which were still pending at June 30, 1950—by fiscal year.....	231
Table 34. A 17-year summary classifying all defendants in criminal cases developed by the Commission—1934 to July 1, 1950.....	231
Table 35. A 17-year summary of all injunction cases instituted by the Commission—1934 to July 1, 1950, by calendar year.....	232

## FOREWORD

This is the Sixteenth Annual Report of the Securities and Exchange Commission. It covers the year July 1, 1949 to June 30, 1950.

The report first outlines the activities of the Commission under the major statutes entrusted to it and, in later sections, deals with over-all activities that cut through statutory lines.

For the Securities and Exchange Commission the year was an extremely active one. Financing by industry, the major source of workload for the Commission, has continued at a high rate. The Commission's job in a particular financing may be the clearance of a registration statement under the Securities Act or the approval of the financing under the Public Utility Holding Company Act, or it may be, by formal or informal means, to issue an opinion as to whether the financing is exempted from these statutes. In any case the work must be done thoroughly and promptly—to guard the interest of investors and to be fair to business whose timing schedules may be closely geared to market conditions.

This balance of interests is, in our view, essential to the effectiveness of the laws. Thorough performance is a necessity in order to serve the investor whom the laws seek to protect. Unwarranted delays are a disservice to those who must live with and comply with the laws. The basic philosophy behind these statutes is that free enterprise is facilitated by honest and decent relations between investor and management. The Commission stresses the facilitative aspect of these laws.

Past reports of the S. E. C. have outlined its progress toward simplifying administration and compliance. Those efforts continue. They are—in the context of our disclosure laws—efforts to transform disclosure on paper into effective information of the investor. For example, the Commission has by dint of constant pressure succeeded in eliminating from prospectuses destined for investors a good deal of technical and confusing detail. This process of simplification has not yet reached the financial statements in prospectuses to the extent the Commission would like to see that done. The accounting profession has recently been invited to join the Commission in an effort to reduce the present formal presentation of information in balance sheets and income statements to homely and understandable terms.

Material problems have faced the Commission in its study of methods of revising the mechanics of prospectus distribution under the Securities Act. These difficulties have delayed the recommendation of statutory changes. However, the study has proved to be a fruitful one nevertheless. It has stimulated an active interest in the usefulness of the prospectus as a vehicle of investor information. It has prompted active attempts—with revisions already made and more in the offing—to change the prospectus into a piece of informative literature useful to the layman. It has led to a consideration of the possibilities of authorizing more informative identifying literature

to be used by distributors in advance of effectiveness of registration. It has resulted in a consideration of the possibility of encouraging preeffective use of adequate informative material. One possible rule now being discussed would allow this pre-effective material to be supplemented (after effectiveness) with a simple sheet giving missing information about price, yields, and spreads, so that the pre-effective material and the supplemental sheet together would constitute the prospectus. In this way the need for printing and distributing after effectiveness a wholly new prospectus (duplicating much of the information previously circulated) could be avoided.

These rule revisions are designed to encourage investors to read prospectuses and to stimulate distributor interest in making timely distribution of adequate information. Whether they are substitutes for a revision of the statute, which would make it mandatory to provide a prospectus before selling a security, cannot now be stated with any assurance.

Of particular significance in this report is the record of our progress under section 11 of the Public Utility Holding Company Act. That section requires the integration and simplification of holding company systems, and—under certain circumstances—the elimination of holding companies. These aims are accomplished by voluntary plans, approved by the Commission and, in many cases, by the courts, for disposal of holding companies' controlling interests in operating companies, for reorganization of system companies, or for dissolution of top or intermediate holding companies.

In the 12 years of active administration of these provisions over \$10,000,000,000 of assets have been released from jurisdiction under the Holding Company Act. There remain subject to the act about \$13,000,000,000 of assets in holding company systems; and it is guessed that the Commission will remain with a \$6,000,000,000 to \$7,000,000,000 industry to regulate under the standards of the act.

The completion of this vast program would bring administration of the Holding Company Act into a new phase. Enormous increases in utility construction in recent years have put a heavy demand on the staff for the processing of financing applications. The defense program will continue to require large outlays by the industry for capital expansion, and that work alone will draw heavily on personnel resources no longer committed to the section 11 phase of our work.

Of necessity many duties under the act have had to be rationed in order to concentrate on the task of integration and simplification. A resurvey of those duties is in progress.

On January 9, 1950, the Commission transmitted to the Congress a report recommending an amendment to the Securities Exchange Act of 1934 which would extend to investors in unregistered securities the protections afforded by the act in respect of the availability of public information, the provision of data necessary for intelligent exercise of the right to vote, and the regulation of insiders' short-term trading. This report supplemented and brought up to date an earlier report which had been submitted on June 19, 1946.

Economic development since 1946, the report indicated, had made more essential the need for this legislation. Individual holdings of cash, deposits, and U. S. Government securities were at a record high,

and yet investment in equity securities had not correspondingly increased. Where idle funds were used for the purchase of such securities, they were used largely to increase the investment in securities subject to the protections of the Securities Exchange Act. The lack of publicity about companies outside of the scope of the act has, in our view, been a substantial factor in the lack of investor interest in these securities. A survey of the financial manuals disclosed that there were approximately 1,800 companies which would be covered by the proposed legislation.

After the receipt of these recommendations by the Commission, there were introduced into the Senate by Senator Frear and into the House of Representatives by Representative Sadowski identical bills providing for the amendment of the Securities Exchange Act in accordance with the Commission's proposals. Hearings were held before the Senate Banking and Currency Committee, but no committee report was rendered to the Congress. Senator Frear explained in a speech delivered on the floor of the Senate that this was caused by the continuous emergency which faced the Banking and Currency Committee as a result of the Korean War. According to the Senator, it was decided that the subcommittee should further study the legislation with a view to action on it at the next session.

## COMMISSIONERS AND STAFF OFFICERS

(as of October 20, 1950)

### Commissioners

*Term expires  
June 5*

HARRY A. McDONALD, of Michigan, Chairman-----	1951
DONALD C. COOK, of Michigan, Vice Chairman-----	1954
RICHARD B. McENTIRE, of Kansas-----	1953
PAUL R. ROWEN, of Massachusetts-----	1955
EDWARD T. McCOBMICK, of Arizona-----	1952

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.

ANTHON H. LUND, Director, Division of Trading and Exchange. SHERRY T. McADAM, Jr., Associate Director.

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

EARLE C. KING, Chief Accountant.

MICHAEL E. MOONEY, Director, Division of Opinion Writing.

JEROME S. KATZIN, Executive Assistant to the Chairman.

NATHAN D. LOBELL, Executive Adviser to 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.
- 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), Tenth and Lamar Streets, Fort Worth 2, Tex.
- Zone 7—John L. Geraghty, Midland Savings Building (Room 822), 444 Seventeenth Street, Denver 2, Colo.
- Zone 8—Howard A. Judy, Appraisers Building (Room 308), 630 Sansome Street, San Francisco 11, Calif.
- Zone 9—James E. Newton, 1411 Fourth Avenue Building (Room 810), Seattle 1, Wash.
- Zone 10—E. Russel Kelly, 425 Second Street NW., 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 Street, St. Paul, Minn.
- Wright Building (Room 327), Tulsa 3, Okla.
- United States Courthouse and Customhouse (Room 1006), 1114 Market Street, St. Louis 1, Mo.



## PART I

### ADMINISTRATION OF THE SECURITIES ACT OF 1933

The purpose of the Securities Act of 1933 is to provide full and fair disclosure and to prevent fraud in the sale of securities in interstate and foreign commerce and through the mails. To this end, the act requires that issuers of securities to be offered for such public sale must file with the Commission registration statements setting forth prescribed information about the securities; that investors must be furnished, at or before delivery of the security purchased, a copy of a required prospectus containing the more significant items of such information; and civil and criminal penalties are provided for securities frauds. The act does not authorize the Commission to pass on the investment merits of securities and it makes representations to the contrary unlawful.

#### THE REGISTRATION PROCESS

##### Purpose of Registration

Unless exempted from the Securities Act, securities offered for sale in interstate commerce or by the use of the mails must be registered. Securities for which such exemption is provided consist, in general, of government and municipal securities and the issues of banks, railroads, cooperatives and other organizations and associations specified in section 3 (a) of the act or covered by exemptions in rules and regulations adopted by the Commission, as discussed elsewhere in this report, pursuant to section 3 (b) of the act. In addition, while the act contains no exemption for securities of governmental or other foreign issuers as such, Public Law 142, 81st Congress, approved by President Truman on June 29, 1949, extended a specific exemption to securities issued or guaranteed by the International Bank for Reconstruction and Development from the registration requirements of both the Securities Act of 1933 and the Securities Exchange Act of 1934.

An integral part of each registration statement is the prospectus, which sets forth the more pertinent information about the security offering. As a basic method of direct disclosure to investors, the prospectus plays a vital role in carrying out the purpose of the act.

The registration statement as a whole discloses material facts dealing, among other things, with the character, size, and profitability of the business, its capital structure, the uses to which the company intends to put the proceeds realized from the sale of the securities, options outstanding against securities of the issuer, remuneration of officers and directors, bonus and profit-sharing arrangements, underwriters' commissions, and pending and threatened legal proceedings.

There must also be included in this document certified financial statements of the business enterprise.

The information contained in registration statements filed with the Commission is not only made available immediately for public inspection at the offices of the Commission but also forms the basis of widespread publicity released by financial news services, financial writers, and newspapers throughout the nation, which further accelerates the process of getting this information rapidly before a greatly enlarged field of potential investors.

While the purpose of registration is thus to secure full and fair disclosure of material facts about securities to enable prospective investors to judge the risk involved intelligently, it is not intended to remove the risk from investment decisions. The Commission is not authorized under the Securities Act of 1933 to pass on the investment merits of securities, and an effective registration statement does not imply that the Commission has in any way passed upon the merits of or given approval to the securities covered. Section 23 of the act makes it unlawful to make any contrary representation to any prospective purchaser.

#### **Examination Procedures**

One of the Commission's most important undertakings has been its development of procedures and techniques, which are constantly undergoing improvements as dictated by experience, for the fast and thorough examination of registration statements to determine compliance with the disclosure requirements of the act. The need for speed in the examination process arises not only from the statutory prescription of an effective date of the registration statement, in the ordinary case on the twentieth day after its filing, but also from the Commission's desire to avoid unnecessary interference with financing plans.

Where examination shows the registration statement to be inaccurate or incomplete in disclosure of material information, the Commission may resort to its power under section 8 of the act and issue an order preventing or suspending the effectiveness of the registration statement. However, the Commission has, during the past five years, continued its policy of exercising this power sparingly. Instead, it has relied for enforcement mainly upon the long-standing practice of securing an amendment to the registration statement. Accordingly, registrants are informally advised, as promptly as possible after the statements are filed, of any material misrepresentations or omissions found upon examination and they are afforded an opportunity to file correcting amendments before the statements become effective. This advice is furnished by means of an informal "letter of comment" which indicates what information should be corrected or supplemented to meet the disclosure standards.

Another informal procedure that has proved effective in speeding the registration process is the "pre-filing conference" between staff members and representatives of registrants and underwriters. In this manner registrants are encouraged to discuss problems in connection with the proposed filing for the purpose of determining in advance what types or methods of disclosure may be necessary under the circumstances. This has contributed to the marked reduction in the num-

ber of instances where the Commission has found it necessary to resort to stop-order proceedings or other formal action under section 8.

Neither the Commission, the issuer, nor the underwriter desires a statement to become effective unless it complies with the act. Often, the staff will ascertain that deficiencies exist in the registration statement as filed, or the issuer or underwriter may wish either to amend the statement or simply to delay its effectiveness because of changes in the securities market or for other 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 registrant to file a minor amendment, called a "delaying amendment," which starts the 20-day waiting period running anew.

#### Effective Date of Registration Statement

The 20-day waiting period between the filing and effectiveness of registration statements was provided by the Congress in order to permit widespread publicity among investors of the information contained in the registration statement before it becomes effective. The Commission is, however, empowered at its discretion to accelerate the effective date where the facts justify such action so that the full 20-day period need not elapse before the registration statement can become effective. In the exercise of this power, the Commission must have 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.

#### Time Required for Registration

For some years the Commission has made every effort to complete the registration process within the 20-day waiting period. This effort has been largely successful, and the median elapsed time from the filing date of a registration statement to its effective date has been progressively shortened from 30½ days in the 1947 fiscal year to 21 days in the 1950 fiscal year. A breakdown of this elapsed time for the 1950 fiscal year is contained in the following table:

*Time elapsed in registration process—1950 fiscal year*

	1949						1950					
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
Total registration statements effective during month (number).....	24	24	36	42	39	25	38	33	65	59	67	36
Elapsed time (median number of days):												
From date of filing registration statement to first letter of comment.....	10	10	10	9	9	11	10	10	11	10	10	12
From date of letter of comment to first amendment by registrant.....	7	7	7	7	6	9	7	5	6	6	6	6
From date of first amendment to the effective date of registration.....	6	3	5	3	4	5	5	4	4	4	4	5
Total median elapsed time (days).....	23	20	22	19	19	25	22	19	21	20	20	23

Although the median elapsed time from filing to effectiveness was 21 days in the 1950 fiscal year, this time was 20 days or less in six months of the year, accounting for more than half of all the registration statements which became effective during the year. The Commission intends to continue its efforts to bring the total elapsed median time down to 20 days or less in all months.<sup>1</sup>

### THE VOLUME OF SECURITIES REGISTERED

#### Volume of All Securities Registered in Fiscal Year

	1950	1949
Total registered.....	\$5, 307, 077, 000	\$5, 333, 362, 000

The amount of securities effectively registered during the 1950 fiscal year was practically the same as that for the 1949 period.

The volume registered in the 1950 fiscal year was distributed over 487<sup>2</sup> statements covering 647 issues, as compared with 429 statements covering 588 issues for the 1949 fiscal year.

#### Volume of securities registered for cash sale

A. ALL SECURITIES		
	1950	1949
Registered for cash sale for accounts of issuers.....	\$4, 381, 314, 000	\$4, 204, 008, 000
Registered for cash sale for accounts of others than issuers.....	304, 736, 000	193, 870, 000
Total registered for cash sale.....	4, 686, 051, 000	4, 397, 878, 000
Total registered for other than cash sale.....	621, 027, 000	935, 484, 000
Total of all registered securities.....	5, 307, 077, 000	5, 333, 362, 000
B. STOCKS AND BONDS REGISTERED FOR CASH SALE FOR THE ACCOUNTS OF ISSUERS		
	1950	1949
Equity securities other than preferred stock..	\$1, 786, 056, 000	\$1, 083, 117, 000
Preferred stock.....	467, 929, 000	325, 854, 000
Total all stock.....	2, 253, 985, 000	1, 408, 971, 000
All bonds.....	2, 127, 330, 000	2, 795, 036, 000
Total.....	4, 381, 314, 000	4, 204, 008, 000

<sup>1</sup> There is no necessary connection between the total time elapsed in the registration process and the 20 day waiting period required by the statute. Under section 8 of the Securities Act a registration statement becomes effective on the 20th day after filing (unless the Commission has accelerated effectiveness). The filing of an amendment to the registration statement begins the waiting period running anew, unless the Commission has consented to or required the filing of the amendment.

After due notice and hearing the Commission may refuse to permit a statement to become effective, or may issue a stop-order determining the effectiveness of the statement.

In view of the tradition of the Commission to rely on careful examination of registration statements and the procurement of corrections by voluntary means, emphasis in the registration process is upon correction in response to a staff letter of comment, rather than upon formal procedures to refuse or terminate effectiveness.

The total time elapsed in the registration process is not completely within the control of the Commission. As will be noted from the chart above, a substantial part of this total time includes the time taken by the registrant to make corrections pursuant to a letter of comment and the subsequent time taken to examine the amended statement.

As the chart shows the median elapsed time from the date of filing to the first letter of comment runs between 9 and 12 days. The remainder of the time is consumed by the registrant in making corrections and in a review of those corrections by the staff.

Customarily a statement is declared effective shortly after the receipt of the corrections made pursuant to the letter of comment. At times, however, more than one letter is necessary.

<sup>2</sup> This figure differs from the 488 shown in the table on p. 176 due to difference in classification as to time of effectiveness of registration statements. See appendix table 1, footnote 2 for details.

It should be noted that while the volume of bonds registered by issuers for cash sale decreased substantially, stock so registered showed a marked increase.

From September 1934 through June 1949 new money purposes represented 37 percent of the net proceeds expected from the cash sale of issues registered for the accounts of the issuers. In the 1950 fiscal year new money purposes represented 51 percent of the expected net proceeds for the year—large enough to raise the 16-year average 2 points to 39 percent.<sup>3</sup>

The table below shows the amount of each type of security registered for cash sale for the accounts of the issuers in each of the fiscal years 1935 through 1950 as well as the three 5-year totals. In addition to the totals of the new issues for cash sale, all registrations are shown for the same periods.

(Millions of dollars) <sup>1</sup>

Fiscal year ended June 30	All registrations	Total	Cash sale for account of issuers		
			Bonds and face-amount certificates	Preferred stock	Common stock and certificates of participation
1935 <sup>2</sup> .....	913	686	490	28	168
1936.....	4,836	3,930	3,153	252	531
1937.....	4,851	3,635	2,426	406	802
1938.....	2,101	1,349	666	209	474
1939.....	2,579	2,020	1,593	109	318
1935-39.....	15,280	11,626	8,328	1,003	2,293
1940.....	1,787	1,433	1,112	110	210
1941.....	2,611	2,081	1,721	164	196
1942.....	2,003	1,465	1,041	162	263
1943.....	659	486	316	32	137
1944.....	1,760	1,347	732	343	272
1940-44.....	8,820	6,812	4,922	812	1,078
1945.....	3,225	2,715	1,851	407	456
1946.....	7,073	5,424	3,102	991	1,331
1947.....	6,732	4,874	2,937	787	1,150
1948.....	6,405	5,032	2,817	537	1,678
1949.....	5,333	4,204	2,795	326	1,083
1915-49.....	28,768	22,249	13,502	3,047	5,698
1950.....	5,307	4,381	2,127	468	1,786

<sup>1</sup> Dollar amounts are rounded to millions and will not necessarily add to totals.

<sup>2</sup> For 10 months ended June 30, 1935.

#### C. ALL SECURITIES REGISTERED FOR CASH SALE FOR THE ACCOUNTS OF ISSUERS—BY TYPE OF ISSUER

Type of issuer	1950	1949
Electric, gas, and water companies.....	\$2,038,227,000	\$1,796,709,000
Financial and investment companies.....	1,067,692,000	680,600,000
Transportation and communication companies <sup>1</sup> .....	522,753,000	989,911,000
Manufacturing companies.....	506,304,000	679,447,000
Foreign governments.....	175,950,000	0
Extractive companies.....	33,027,000	33,495,000
Merchandising companies.....	25,370,000	14,675,000
Service companies.....	7,582,000	9,171,000
Real estate companies.....	4,409,000	0
<b>Total.....</b>	<b>4,381,314,000</b>	<b>4,204,008,000</b>

<sup>1</sup> Does not include companies subject to regulation by the Interstate Commerce Commission and therefore exempt from registration.

<sup>2</sup> See also appendix table 1, pt. 3.

Registrations of securities for cash sale by electric, gas, and water companies exceeded by 13 percent their previous high established in the 1949 fiscal year. Those for the financial and investment companies exceeded by 18 percent their previous high established in the 1946 fiscal year. These two groups accounted for 47 percent and 24 percent respectively of the total for the year. Manufacturing companies and transportation and communication companies registered about equal amounts, each 12 percent of the total, decreases of 25 and 47 percent, respectively, from the amounts of the 1949 fiscal year.

**D. USE OF INVESTMENT BANKERS AS TO SECURITIES REGISTERED FOR CASH SALE FOR THE ACCOUNTS OF ISSUERS**

Amount registered to be sold through investment bankers:	1950	1949
Under agreements to purchase for resale.....	\$2, 927, 787, 000	\$2, 758, 454, 000
Under agreements to use "best efforts" to sell.....	962, 830, 000	557, 361, 000
Total registered to be sold through investment bankers.....	3, 890, 617, 000	3, 315, 814, 000
Total registered to be sold directly to investors by issuers.....	490, 698, 000	888, 194, 000
Total.....	4, 381, 314, 000	4, 204, 008, 000

The Commission's Section of Operational Statistics continues to study the costs of flotation of security issues. The greatest part of these costs continues to be commissions and discount, which are the amounts paid to investment bankers, the balance being distributed among other expenses such as (a) those not affected by registration: exchange listings, Federal revenue, stamp taxes, State fees and taxes, trustees, transfer agents, etc., (b) those partly affected by registration: printing and engraving, legal fees and expenses, accounting fees and expenses, engineering, appraising, etc., and miscellaneous and (c) those entirely attributable to registration: the S. E. C. filing fee of one one-hundredth of 1 percent of the maximum offering price of the securities registered.

During the past 5 calendar years, 1945-49 inclusive, registrations of all types of securities (for cash sale and otherwise) amounted to approximately \$29,000,000,000. The cost of flotation of these securities was \$2.64 per hundred dollars of gross proceeds. Of this, compensation paid to underwriters amounted to \$2.12 and other expenses amounted to \$0.52.

In the 1950 fiscal year, investment bankers were used in the sale of 89 percent of the total registered for cash sale for the accounts of issuers as compared with 79 percent in the 1949 fiscal year. Commitments by investment bankers to purchase for resale involved 67 percent of the total registered for cash sale for the accounts of issuers, as compared with 66 percent in the 1949 fiscal year.<sup>4</sup>

That part of cost of flotation represented by commissions and discounts to investment bankers, but excluding other expenses, is shown for each type of security for each of the past 10 fiscal years. The

<sup>4</sup> See appendix tables 1 and 2 for a more detailed breakdown of the dollar volume of Securities Act registrations.

table below covers securities effectively registered for cash sale through investment bankers to the general public for the accounts of the registrants, but does not include securities sold to existing security holders of the issuers, securities sold to special groups, and securities of investment companies.

*Commissions and discounts to investment bankers*

(Percent of gross proceeds)

Fiscal year ended June 30	Bonds	Preferred stock	Common stock	Fiscal year ended June 30	Bonds	Preferred stock	Common stock
1941.....	1.8	4.1	14.4	1946.....	.9	3.1	8.0
1942.....	1.5	4.1	10.1	1947.....	.9	2.8	9.3
1943.....	1.7	3.6	9.7	1948.....	.6	4.5	10.2
1944.....	1.5	3.1	8.1	1949.....	.8	3.8	7.1
1945.....	1.3	3.1	9.3	1950.....	.6	2.7	6.4

**ALL NEW SECURITIES OFFERED FOR CASH SALE <sup>5</sup>**

**Registered Securities**

Securities effectively registered under the Securities Act of 1933 and actually offered for cash sale during the 1950 fiscal year amounted to \$3,163,000,000. This total was less than the amount of securities offered in any of the postwar fiscal years; \$4,656,000,000 were so offered during the peak year ended June 1946. The amounts of such offerings in the last 2 years, valued at actual offering prices, are as follows: <sup>6</sup>

	1950	1949
Corporate (excluding investment companies).....	\$2,987,000,000	\$3,443,000,000
Noncorporate (Foreign Government).....	176,000,000	0
<b>Total.....</b>	<b>\$3,163,000,000</b>	<b>\$3,443,000,000</b>

**Unregistered Securities**

**CORPORATE**

Some \$3,006,000,000 of unregistered corporate securities are known to have been offered for cash sale by issuers in the 1950 fiscal year as compared with \$3,686,000,000 in the 1949 fiscal year. The basis for exemption of these securities from registration is as follows: <sup>7</sup>

Basis for exemption from registration:	1950	1949
Privately placed issues.....	\$2,211,000,000	\$2,904,000,000
Railroads and other common carriers..	572,000,000	621,000,000
Commercial bank issues.....	110,000,000	25,000,000
Intrastate offerings.....	6,000,000	5,000,000
Offerings under regulation A <sup>1</sup> .....	107,000,000	121,000,000
Other exemptions.....	0	10,000,000
<b>Total.....</b>	<b>\$3,006,000,000</b>	<b>\$3,686,000,000</b>

<sup>1</sup> Includes only offerings between \$100,000 and \$300,000 in size. See p. 9 for a more detailed discussion of regulation A offerings.

<sup>5</sup> See appendix for a detailed statistical breakdown of all securities offered for cash sale in the United States.

<sup>6</sup> The figures given in this section exclude securities sold through continuous offering, such as issues of open-end investment companies and employee purchase plans.

<sup>7</sup> Where a security may have been exempted from registration for more than one reason, the security was counted only once.

## NONCORPORATE

The total of unregistered governmental and eleemosynary securities offered for cash sale in the United States during the 1950 fiscal year was \$15,673,000,000 as compared with \$13,823,000,000 in the 1949 fiscal year. These totals consist of the following:

Issuer:	1950	1949
United States Government.....	\$12,068,000,000	\$11,135,000,000
State and local governments.....	3,482,000,000	2,512,000,000
Foreign governments.....	0	166,000,000
International Bank.....	101,000,000	0
Miscellaneous nonprofit organizations..	22,000,000	10,000,000
Total.....	\$15,673,000,000	\$13,823,000,000

**Total Registered and Unregistered Securities**

Proceeds from corporate securities flotations, both registered and unregistered, applicable to expansion of fixed and working capital amounted to \$3,940,000,000. This is considerably lower than the volume of securities sold for this purpose during the 1949 and 1948 fiscal years, the amount being approximately \$5,800,000,000 in each of these two periods. Electric and gas companies accounted for 41 percent of the new money financing, manufacturing firms 17 percent, communication companies 8 percent, railroads 9 percent, and all others 25 percent. Securities offered for retirement of outstanding securities and repayment of bank loans amounted to \$1,601,000,000 in the 1950 fiscal period compared with \$921,000,000 in the preceding year. The increase was due to a substantial rise in the amount of securities refunded, particularly by electric and gas utility companies.<sup>8</sup>

**REGISTRATION STATEMENTS FILED**

During the 1950 fiscal year 496 registration statements were filed covering proposed offerings in the aggregate amount of \$5,220,654,010.

*Number and disposition of registration statements filed*

	Prior to July 1, 1949	July 1, 1949 to June 30, 1950	Total as of June 30, 1950
Registration statements:			
Filed.....	8,043	496	8,539
Effective—net.....	6,663	1,488	8,151
Under stop or refusal order—net.....	182	0	182
Withdrawn.....	1,145	23	1,168
Pending at June 30, 1949.....	53		
Pending at June 30, 1950.....			45
	8,043		8,539
Aggregate dollar amount:			
As filed.....	\$57,962,671,149	\$5,220,654,010	\$63,183,325,159
As effective.....	54,113,698,063	5,307,077,191	59,440,775,254

<sup>1</sup> Excludes 2 registration statements which became effective and were subsequently withdrawn and includes 1 registration statement previously under stop order.

<sup>2</sup> 7 registration statements which became effective prior to July 1, 1949 were withdrawn and are counted in the number withdrawn.

<sup>3</sup> During the fiscal year a stop order was issued against 1 registration statement and a stop order on another registration statement was lifted, making no change in the net number of stop order cases.

<sup>8</sup> See appendix table 4 for statistics in greater detail as to the use of net proceeds from the sale of securities.

*Additional documents filed in the 1950 fiscal year related to Securities Act registrations*

Nature of document:	Number
Material amendments to registration statements filed before the effective date of registration-----	764
Formal amendments filed before the effective date of registration for the purpose of delaying the effective date-----	421
Material amendments filed after the effective date of registration-----	638
<hr/>	
Total amendments to registration statements-----	1, 823
Supplemental prospectus material, not classified as amendments to registration statements-----	1, 112
Reports filed under section 15 (d) of the Securities Exchange Act of 1934 pursuant to undertakings contained in registration statements under the Securities Act of 1933:	
Annual reports-----	753
Current reports-----	2, 378

**EXEMPTION FROM REGISTRATION UNDER THE ACT**

The Commission is authorized by section 3 (b) of the act to adopt rules and regulations granting exemptions from the registration requirements for issues of securities whose aggregate offering price to the public does not exceed \$300,000.

The Commission has adopted five regulations 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.

Small offerings of securities may be made and sold to the public pursuant to a section 3 (b) exemption on the basis of a less complete disclosure than that required by the act in the case of a registered security. For example, regulation A provides for the filing of a simple letter of notification, containing limited information about the issuer and the offering, with the appropriate regional office of the Commission, and provides further that the offering may be made five business days thereafter.

It should be emphasized, however, that exemption from registration permitted under section 3 (b) carries no exemption from civil liabilities under section 12 for misstatements or omissions, or from the criminal liabilities for fraud under section 17. For the proper enforcement of these sections, the conditions for the availability of the exemptions provided under section 3 (b) include, with the exception of regulation A-R, the requirement that certain minimum information be filed with the Commission and that disclosure of certain information be made in sales literature, if any sales literature is used. While no prospectus need be used, selling literature must be filed in advance of its use.

**Exempt Offerings under Regulation A**

In the 1950 fiscal year 1,357 letters of notification were filed under regulation A, covering offerings in the aggregate amount of \$171,743,-472, compared with 1,392 filings totaling \$186,782,661 during the 1949

fiscal year. The 1950 fiscal year figures include 136 letters of notification covering stock offerings aggregating \$19,909,525 filed by companies engaged in some phase of the oil and gas business.

In addition to the 1,357 letters of notification filed in the 1950 fiscal year, 1,159 amendments to these letters of notification were received and examined and there were 1,844 filings of sales literature to be used in connection with such offerings.

Of 1,345 letters of notification covering completed offerings filed in the 1950 fiscal year, 787 covered proposed offerings of \$100,000 or less; 218 covered offerings for more than \$100,000 and less than \$200,000; and 340 covered offerings of more than \$200,000 but not more than \$300,000. Issuing companies made 1,134 of these offerings, stockholders made 199, and both issuers and stockholders joined in making the remaining 12. Commercial underwriters marketed 398 of the offerings, officers and directors or other persons not regularly engaged in the underwriting business handled 164, and there was no underwriting of the remaining 803.

The procedure for making an exempt offering under regulation A is simple. All that is necessary is to file the prescribed letter of notification, and such sales literature as the offeror intends to employ, with the appropriate regional office of the Commission five business days before the offering is to be made. In processing by the Commission this material is examined in the field and reviewed by the staff at the Commission's headquarters. This review involves a search for pertinent information in the Commission's extensive files and an examination to determine whether the exemption provided by the regulation is applicable to the particular case and whether the information filed discloses any violation of any of the acts administered by the Commission. The results of this review are made available promptly to the regional office. The Commission also follows the practice of cooperating with the proper local authorities in the States in which the securities are proposed to be offered by furnishing them significant data about the proposed offering.

#### **Exempt Offerings under Regulation A-M**

During the 1950 fiscal year the Commission received and examined 9 prospectuses covering an aggregate offering price of \$303,122 for assessable shares of mining corporations exempt from registration under this regulation.

#### **Exempt Offerings under Regulation B**

The Commission maintains a specialized unit in its headquarters office to administer regulation B and to advise and assist with technical phases of all offerings of oil and gas securities arising under other provisions of the Securities Act. In addition, the Commission maintains a petroleum geologist in Tulsa, Okla., who advises the Commission as to the development of tracts and wells in the Mid-Continent and Coastal regions. Development has been active in the Rocky Mountains during the 1950 fiscal year.

The exemption from registration provided by regulation B for fractional undivided interests in oil or gas rights is limited to a maximum aggregate offering price of \$100,000. Regulation B requires that

an offering sheet be filed with the Commission summarizing pertinent information regarding the security being offered.

In addition to 136 offerings under regulation A which covered oil and gas securities, 88 offering sheets and 61 amendments were filed under regulation B during the 1950 fiscal year. The following actions were taken on these filings:

*Action taken on filings under regulation B*

Temporary suspension orders (rule 340 (a))-----	14
Orders terminating proceedings after amendment-----	8
Orders consenting to withdrawal of offering sheet and terminating proceeding-----	1
Orders terminating effectiveness of offering sheet (no proceeding pending)--	8
Orders consenting to withdrawal of offering sheet (no proceeding pending)--	1
Orders accepting amendment of offering sheet (no proceeding pending)----	34
<b>Total orders-----</b>	<b>66</b>

*Confidential written reports of sales under regulation B.*—Another function of the Commission in the administration of regulation B is to determine from confidential written reports of actual sales that no violations of law occurred in the marketing of oil and gas securities exempted under this regulation. Such reports are required to be filed pursuant to rules 320 (a) and 322 (c) and (d) concerning sales made by broker-dealers to investors and by dealers to other dealers. During the 1950 fiscal year 1,132 such reports were received with respect to aggregate sales of \$829,875.

*Oil and gas investigations.*—Most oil and gas investigations arise out of complaints received by the Commission. They are conducted primarily to ascertain whether there has been any violation of section 5, which requires registration, or of section 17, which prohibits fraud in securities transactions.

A typical investigation was made in the 1950 fiscal year to determine whether certain claims of profits in sales literature used to sell oil royalties under regulation B were misleading. The offering circular claimed that the royalties would return a profit of 8 to 12 percent and would be a better investment than most stocks and bonds. The staff made an extensive study of the total income received from royalties sold by the offeror under offering sheets relating to as many as 46 tracts since 1940. Inasmuch as information as to production and income from these tracts was not a matter of published record, a large part of the necessary data was obtained from the producer and the purchaser of the oil. It was found that out of the 46 tracts under review, only 2 had returned the capital invested, with a profit; 4 should eventually do so, with a modest profit; and of the remaining 40 tracts only a very few can reasonably be expected ever to return even as much as the capital invested.

The offeror agreed to cease claiming an 8 to 12 percent yield, to cease comparing any return on these royalties with that available from stocks and bonds, and to describe his royalties as liquidating assets the return from which cannot be regarded as profit until the capital invested has been recovered by the purchaser.

The Commission instituted 10 new investigations involving oil and gas securities during the 1950 fiscal year and 23 such cases were closed. This brought the total pending during the year to 135 and the number pending at the close of the year to 112. As a result of evidence developed in two cases, the Commission secured injunctions in the courts restraining violations of the registration and antifraud provisions of the act. The facts in two other cases were referred to the Department of Justice for criminal prosecution, in which the Commission cooperated. The conviction of Claude Cleve Alfred in connection with fraudulent sales of oil securities is mentioned in another section of this report.

### FORMAL ACTION UNDER SECTION 8

The purpose of the Commission's informal procedures in processing registration statements is to get registration statements which comply with the requirements of the act before the statements become effective. In almost all cases conference and comment by letter are 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).

#### Stop-order Proceedings under Section 8 (d)

Two stop order proceedings were pending at the beginning of the 1950 fiscal year and one was instituted during the year under section 8 (d). These cases are described below.

*Pan American Gold Limited (no personal liability)—File No. 2-7603.*—This Canadian company filed a registration statement covering 1,983,295 of its common shares, \$1 par value, to be offered at 45 cents per share and net about \$670,500 to the issuer. According to the registration statement, these proceeds were to be used (1) for the exploration of a gold mining prospect located in South Dakota, and (2) for the equipment of a South American gold placer mining property.

Upon examination the registration statement appeared to contain materially misleading representations, and in the 1949 fiscal year the Commission authorized a private examination under section 8 (e) to

determine the adequacy and accuracy of certain of these representations and to determine whether stop-order proceedings should be instituted. On the basis of testimony adduced at the examination, stop-order proceedings were instituted. Following these proceedings and after the registrant filed amendments to the registration statement which substantially corrected deficiencies, the Commission issued its opinion, deferring issuance of a stop-order pending correction by the registrant of the remaining deficiencies, at which time the registration statement could become effective.<sup>9</sup>

The Commission found that the original registration statement was materially misleading in numerous respects. The prospectus filed as a part of the original registration statement contained information to the effect that the registrant's South Dakota property is located along the southern border of the famous Homestake Mine. A map, forming a part of the prospectus, showed what purported to be the southeasterly "trend" of the Homestake gold ore bodies into and through the registrant's property. This representation was said to rest on the authority of United States Geological Survey Atlas Folio 219. The Commission found that the map was not supported by such folio and that the registrant had no factual basis for portraying the extension of the Homestake ore bodies into and through its property. The prospectus was amended to omit this unjustifiable claim and also to delete a report on the property which the Commission held to be materially inaccurate, inadequate, and misleading. In addition it was amended to show for the first time that the registrant was aware of several unfavorable geological reports made after exploratory drilling.

The South American property of the registrant was described originally in the registration statement as being ready for productive operation upon installation of mining equipment. The amount of commercial gravel said to be available for mining was estimated at a minimum of 5,000,000 cubic yards averaging \$1 per cubic yard in gold. The planned rate of production was said to be at least 1,000,000 cubic yards of gravel per year. The registrant stated that it believed that operations on the property should enable it to obtain steady earning power from this property. The amended registration statement discloses that the registrant made no investigation of the property, and has no factual information about the presence, extent, or character of gravel deposits on the property. The prospectus, as revised, shows that the registrant intends to test the property as an initial step in order to determine whether it warrants the installation of machinery for production. Specifically, it is stated in the revised prospectus: "If the further exploratory work and shafting as contemplated do not show sufficient values to justify further development, this property will be abandoned."

*The Maumee Oil Corporation—File No. 2-7976.*—This case was completed during the 1950 fiscal year although instituted previously. The company was incorporated in Ohio on July 30, 1947 and on May 11, 1949 filed a registration statement covering 8,000 shares of no par value common stock to be offered at \$100 a share. Its assets consisted

<sup>9</sup> Securities Act release No. 3368.

of assignments of oil and gas leases and an undivided one-half interest in four wells (two of which were not productive) in the Beddo field in the vicinity of Ballinger, Runnels County, Tex. After examination of the registration statement, stop-order proceedings were instituted on May 27, 1949.

From information developed at the hearing it appeared that the registration statement failed to disclose that the Beddo field was an inferior field which seldom, if ever, marketed more than 60 percent of its allowable production, and often much less, and that the number of dry holes in the field exceeded the number of producing wells. The registration statement also failed to provide adequate information with respect to the wells in which the registrant had an interest. The prospectus stated that two of the four wells were unproductive, but it failed to state that the other two producing wells had no reasonable chance of profitable production and were being operated on a day to day basis only because this was more economical than to abandon them.

At the time the registration statement was filed the registrant was in possession of two reports from geologists which indicated that, at best, only 5 percent of the registrant's acreage had a reasonable chance to produce oil in any amount. The Commission held that in such circumstances, where there had been significant exploration in the area indicating that the possibilities of success were extremely remote, it was misleading to imply a fair chance of profit by describing the offering as "speculative," or to state or imply that the area in which the registrant's properties were located had not been proved, or that the registrant's own acreage should be regarded as unproved. As to the registrant's plan for new drilling, to be financed with proceeds from the sale of the securities sought to be registered, it was held misleading for the registrant to characterize the projected wells as "exploratory" without disclosing the information in its possession indicating that since the projected wells were to be located in the vicinity of its existing unprofitable wells there was no reasonable factual basis for an expectation that new wells would be better than the existing wells.

The registration statement and prospectus failed to name Eldridge S. Price as a promoter although required to do so by the Commission's rules, and to provide a fair disclosure of the registrant's dealings with him. Price, although not an officer, director, or stockholder, sold assignments of oil and gas leases on some 2,677 acres of his holdings in Runnels County, Tex., to the persons who became the original shareholders of the company. Price received about \$290,340, about 92 percent of all the money obtained by the registrant from the sale of securities. The original amount paid to Price was \$43.75 an acre, but this was later raised to \$100 although Price was apparently at the same time acquiring additional acreage for about \$1 per acre.

The Commission's opinion mentions other omissions and inconsistencies in the registration statement relating to such matters as the amount of the offering, the liability of certain shareholders for assessment, the business experience of officers, inaccurate financial statements, and the failure to file material exhibits.<sup>10</sup> At the close of

<sup>10</sup> Securities Act release No. 3354.

the 1950 fiscal year the registrant had not attempted to correct the deficiencies found to exist in its registration statement and the stop order was still in effect.

*Ralph A. Blanchard and George P. Simons, doing business as Northwest Petroleum—File No. 2-3243.*—The registration statement filed in this case covered 350 “undivided Fractional Participating Interests (Oil)” to be offered for sale to the public at an aggregate price of \$175,000. The Commission, alleging generally that there is reasonable cause to believe that the disclosures contained in the registration statement and prospectus are inaccurate and incomplete in material respects, challenging 19 items specifically, instituted stop-order proceedings during the 1950 fiscal year that were still pending at the close of the year.<sup>11</sup>

#### DEFICIENCIES DISCOVERED IN EXAMINATION OF REGISTRATION STATEMENTS

The examination of registration statements during the waiting period brings to light many deficiencies in the registration statements which would, if undiscovered, be published and furnished to investors. These are sometimes corrected; often they are of such material character that the statements are withdrawn on discovery of the deficiency. The following are examples of deficiencies discovered in examination of registration statements.

##### Overstated Oil Reserves

An oil-producing company filed a registration statement covering \$2,937,254 of 4½ percent senior cumulative interest debentures, due January 1, 1965; \$1,147,150 of 5 percent junior income debentures, due January 1, 1970; 30,500 shares of \$5 cumulative class A preferred stock, no par; 51,000 shares of \$5 cumulative class B preferred stock, no par; and 2,000 shares of common stock, no par.

Prior to the formation of the company, the promoters of its predecessors had sold working interests in oil leases, in which the promoters retained overriding royalties, to some 350 investors in and around Boston. These royalties and other assets were subsequently conveyed to the company by the promoters. The company appears to have been continuously short of working capital although, in addition to substantial loans from insurance companies and banks, it had received additional funds from a syndicate composed of some of the original investors in the leases. A plan of reorganization was devised which provided for: (1) A large loan from the RFC; (2) the acquisition of additional oil properties; (3) the repayment of part of the outstanding loans; and (4) payments in cash and new securities for the properties owned and to be acquired. The Commission determined that the proposed offering of debentures, preferred stock, and common stock, in addition to cash, to the 350 investors was a public offering and required the filing of a registration statement.

It became apparent upon review by the Commission of the reports prepared by various petroleum engineers in respect of the company's oil and gas reserves, and after conference with such engineers, that

<sup>11</sup> Securities Act release No. 3367.

the reserve estimates were too high, that upon a reasonable estimate of these reserves there was no present value behind the securities proposed to be offered, and that the prospects of any future values were remote and contingent. Consequently the company proposed, in lieu of furnishing an estimate of oil and gas reserves in the registration statement, to state the fact that the securities being offered were without present value and of extremely remote and contingent future value, and also to make a more detailed statement of such facts on the second page of the prospectus. This amendment was made and resulted in furnishing to prospective purchasers in a readily understandable form the ultimate conclusion as to the effect of the factors of value—such as the estimated amount of reserves, the dollar value of oil, lifting costs, and rate of extractions—instead of a mere itemization of these factors themselves.

#### **Understatement of Liability**

The adoption of pension plans during the year presented new problems to some registrants as in the case of a registrant which adopted a 5-year plan to become effective on a date within an interim period for which unaudited financial statements were furnished as permitted by the rules. The company's financial statements filed with the Commission included a charge to profit and loss for the interim period proportionate to the total estimated cost for the 5-year period with an equivalent amount reflected in the balance sheet as a liability. Examination of the plan indicated that in the first year a much larger number of employees would be eligible under the plan than in the succeeding years due to the fact that all employees over the required age and term of service for eligibility could claim their pension rights immediately, although not all of them were expected to do so. When this feature was called to the attention of the registrant the financial statements were amended to increase the liability shown in the balance sheet under the pension plan from the previous estimate of approximately \$500,000 to \$2,000,000, of which \$400,000 was classified as current. The previously determined accrual was charged to profit and loss and the remaining \$1,500,000 was set up as a deferred charge to be allocated against future operations. A comprehensive footnote described the pension plan and indicated that the liability included in the balance sheet was based upon the best indication at the date of filing of the intention of eligible employees to retire within the terms of the plan.

#### **Restatement of Reserves**

A company filing a registration statement covering 76,983 shares of 4½ percent cumulative preferred stock owned several old established operating mining companies, which followed a widespread practice of making no provision for depletion of their mining properties. However, in its latest balance sheet accompanying the registration statement the parent company reflected a reserve for contingencies amounting to \$4,000,000, created by a charge to earned surplus "for the eventual write-off of its investment direct or indirect in mining property upon the exhaustion of any such property." It appeared to the staff that one of the mines, the mining property of which was carried at \$4,388,410, was practically in a salvage status. The reserve, previously described as a contingency reserve, was thereafter changed

to "Reserve for exhaustion of mining property," and shown in the company balance sheet as a deduction from the carrying value of the investments in the mining companies and in the consolidated balance sheet as a deduction from the carrying value of mining property. In each case, the carrying value was thereby reduced \$4,000,000 thus giving unambiguous recognition to the status at the balance sheet date, which in the original filing could be determined only by a very careful reading of pertinent parts of the text of the prospectus.

A significant amendment to the prospectus was also obtained in view of the indications in the text that one of the principal mines of the company was practically exhausted. The summary of earnings was amended to call attention to the present status of the company's principal revenue-producing mine.

#### **Statement of Potential Profits**

A company in the promotional stage included in its prospectus a statement indicating the company's estimate of annual production in units of the items to be manufactured and gave the estimated factor prices of the units, so that a gross sales estimate could have been calculated by a prospective investor. The estimated annual cost of operations was given in round figures, with a minimum of detail, and omitting certain important elements of cost such as depreciation, maintenance, repairs, and rents. The over-all effect was to imply that substantial profits might be realized by the company, despite the disclaimer contained in the prospectus to the effect that the company could not assure the rate of production upon which the estimates were based or that the prices quoted would be received for the product. When these uncertainties were pointed out the registrant deleted those elements of the presentation which provided the basis for possible misleading calculations of profit.

#### **Failure to Disclose History and Risks Involved**

A company, organized in 1947 as the successor to companies which have been engaged since 1945 in developing a small automobile, filed a registration statement on May 10, 1949 covering 5,000,000 shares of common stock to be offered to the public at \$1 per share through an underwriter pursuant to a "best efforts" arrangement. The prospectus stated that the registrant's first product was to be a station wagon.

As a result of inadequacies cited by the staff in its letter of comment, the prospectus was extensively revised and disclosed, among other things, that: (1) None of the registrant's 18 existing model cars met the exact specifications proposed for the car to be built, and additional testing was required which might result in substantial design changes, increased preproduction expense, and production delays; (2) the registrant and its predecessors in the period from October 8, 1945 to June 30, 1949 had received \$2,271,482 in cash, including \$1,476,633 for dealer and distributor franchise fees, and had paid out \$2,150,198, including \$656,351 for salaries and wages; (3) the registrant's balance sheet at June 30, 1949 showed assets in excess of liabilities of only \$12,026; (4) the registrant's cost estimates and production plans were predicated upon the attainment of an annual production and sales volume which represented approximately 70 percent of the entire

United States domestic station wagon market, based on production figures for the 18 months ended June 30, 1949; (5) if substantially all of the proceeds of the issue were not received it would be necessary to reduce the proposed production program and to raise the selling price of the car, in which event it might be difficult, or impossible, to overcome the resultant competitive disadvantages; and (6) there was no provision for the return of funds to the purchasers of the stock if the registrant were unable to sell all the shares being offered and carry out its plans. The registration statement as amended became effective October 3, 1949.

On February 17, 1950, the registrant filed a petition for reorganization pursuant to chapter X of the Bankruptcy Act, and was declared bankrupt May 19, 1950. No shares covered by the registration statement had been sold.

#### **Questionable Selling Activities**

A registration statement of a Montana corporation, proposing to engage in the manufacture and sale of ground wood pulp, became effective in August 1949. The corporation was in the promotional stage, its tangible assets consisting of a plant site in Montana and about \$150,000 obtained from the sale of securities in Montana several years before. The registration statement included a report of a forestry expert which indicated that the best source of timber for the project would be in Montana, north of the plant site. Shortly after the registration statement became effective, it was learned that the corporation was receiving extensive publicity in the Idaho-Washington area about a proposed purchase of land in Idaho for the purpose of constructing a paper and pulp plant there. Investigation by the Commission's regional office revealed that the land had been purchased and, moreover, that the corporation had been making sales of stock in Montana without using a prospectus required by the Securities Act and without a proper license from the State of Montana.

Following this investigation, the corporation filed an amended prospectus which referred to the purchase of land in Idaho, implying that it might be used for timber-storage purposes and justifying the purchase on the grounds that funds for that purpose had not been obtained from its offering of registered securities. The corporation was requested to reconcile the proposed use of the Idaho property with the above-mentioned report of its forestry expert, and to point out in the prospectus that the use of funds in Idaho was not consistent with representations made in selling literature employed in the original sale of securities in Montana, namely that all proceeds would be used to construct a plant in Montana. The registrant canceled its agreement to purchase the Idaho property and offered to make rescission to all purchasers of stock who had not received a proper prospectus.

#### **CHANGES IN RULES, REGULATIONS, AND FORMS AFFECTING EXEMPT SECURITIES**

*Regulation BW—Reports of International Bank for Reconstruction and Development.*—Section 15 (a) of the Bretton Woods Agreements Act, which was added to that act by the Eighty-first Congress and

approved by President Truman on June 29, 1949, exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued, or guaranteed both as to principal and interest, by the International Bank for Reconstruction and Development. However, the bank is required to file with the Commission such annual and other reports with respect to such securities as the Commission shall determine to be appropriate, in view of the special character of the bank and its operations, and necessary in the public interest and for the protection of investors. The Commission has heretofore expressed its opinion that an exemption is available under the Trust Indenture Act of 1939.

New rules and regulations were adopted on January 9, 1950, designated regulation BW, to require the bank to file with the Commission substantially the same information, documents, and reports as would be required if the bank had securities registered under the Securities Exchange Act of 1934. The bank is required also to file a report with the Commission not less than 7 days prior to the date on which any of its primary obligations are sold to the public in the United States. This report and the periodic reports filed make available at the Commission information quite similar to the information which would be required in a registration statement under the Securities Act of 1933. This carries out the intention which the Commission expressed to the Congress when the amendment to the Bretton Woods Agreement Act was under consideration.

The Commission announced at the same time that it was informed by the bank that no public offering of securities guaranteed by the bank was presently contemplated.<sup>12</sup> Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, were limited to the sale of primary obligations of the bank.

The Commission at the same time rescinded certain rules previously adopted under the Securities Act of 1933 and the Securities Exchange Act of 1934 with particular reference to the bank.

*Regulation A—General exemption for small issues.*—Three amendments to regulation A, which provides an exemption from registration under the Securities Act for certain small issues, were adopted by the Commission during the 1950 fiscal year.<sup>13</sup>

The first of these amendments raised from \$100,000 to \$300,000 the amount of the aggregate offering price of securities which may be offered by the estate of a deceased person for the purpose of paying taxes or other expenses of the estate. There are situations in which the deceased person did not stand in a control relation with the issuer but in which the executor or administrator (because of direct or indirect holdings of his own) does stand in such a relationship and would be prevented from selling without registration. The enlarged exemption is available, however, only if the deceased person was not in a control relationship with the issuer and would not have been required to register the securities if the offering had been made by him prior to his death.

<sup>12</sup> Bretton Woods Agreements Act release No. 1. For a further discussion see p. 164 of this report.

<sup>13</sup> Securities Exchange Act release Nos. 3352, 3370, and 3377.

The second amendment is intended to prevent the commencement or continuance of the sale of securities under regulation A during the pendency of injunction proceedings instituted by the Commission. Under a literal construction of the rule previously in effect, a person who had filed a letter of notification under which a portion of the securities thereby qualified remained unsold might continue to sell (insofar as the rule was concerned) such securities without registration despite the pendency of an action instituted by the Commission to enjoin the issuer or other person affiliated with the issuer from engaging in or continuing any conduct or practice in connection with the sale of any security of such issuer.

It is obviously inconsistent with the Commission's action in securing an injunction to prevent violations of the act to continue in effect a discretionary exemption which might tend to a substantial degree to nullify the relief being sought.

The third amendment makes it clear that the maximum aggregate amount of securities which may be sold under regulation A in any 12-month period is \$300,000 in actual gross proceeds from the public. The amendment was made to correct an erroneous impression in some quarters that if the initial offering price did not exceed that amount, the entire offering might be sold for an actual aggregate price to the public exceeding \$300,000.

### LITIGATION UNDER THE SECURITIES ACT

The bulk of litigation in connection with the enforcement of the Securities Act deals with persons who fail to register securities before offering them to the public as required by section 5 and persons who make fraudulent security sales in violation of section 17. Violations of section 5 deprive the public of information essential to intelligent investing and violations of section 17 involve outright deception of public investors. In either situation, maximum protection is afforded to the public by enjoining further sales. For this reason, it is customary for the Commission to enjoin the illegal activities promptly, even though criminal action may be instituted later.

Some cases involve violations of both sections of the act; some include also violations of other acts administered by the Commission, particularly the Securities Exchange Act of 1934, which contains antifraud provisions.

During the course of the year the Commission obtained temporary or permanent injunctions against further violations of section 5 in cases involving sales of securities of mining companies,<sup>14</sup> oil and gas corporations,<sup>15</sup> and other types of business.<sup>16</sup> As in the past, some

<sup>14</sup> *S. E. C. v. Pilot Silver-Lead Mines, Inc.*, Civil Action No. 747, E. D. Wash., Aug. 5, 1949; *S. E. C. v. Lucky Friday Extension Mining Co.*, Civil Action No. 714, E. D. Wash., Aug. 5, 1949; *S. E. C. v. Silver Creek Precision Corp.*, Civil Action No. 50-663, S. D. N. Y., July 8, 1949; *S. E. C. v. James R. Davies, Sr.*, Civil Action No. 2673, D. Idaho, Aug. 19, 1949, and *S. E. C. v. Alhambra Gold Mine Corp.*, Civil Action No. 11820, S. D. Calif., Aug. 1, 1950.

<sup>15</sup> *S. E. C. v. F. L. Rigney Co.*, Civil Action No. W 75, D. Kan., Feb. 24, 1950; *S. E. C. v. Aloha Oil Co.*, Civil Action No. 4463, W. D. Okla., June 30, 1949, and *S. E. C. v. H. A. Tucker*, Civil Action No. 4724, W. D. Okla., Feb. 28, 1950.

<sup>16</sup> *S. E. C. v. Westates Agricultural Chemical Co.*, Civil Action No. 582, E. D. Wash., Nov. 2, 1949; *S. E. C. v. Garrette W. Peck, et al.*, Civil Action No. 11337-WM, S. D. Calif., May 5, 1950 ((laboratories); *S. E. C. v. Johnson Machine Works, et al.*, Civil Action No. 1892, N. D. Tex., Oct. 5, 1949; *S. E. C. v. Automatic Systems Corp., et al.*, Civil Action

of the securities sold were not in conventional form. For example, in the Chinchilla Chateau case<sup>17</sup> promoters offered unregistered investment contracts evidenced by purchase agreements for among other things, pairs of live chinchillas.

Some of the recurring types of misrepresentation are illustrated in the following cases. In *S. E. C. v. Helcolicon Mines, Inc., et al.*,<sup>18</sup> the court enjoined further sales of the stock of Helcolicon Mines upon a showing that the individual defendants had falsely represented, among other things, that tests in an area covered by the company's mining claims had established the existence of gold in sufficient quantities and value to justify large-scale operations and that the Reconstruction Finance Corporation and certain banks in Alaska had agreed to participate in production loans to the company aggregating \$1,000,000 as soon as minerals in the ground covered by its claims had been evaluated to the extent of \$2,000,000. In *S. E. C. v. Charles A. Howe and Maryland-Nevada Operating Co., Inc.*,<sup>19</sup> defendants were enjoined from violating both sections 5 and 17 of the act on the basis of a complaint charging that, in order to sell investment contracts, they falsely stated that they intended to operate certain mining equipment to recover, by using a special process, commercially valuable gold from about 100 miles of beach on the west coast of California. *S. E. C. v. Diamonds & Metals Exploration Co., Inc., et al.*<sup>20</sup> was another mining case where the defendants were enjoined from violations of both sections 5 and 17 of the act. Violation of both sections were also enjoined in several oil promotions during the past year.<sup>21</sup>

An injunction was issued in *S. E. C. v. Empire Insurance Agency and Jeff B. Burleson*<sup>22</sup> upon a complaint that the defendants made untrue statements with respect to the amount of stock of the corporate defendant subscribed during the first week of public offering, with respect to the retention of a sizable surplus after paying a dividend and with respect to leases entered into for occupancy of a building to be constructed.

Industrial promotions which resulted in injunctions for violations of both sections 5 and 17 included: *S. E. C. v. Claytonian Manufacturing Corp., Inc., et al.*,<sup>23</sup> *S. E. C. v. Co-op Insurance Co., et al.*,<sup>24</sup> *S. E. C. v. Alfred L. Lodge, et al.*<sup>25</sup> and *S. E. C. v. Truusted Funds, Inc.*<sup>26</sup> An injunction based on violation of both these sections was

No. 1750, W. D. Tenn., Feb. 17, 1950; *S. E. C. v. Chinchilla Chateau, Inc., et al.*, Civil Action No. 419-50, D. N. J., June 19, 1950; *S. E. C. v. Ferrel Industries, Inc.*, Civil Action No. 28263H, N. D. Calif., Aug. 29, 1949 (weapons); *S. E. C. v. South Pacific Engineering Corp., et al.*, Civil Action No. 5135, D. Oreg., Jan. 12, 1950 (timber and mineral concessions in Ecuador).

<sup>17</sup> See footnote 16, *supra*.

<sup>18</sup> Civil Action No. 1401, W. D. Michigan, Nov. 8, 1949.

<sup>19</sup> Civil Action No. 1290, D. Del., Mar. 6, 1950.

<sup>20</sup> *S. E. C. v. Diamonds & Metals Exploration Co., Inc., et al.*, Civil Action No. 2468, W. D. Wash., Feb. 10, 1950.

<sup>21</sup> *S. E. C. v. William Seyler, et al.*, Civil Action No. 122 CD, D. S. D., Apr. 13, 1950; *S. E. C. v. The Stevens-Stephens Co., Inc., et al.*, Civil Action No. 1943, N. D. Tex., Feb. 24, 1950; *S. E. C. v. Alwyn H. Wild, et al.*, Civil Action No. 52-162, S. D. N. Y., Oct. 25, 1949; *S. E. C. v. Northwest Petroleum, Ltd., et al.*, Civil Action No. 5188, D. Oreg., disposition pending.

<sup>22</sup> Civil Action No. 1573, D. N. Mex., Dec. 8, 1949.

<sup>23</sup> Civil Action No. 50-180, D. Mass., Mar. 15, 1950.

<sup>24</sup> Civil Action No. 1496, D. Ariz., June 30, 1950.

<sup>25</sup> Civil Action No. 50-92, D. Mass., Feb. 9, 1950.

<sup>26</sup> Civil Action No. 8622, D. Mass., Sept. 9, 1949. Although the complaint alleged violations of the prospectus and antifraud provisions of the Securities Act, this case is described below at page 14 in connection with its Investment Company Act aspects.

also obtained in *S. E. C. v. James M. Cuzzo*<sup>27</sup> to terminate a "Ponzi" type scheme, the defendant having paid back as fictitious profits part of the proceeds from sales of investment contracts.

In *S. E. C. v. Cleo F. Ramsey*<sup>28</sup> a complaint seeking an injunction is presently pending to prevent further sales of stock in corporations which the defendant allegedly falsely represented to have extensive and valuable rights, concessions, and properties in Peru. Further action is also pending in *S. E. C. v. Mercer Hicks Corp.*,<sup>29</sup> a case in which a broker-dealer who had formerly operated as a sole proprietor attempted to continue his business in corporate form by selling the corporation's stock to the public. No section 5 violation was charged because a letter of notification had been filed pursuant to the requirements of the Commission's rules relating to the exemption of small offerings. But the complaint alleged that in the course of sales of stock there were many violations of section 17. Among them were failure to disclose the existence of substantial operating deficits and the fact that dividends had been paid out of capital surplus contributed by investors in the stock; falsely representing that the corporation was earning money when it was actually losing money; and appropriating customers' cash and securities without their knowledge or consent and substituting the stock of Mercer Hicks Corp. Subsequent to the close of the fiscal year a preliminary injunction was obtained by the Commission. The Commission also requested the appointment of a receiver but withdrew its motion when a receiver was appointed under the New York Martin Act.

As an aid to its investigative function, the Commission often finds it necessary to subpoena witnesses or their records. If Commission subpoenas are resisted the Commission applies to the courts for an order directing the production of the witnesses or documents. Two cases during the past year arose out of such applications to the court. They were *S. E. C. v. Coeur D'Alene Consolidated Silver-Lead Mines, Inc. et al.*<sup>30</sup> and *S. E. C. v. Alhambra Gold Mine Corp. et al.*<sup>31</sup> The Commission was successful in both instances and the documents requested were produced.

<sup>27</sup> Civil Action No. 8413, D. Mass., July 11, 1949.

<sup>28</sup> Civil Action No. 2233, W. D. Wash. (pending).

<sup>29</sup> Civil Action No. 5896, S. D. N. Y. (pending).

<sup>30</sup> Civil Action No. 856, E. D. Wash., Aug. 3, 1949.

<sup>31</sup> Civil Action No. 10843M, S. D. Calif., Jan. 4, 1950.

**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; to provide for the regulation of proxies respecting listed securities; 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 and Exemption of Exchanges**

Section 5 of the act requires each securities exchange within the United States or subject to its jurisdiction to register with the Commission as a national securities exchange or to apply for exemption from such registration. Exemption from registration may be granted to an exchange which has such a limited volume of transactions effected thereon that, in the opinion of the Commission, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require its registration.

At the close of the 1950 fiscal year the following 16 exchanges were registered as national securities exchanges:

Boston Stock Exchange	New York Stock Exchange
Chicago Board of Trade	Philadelphia-Baltimore Stock Exchange
Cincinnati Stock Exchange	Pittsburgh Stock Exchange
Detroit Stock Exchange	Salt Lake Stock Exchange
Los Angeles Stock Exchange	San Francisco Mining Exchange
Midwest Stock Exchange	San Francisco Stock Exchange
New Orleans Stock Exchange	Spokane Stock Exchange
New York Curb Exchange	Washington Stock Exchange

Four exchanges were exempted from registration at the close of the 1950 fiscal year. These were:

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

In the latter part of 1949, the Chicago, Cleveland, and St. Louis Stock Exchanges, all registered national securities exchanges, and the Minneapolis-St. Paul Stock Exchange, an exempted exchange, entered

into an agreement providing for the consolidation of their membership and operations. The plan of consolidation became effective on December 1, 1949, and provided that the Chicago Stock Exchange would have the status of a continuing exchange with its name changed to the Midwest Stock Exchange. Accordingly, the registration of the Chicago Stock Exchange as a national securities exchange continued in effect for the new Midwest Stock Exchange; the other three exchanges were liquidated and the registration of the Cleveland and St. Louis Stock Exchanges and the exemption of the Minneapolis-St. Paul Stock Exchange were withdrawn. A majority of the members of the three liquidated exchanges acquired membership in the Midwest Stock Exchange, and a majority of the issuers of securities listed on such exchanges transferred their listing and registration to the new exchange. Headquarters of the Midwest Stock Exchange is in the city of Chicago, and branches have been opened in the cities of Cleveland and St. Louis. These branches are connected directly with the exchange floor in Chicago by private duplex teletype and buy and sell orders are transmitted from the branches over these wires to Chicago. These two branches serve also as local clearing offices for receipt and delivery between member firms, in their respective cities, of items which have been processed through the clearance department in Chicago. Thus, member brokers in branch office cities, as well as those in other cities using the clearing-by-mail plan (an innovation developed by the Chicago Stock Exchange during the past several years) are able to handle their own orders without the intermediary services of a Chicago correspondent clearing house member firm. The consolidation was intended to enlarge and broaden markets in the Midwest for stockholders in that section of the country.

Effective January 1, 1950, the Commission revised its forms and rules pertaining to the registration and exemption of exchanges.<sup>1</sup> The purpose of the revision was to simplify the application for registration as a national securities exchange, or for exemption from such registration, and to reduce the number of formal amendments required to be filed in keeping the information contained in such an application up to date. As in the previous form, the revised form of application requires an exchange to furnish information about its organization, rules of procedure, trading practices, membership requirements, and related matters. The revised application has eliminated the need for an exchange to duplicate in the statement, which is part of the application, many items of information which experience has shown are furnished in its constitution and rules filed as an exhibit to the application. Under the revised procedure an exchange ordinarily will be required to file a formal amendment only once each year. Changes effected during the year are to be reported by an exchange either by letter or by the filing of copies of notices made generally available to its members. In view of the substantial number of amendments which had been filed by each exchange to its original application in 1934, the Commission requested each registered and exempted exchange to file as an amendment a complete new application on the revised form prior to June 30, 1950.

<sup>1</sup> Securities Exchange Act release No. 4383.

Including the amendments containing the revised applications, the exchanges filed a total of 50 amendments during the fiscal year. While many of these amendments contained only periodic information required by the rules, such as membership lists, names of officers and directors of the exchange and financial statements of the exchange many other changes relating to the internal operations of the exchanges also were reflected in these amendments. Each amendment was reviewed to ascertain whether the changes reflected therein were in the public interest and complied with the provisions of the act. The nature of the changes effected in the exchanges' rules and trading practices varied considerably; some of the more significant changes occurring during the fiscal year are briefly outlined below:

Boston Stock Exchange amended its rules relating to the execution of odd-lot orders in securities having a primary market on another exchange. The amendment provides that unless otherwise specifically requested such orders involving less than five shares would be filled on the basis of the last reported round-lot transaction occurring on the exchange on which the primary market for the security exists. Previously all odd-lot orders were required to be executed on the basis of the next round-lot transaction occurring on the primary exchange.

Cincinnati Stock Exchange amended its rules with respect to the execution of odd-lot orders in securities dually traded on that exchange and either the New York Stock or New York Curb Exchange, to permit the execution of such orders on a round lot sale occurring on the Cincinnati Stock Exchange, subject to certain conditions. Previously all odd-lot orders in such securities were required to be executed on an appropriate round-lot sale occurring on a New York exchange.

Detroit Stock Exchange amended its rules to permit members to transact business for nonmembers who are members of the National Association of Security Dealers, Inc., at a commission rate of not less than 60 percent of the usual minimum nonmember commission rates. This follows a procedure adopted by several west coast exchanges some years ago.

Boston, New York, and San Francisco Stock Exchanges and New York Curb Exchange amended their rules to permit registered employees of members to be compensated on a commission basis as well as on a salary basis.

New York Stock Exchange amended its constitution to provide for an increase in the size of its board of governors and to change the composition thereof. This exchange also adopted new general qualifications for the listing of securities. It revised its schedule of listing fees and discontinued the optional method of permitting issuers to pay the listing fee for additional shares on a lump-sum basis rather than on an annual continuing fee basis. Its board of governors approved and submitted to the membership for vote a proposed general amendment to its constitution to provide for the permissive incorporation of members firms and the admission of corporations, under prescribed restrictions, as member corporations. The proposed amendment was disapproved by the membership.

After conferences between New York Stock Exchange and members of the Commission's staff, the exchange again modified its floor-trading rules which had been originally adopted in 1945. Shortly thereafter,

New York Curb Exchange revised its floor trading rules to conform with those of New York Stock Exchange. The revised rules removed certain restrictions on floor traders' purchases at prices below the previous day's close and permitted a limited amount of purchases above the last sale price even if this purchase price exceeded the previous day's close. Some restriction was placed for the first time on the number of purchases a floor trader could effect on his bid at rising prices. These exchanges also adopted a rule forbidding floor traders from congregating in or dominating the market.

#### **Disciplinary Actions by Exchanges Against Members**

Each national securities exchange, pursuant to a request of the Commission, reports to the Commission any action of a disciplinary nature taken by it against any of its members or against any partner or employee of a member for violation of the Securities Exchange Act of any rule or regulation thereunder, or of any exchange rule. During the past fiscal year five exchanges reported taking disciplinary action against 25 members, member firms, and partners of member firms.

The nature of the actions reported included fines ranging from \$25 to \$1,000 in seven cases, with total fines aggregating \$2,375; suspension of an individual from exchange membership; censure of individuals or firms for infractions of the rules, and warnings against further violations. The disciplinary actions resulted from violations of exchange rules, principally those pertaining to capital requirements, floor trading, partnership agreements, and handling of customers' accounts.

### **REGISTRATION OF SECURITIES ON EXCHANGES**

#### **Purpose and Nature of Registration**

Section 12 of the Securities Exchange Act forbids trading in any security on a national securities exchange unless the security is registered or exempt from registration. The purpose of this provision is to make available to investors reliable and comprehensive information regarding the affairs of the issuing company by requiring an issuer to file with the Commission and the exchange an application for registration disclosing pertinent information regarding the issuer and its securities. A companion provision contained in section 13 of the act requires the filing of annual, quarterly, and other periodic reports to keep this information up to date. These applications and reports must be filed on forms prescribed by the Commission as appropriate to the class of issuer or security involved.

#### **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 registrant's 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 registrant a 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 registrant is 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.

*Examination of financial data*—Applications and reports are examined to make sure that sound accounting principles have been followed in the presentation of accompanying financial data. At times extensive revisions become necessary. An example of accounting for fixed assets and depreciation arose during the year in connection with the financial statements of a large public utility holding company. The Division of Corporation Finance had commented to the effect that the accountants' certificate, which included the phrase "subject to the adequacy of the companies' provisions for property retirement as to which we are not in a position to express an opinion" was unsatisfactory under the Commission's rules. The company responded that its auditors were in the process of making comprehensive studies of the situation and that amendments could not be made until these studies were completed. In due course a conference was arranged with the staff of the division in which officers of the company, accompanied by their accountants and counsel, reported on the results of this study of the property and provisions for its retirement. Consequently the company effected a change in property retirement reserve appropriations and accumulated reserves, which resulted in an increase in the reserve balances of \$18,793,528, of which \$17,152,641 was charged to surplus and \$1,640,887 to current profit and loss. Thereupon the registrant filed amended financial statements in accord with this change.

In its 1948 annual report another registrant, engaged in paint and chemicals manufacturing, set up a reserve of \$750,000 on the liability side of the balance sheet with a corresponding charge to earned surplus, to provide for an indicated loss on sale of its investment in a subsidiary company at approximately \$750,000 less than the book value of the investment on the parent's books.

Since the reserve was clearly a valuation reserve, the Division of Corporation Finance requested that it be deducted from the investment account on the asset side of the balance sheet; and, since the charge was clearly a loss recognized in the year, the division requested that it be included in the profit and loss statement rather than earned surplus. The financial statements were amended, showing an increase from \$555,920.64 to \$1,305,920.64 in consolidated net loss for the year. The sale was consummated in 1949 at an aggregate loss of \$859,138.60 or \$109,138.60 in excess of the \$750,000 reserve provided in 1948.

*Coordination of annual reports to stockholders and filings with the Commission.*—Financial statements filed during the year revealed an

increasing trend toward the use of the same basic statements (balance sheet, income and surplus statements) in the annual reports to the Commission and in the companies' published annual reports to stockholders. The rules of the Commission permit the filing of the report to stockholders to meet the financial statement requirements of the Form 10-K annual report to the Commission insofar as the former substantially complies with the provisions of the latter form. A current example of this growing practice, which avoids duplication of reporting, may be found in the Form 10-K for the fiscal year ended June 30, 1949 of the Colorado Fuel & Iron Corp. and subsidiary companies in which the annual report to stockholders, when supplemented by schedules not included in the published report and covered by a signed certificate of the independent accountants, met the requirements of the form in all material respects.

#### Statistics of Securities Registered on Exchanges

At the close of the 1950 fiscal year, 2,128 issuers had 3,544 security issues listed and registered on national securities exchanges. These securities consisted of 2,573 stock issues aggregating 3,147,684,318 shares, and 971 bond issues aggregating \$20,898,718,791 in principal amount. This represents increases of 182,312,982 shares and \$121,419,744 in principal amount, respectively, over the aggregate amounts of securities listed and registered on national securities exchanges at the close of the 1949 fiscal year. The following table shows the number of applications and reports filed during the fiscal year in connection with the registration of securities on national securities exchanges:

Applications for registration of securities on national securities exchanges.....	521
Applications for registration of unissued securities for "when issued" dealing on national securities exchanges.....	71
Exemption statements for trading short-term warrants on national securities exchanges.....	52
Annual reports.....	2,091
Current reports.....	8,814
Amendments to applications and reports.....	929

During the 1950 fiscal year 49 new issuers registered securities under the Securities Exchange Act on national securities exchanges, and the registration of all securities of 61 issuers was terminated, principally by reason of retirement and redemption and through mergers and consolidations. Included in these 61 issuers are 16 whose securities were removed from registration by reason of the termination of the registration of the Cleveland and St. Louis Stock Exchanges on December 1, 1949, such issuers having determined not to transfer the registration of their securities to the Midwest Stock Exchange.

#### 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 118 issues during the year. In some instances, the same issue was admitted to trading on more than one exchange, so that the total admissions to such trading, including duplications, numbered 211.

#### Special Offerings on Exchanges

Rule X-10B-2 under the Securities Exchange Act permits special offerings of large blocks of securities to be made on a national securities exchange provided such offerings are effected pursuant to a plan which has been filed with and approved by the Commission. A security may be the subject of a special offering when it has been determined that the auction market on the floor of the exchange cannot absorb a particular block 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 which ordinarily exceeds the regular brokerage commission. Buyers of the security are not charged any commission on their purchases and obtain the security at the net price of the offering.

Since February 6, 1942, the date on which rule X-10B-2 was amended to permit special offerings, the Commission has declared effective special offering plans of the following nine exchanges on the date shown opposite each:

New York Stock Exchange.....	Feb. 14, 1942
San Francisco Stock Exchange.....	Apr. 17, 1942
New York Curb Exchange.....	May 15, 1942
Philadelphia-Baltimore Stock Exchange.....	Sept. 23, 1943
Detroit Stock Exchange.....	Nov. 18, 1943
Midwest Stock Exchange <sup>2</sup> .....	Mar. 27, 1944
Cincinnati Stock Exchange.....	June 26, 1944
Los Angeles Stock Exchange.....	May 28, 1948
Boston Stock Exchange.....	Sept. 15, 1948

<sup>2</sup> Formerly the Chicago Stock Exchange; name changed Dec. 1, 1949.

During the past year the New York Stock Exchange, New York Curb Exchange, and San Francisco Stock Exchange each submitted to the Commission proposed amendments to their special offering plans, and the Commission declared effective, for an experimental period ending December 30, 1950, the amended plans of each of these exchanges. The purposes of the amendments to the special offering plans of these exchanges were: (1) To permit the offeror to allot on a firm basis, to member firms engaged in the distributing business, not more than 50 percent of the securities involved in the offering. Up to this time when buy orders in a special offering exceeded the amount of the offering the entire amount of the offered securities was required to be allocated in reasonably proportionate amounts. Under the amendment only those shares not allotted to member firms on a firm basis must be allocated. (2) To permit members and member firms to retain the special commission applicable to securities received under

a firm allotment for the bona fide purpose of distribution even though their efforts to distribute such securities are unsuccessful. Under the old plans members and member firms were prohibited from retaining any part of the special commission in connection with purchases for their own account. This modification is designed to supplement and give effect to the provisions of the amendment mentioned under (1) above. (3) To provide that the special commission may not be less than a regular single nonmember commission based upon the per share rate of 100 shares at the price of the special offering. (4) To make it permissive rather than mandatory that certain specified factors be taken into consideration by the exchanges in determining whether a particular block of securities may be made the subject of a special offering. This will give the exchanges a certain administrative discretion in determining whether to permit the use of exchange facilities for a special offering. This amendment also reduces from 6 months to 1 month the period of time during which price range and volume of transactions in the particular security must be considered in making the necessary determination.

Each exchange with a special-offering plan in effect has been requested to report certain information to the Commission on each offering effected on the exchange under the plan. Such reports showed a total of 29 offerings effected on the New York Stock Exchange and New York Curb Exchange during the fiscal year ended June 30, 1950. These offerings involved the sale of 430,955 shares of stock with an aggregate market value of \$11,129,000 and ranging in market value from \$40,400 to \$1,293,800. Special commissions paid to brokers participating in these 29 offerings totaled \$266,000. By comparison, in the preceding fiscal year a total of 25 offerings involving 263,700 shares of stock having a market value of \$5,750,000 were effected on five exchanges, with special commissions paid to brokers totaling \$161,000. Further details of special offerings during the year are given in appendix table 10.

During the period February 19, 1942 through June 30, 1950, a total of 435 offerings have been effected. These offerings totaled 5,346,855 shares with a market value of \$155,464,000 and brokers have been paid special commissions totaling \$3,081,800.

#### **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 distributions 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.

During the fiscal year ended June 30, 1950, 5 exchanges reported having approved a total of 78 secondary distributions under which 3,705,320 shares of stock with a market value of \$99,077,000 were sold. Further details of secondary distributions of exchange stocks are given in appendix table 11.

#### **Termination of Registration Under Section 19 (a) (2)**

Where it is found that the issuer of any security registered on an exchange has failed to comply with any applicable provision of the Securities Exchange Act or the rules and regulations thereunder, the Commission has authority under Section 19 (a) (2) of the act, after appropriate notice and opportunity for hearing, to deny, to suspend the effective date of, to suspend for a period of not exceeding 12 months, or to withdraw the registration of that security.

The Commission has little occasion to resort to formal action under this authority, and no such proceedings were instituted during the 1950 fiscal year. However, as noted in the fifteenth annual report, page 38, proceedings were pending in one case at the beginning of the year. This case involved the registration of Barnhart-Morrow consolidated common capital stock \$1 par value on the Los Angeles Stock Exchange. After successive postponements of the hearings at the request of the exchange and the issuer, the registrant filed, in connection with its annual reports required under the law, amended financial statements for the years 1945, 1946, 1947, and 1948, satisfactorily correcting the deficiencies cited. As a result the Commission dismissed the proceedings.

As originally filed, the balance sheets of the company for those dates had included under "Intangible assets" an item of about \$219,000 captioned "Capital stock issued for services and leases." This represented capital stock issued to the two organizers of the company for alleged services and for a lease interest acquired from the organizers but abandoned and quit-claimed by the company to the lessor in 1927. Furthermore, the company had been in receivership from 1931 to 1936. After objection was made by the staff to inclusion of the \$219,000 item it was deducted from the common stock account.

#### **Unlisted Trading Privileges on Exchanges**

A security, unless exempted, which is not registered on a national securities exchange under section 12 (b) of the Securities Exchange Act of 1934, may not be traded on such exchanges unless unlisted trading privileges are available under section 12 (f) of the Securities Exchange Act of 1934.

Section 12 (f) provides that upon application to and approval by the Commission a national securities exchange may: (1) continue unlisted trading privileges to which a security had been admitted on such exchange prior to March 1, 1934; (2) under certain conditions extend unlisted trading privileges to any security duly listed and registered on any other national securities exchange; or (3) extend unlisted trading privileges to any security in respect of which there is available from a registration statement and periodic reports or other data filed under the Securities Exchange Act of 1934, or the

Securities Act of 1933, information substantially equivalent to that filed in respect of a security duly listed and registered on a national securities exchange. The statute requires that appropriate notice be issued and an opportunity for hearing provided, and that the applicant exchange establish to the satisfaction of the Commission that there exists in the vicinity of that exchange sufficiently widespread public distribution and sufficient public trading activity in the security to render the extension of unlisted trading privileges on that exchange necessary or appropriate in the public interest or for the protection of investors.

The following summarizes the status of unlisted issues on the registered exchanges as of June 30, 1950:

	<i>Stocks</i>	<i>Bonds</i>
Listed on some other registered exchange.....	545	6
Not listed on any registered exchange.....	332	75
<b>Total.....</b>	<b>877</b>	<b>81</b>
Total, all stocks and bonds, 958 issues.		

The first grant of an application by an exchange under section 12 (f) (2) for unlisted trading in stocks listed on some other registered exchange was in April, 1937. There have been 692 admissions of such stocks to the various exchanges. Stocks covered by 599 admissions were extant as of June 30, 1950. The number of actual issues involved is less than this figure because many issues have been admitted to unlisted trading on two or more exchanges. The numerous admissions, including the record number of 130 during the past fiscal year, have, however, barely maintained the ratio of listed stocks traded unlisted on other exchanges to all listed stocks. On June 30, 1945, for example, 21.8 percent of all registered (listed) stock issues and 54.9 percent of all registered shares were also admitted to unlisted trading on other exchanges, while 5 years later, after 396 section 12 (f) (2) admissions,<sup>3</sup> the comparable figures were 21.2 percent of the issues and 54.3 percent of the shares. During this 5-year period, the number of stocks listed on New York Stock Exchange and traded on other exchanges has declined from 51.6 to 49.8 percent of all stocks listed thereon. Securities registered on that exchange are the principal source of unlisted admissions under section 12 (f) (2). Listed stocks which are also traded unlisted on other exchanges, numbering 545 as of June 30, 1950, and were 554 on June 30, 1937. However, the 11 regional exchanges which have availed themselves of section 12 (f) in order to procure trading privileges in securities listed on other exchanges had only 84 more stocks to trade in on June 30, 1950, than they had on June 30, 1937, and 598 of the total stock issues traded on those exchanges in 1950 were admitted pursuant to section 12 (f) (2), without which it appears that these exchanges might have suffered a decline of more than 500 stocks:

<sup>3</sup> 33 in 1945, 78 in 1946, 71 in 1947, 46 in 1948, 38 in 1949, and 130 in 1950, all in fiscal years ending June 30. Part of the increase in 1950 is due to the Commission's requests for 12 (f) (2) applications rather than applications for determination of substantial equivalence pursuant to rule X-12 (f)-2 (b), in numerous cases where new issues were succeeding old ones in corporate changes and where the listed status of the issues made recourse to section 12 (f) (2) possible and appropriate.

	Stock available for trading <sup>1</sup>		June 30, 1950, excluding 12 (f) (2) admissions
	June 30, 1937	June 30, 1950	
Boston.....	370	383	275
Cincinnati.....	101	110	65
Detroit.....	119	206	4 128
Los Angeles.....	197	261	186
Midwest.....	3 517	454	379
Philadelphia-Baltimore.....	3 538	489	382
Pittsburgh.....	3 102	126	71
Salt Lake.....	107	100	100
San Francisco Stock.....	3 337	354	304
Washington.....	39	41	39
Wheeling.....	32	19	16
Total.....	2,459	2,543	1,945

<sup>1</sup> Includes many duplications of issues among the exchanges.

<sup>2</sup> Includes issues of exchanges merged thereafter.

<sup>3</sup> Includes 10 sec. 12 (f) (2) admissions.

<sup>4</sup> The sole increase over 1937.

New York Curb Exchange does not trade in New York Stock Exchange issues. The single section 12 (f) (2) extant admission of a stock on the Curb is Utah-Idaho Sugar common, listed on Salt Lake Stock Exchange. Stocks available for trading on the Curb have declined from 1,149 in 1937 to 779 in 1950, both figures as of June 30. New York Stock Exchange does not have any section 12 (f) (2) admissions, since it does not permit trading in unlisted securities. Since the section 12 (f) (2) admissions of stocks to the regional exchanges are principally of issues listed on New York Stock Exchange, and since these admissions constitute an ever-increasing proportion of the stocks available for trading on the regional exchanges, their effect is to concentrate trading on the regional exchanges more and more in the national, as against the local issues.

The 332 stocks admitted to unlisted trading without being listed on any registered exchange aggregated 329,904,324 shares, or about 9½ percent of the total shares admitted to trading on the registered exchanges as of June 30, 1950. Reported volume of trading in the 332 issues for the calendar year 1949 was 21,715,000 shares, or about 4¼ percent of the total share volume on the registered exchanges. In this compilation "shares" include warrants, American depository receipts, voting trust certificates, etc. New York Curb Exchange accounted for about 93 percent of the 21,715,000 reported share volume, San Francisco Stock Exchange for about 6 percent and 1 percent was scattered among 6 other regional exchanges. Reported volumes are about seven-eighths of actual volumes on New York Curb Exchange, principally because odd lots are not usually reported on the ticker. Considering this factor and the volume in stocks removed from unlisted trading during 1949, it appears that approximately one-third of the share volume in that year on New York Curb Exchange was in unlisted stocks not registered pursuant to the Securities Exchange Act of 1934.

In June 1950, the stocks traded on an unlisted basis pursuant to section 12 (f) (3) were reduced to six, upon retirement of American Gas & Electric preferred.

Of 592 bond issues available for unlisted trading on exchanges as of June 30, 1937, only 81 were available on June 30, 1950. These aggregated \$879,231,350 face value and most of the issues were on New York Curb Exchange.

In addition to the unlisted issues discussed above on the registered exchanges, there were 35 stocks and 1 bond issue admitted only to unlisted trading on the Honolulu Stock Exchange, an exempted exchange.

#### Applications for Unlisted Trading Privileges

Pursuant to clause (2) of section 12 (f), a total of 131 issues were accorded unlisted trading privileges during the 1950 fiscal year.

Stock exchange applying:	Number of issues	
	Stocks	Bonds
Boston.....	31	-----
Cincinnati.....	16	-----
Detroit.....	14	-----
Los Angeles.....	15	-----
Midwest.....	20	-----
Philadelphia-Baltimore.....	15	-----
Pittsburgh.....	3	-----
San Francisco.....	15	1
Washington.....	1	-----
<b>Total.....</b>	<b>130</b>	<b>1</b>

#### Changes in Securities Admitted to Unlisted Trading Privileges

Rule X-12F-2 under the Securities Exchange Act provides for the case where a change is made in a security previously admitted to unlisted trading privileges. Under paragraph (a) of this rule if the change is in the title of the security or the name of the issuer, in the maturity, interest rate or outstanding aggregate principal amount of an issue of bonds, debentures or notes, or in the par value, dividend rate, number of shares authorized or the outstanding number of shares of a stock, the security as changed is deemed to be the security originally admitted to unlisted trading privileges on the exchange. The exchange is required to notify the Commission of such changes promptly after it learns of the change and many such notifications are received during the year.

Paragraph (b) of rule X-12F-2 provides for changes in a security admitted to unlisted trading privileges where the change is more comprehensive than those enumerated in paragraph (a) of the rule. In such case the exchange may file an application requesting a Commission determination of the effect of the change, describing each change effected in the security and furnishing copies of all written matter submitted by the issuer to its security holders relating to such changes. If the Commission determines that the security after such change is substantially equivalent to the security originally admitted to unlisted trading privileges, then the security as changed is deemed to be the security originally admitted to unlisted trading privileges on that exchange. Pursuant to the provisions of paragraph (b) of rule X-12F-2, the Commission granted four applications for a determination of substantial equivalence by New York Curb Exchange<sup>4</sup> and an application

<sup>4</sup>Middle States Petroleum Corp., Feb. 9, 1950; Northern Indiana Public Service Co., Feb. 9, 1950; Kansas Gas & Electric Co., Feb. 20, 1950.

by New Orleans Stock Exchange with respect to two stocks.<sup>5</sup> One application by New York Curb Exchange was denied.<sup>6</sup>

## DELISTING OF SECURITIES FROM EXCHANGES

### Securities Delisted by Application

Section 12 (d) of the Securities Exchange Act provides that upon application by the issuer or the exchange to the Commission, a security may be withdrawn or stricken 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 this procedure, six bond issues and three stock issues were stricken from listing and registration upon application by exchanges. All six bond issues<sup>7</sup> and one of the stock issues<sup>8</sup> were delisted by New York Stock Exchange, on the ground that the amounts of the issues remaining outstanding had been reduced to inconsequential proportions by reason of exchanges or redemptions. The two remaining stock issues were delisted by New York Curb Exchange (and one of them also by Philadelphia-Baltimore Stock Exchange<sup>9</sup>) by reason of reacquisition of most of the shares in the one case and liquidation in the other.<sup>10</sup>

The Commission granted the application by the receivers of one corporation to withdraw its common stock from registration and listing on New York Curb Exchange on the ground that the company was insolvent and in process of liquidation.<sup>11</sup> It granted the application of another corporation to withdraw its common stock from registration and listing on Chicago Board of Trade since the company had already registered and listed the same security upon Midwest Stock Exchange.<sup>12</sup>

### 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 if the exchange files a certification with the Commission to the effect that such retirement has occurred.<sup>1</sup> 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 152 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 181. Successor issues to those removed became listed and registered on exchanges in many cases.

<sup>5</sup> Ford Motor Co., Ltd., of Great Britain, Feb. 28, 1950.

<sup>6</sup> Jefferson Lake Sulphur Co., Mar. 23, 1950.

<sup>7</sup> The Long Island Railroad Co., Securities Exchange Act release No. 2484 (1949); Mortgage Bank of the Venetian Provinces, Securities Exchange Act release No. 4334 (1949); Chicago, St. Louis and New Orleans Railroad Co., Securities Exchange Act release No. 4426 (1950); State of San Paulo, Securities Exchange Act release No. 4426 (1950); City of Porto Alegre, Securities Exchange Act release No. 4426 (1950).

<sup>8</sup> The Joliet & Chicago Railroad Co., Securities Exchange Act release No. 4444 (1950).

<sup>9</sup> Cooper Distributing Co., Securities Exchange Act release No. 4275 (1949).

<sup>10</sup> Old Poinexter Distillery, Inc., Securities Exchange Act release No. 4335 (1949); Cooper Distributing Co., Securities Exchange Act release No. 4275 (1949).

<sup>11</sup> Leonard Oil Development Co., Securities Exchange Act release No. 4354 (1949).

<sup>12</sup> Centlivre Brewing Corp., Securities Exchange Act release No. 4443 (1950).

In accordance with the provisions of rule X-12D2-1 (d), New York Curb Exchange removed 16 issues from listing and registration when they became listed and 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 if the security becomes 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 Exchange**

A security may be removed from listing on an exempted exchange by such an exchange filing an appropriate amendment to its exemption statement setting forth a statement of the reasons for the removal. One exempted exchange removed two issues from listing thereon during the year, due in one case to the redemption of the security and in the other to the expiration of a voting trust agreement.

### **MANIPULATION AND STABILIZATION**

Sections 9, 10, and 15 of the Securities Exchange Act prohibit manipulation of securities prices. Section 9 forbids certain specifically described forms of manipulative activity. Transactions which create actual or apparent trading activity or which raise or lower prices are declared to be unlawful if they are effected for the purpose of inducing others to buy or to sell. 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 a 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 buying securities are forbidden to make false or misleading statements of material facts, with knowledge of their falsity, or willfully to omit material information regarding such securities for the purpose of inducing purchases or sales.

Pursuant to its statutory authority, the Commission has adopted rules and regulations to aid it in carrying out the expressed will of Congress. Sections 9, 10, and 15, as augmented by the Commission's rules and regulations, are aimed at freezing our securities markets from artificial influence and maintaining fair and honest markets whose prices are established by supply and demand and are uninfluenced by manipulative activity.

#### **Manipulation**

The manipulation of securities prices which in previous years took millions of dollars annually from the public, was one of the principal reasons for the adoption of the Securities Exchange Act of 1934. In the early days of the Commission's existence, some market operators attempted to continue their manipulative activities. The Commission uncovered these activities and as a result various penalties were im-

posed upon certain operators, including expulsions from exchanges, jail sentences, and fines. As a result of the administration of the act, manipulation is believed no longer to be an appreciable factor in our markets. However, sporadic attempts artificially to raise or depress the prices of securities are still encountered, and it is evident that any relaxation of market surveillance on the part of the Commission would create a danger of reestablishment of many of the manipulative practices the act was designed to prevent.

During the fiscal year ended June 30, 1950, several actions arising out of manipulative investigations were undertaken. A permanent injunction was obtained against Henry M. Stanley on the basis of attempts to manipulate the market in the stock of Friars Ale Brewing Co. Public hearings were begun in Chicago to revoke the broker-dealer registration of Adams & Co., Bennett, Spanier & Co., and Ray T. Haas for their manipulation of the price of Mohawk Liqueur Co. stock. The registration of W. H. Bell & Co., Inc., was revoked for Securities Act violations in the stock of Bost, Inc. A series of frauds perpetrated on an investment trust resulted in the jailing of William A. Hancock and led to an action to revoke the registration of the firm of Junger, Anderson & Co. All of the above cases were discovered during investigations which arose out of the detection methods described in the following paragraphs. A clarification of certain issues involving the propriety of trading by underwriters was made in an opinion dealing with the underwriting of bonds of Northern Indiana Public Service Co.

In administering the antimanipulative requirements there is a premium on prompt action to prevent harm before it occurs, and on the avoidance of interference with the legitimate functioning of the markets. To accomplish this the Commission has continuously modified and sought to improve its procedures for the systematic surveillance of trading in securities. Methods used to detect manipulation have necessarily been flexible, since techniques employed by manipulators change constantly, increasing in subtlety and complexity.

The staff regularly scrutinizes price movements in approximately 8,500 securities, including about 3,700 issues traded on the exchanges and 4,800 which have the most active markets over the counter. Information maintained concerning these securities includes not only data reflecting the market action of such securities, but also includes news items, earnings figures, dividends, options, and other facts which might explain price and volume changes. In addition, monthly observations are made of the price movements of thousands of other issues which occasionally change hands in our public markets. The markets for securities about to be sold to the public are watched very closely. In this connection the markets for almost 1,400 issues in the amount of about \$172,000,000, offered under regulation A, were carefully checked for improper pricing or market grooming. Several hundred other securities were kept under special daily observation during the 1950 fiscal year, for periods ranging from 14 to 90 days, because a public offering under a registration statement was proposed and either the underwriter or the issuer had reserved the right to stabilize the market for the security. The issues actually offered had a public offering price in excess of \$3,000,000,000.

When no apparent explanation can be found for an unusual movement in a security or for an unusual volume of trading, the matter may be referred to one of the regional offices 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, for it has found that knowledge of the existence of such investigations may 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 certain cases when, in fact, it is actually engaged in an intensive investigation.

The Commission's investigations of unusual market activity take two forms. The "quiz," or preliminary investigation, is designed to detect and discourage incipient manipulation by a prompt determination of the reasons for unusual market behavior. Often the results of a 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 staff are empowered to subpoena pertinent material and to take testimony under oath. In the course of such investigations, data on purchases and sales over substantial periods of time are often compiled and trading operations involving considerable quantities of securities 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 investigations, through the quiz technique, stops the manipulation before it is fully developed. Losses by the public are seldom recoverable even though the perpetrator of a fraud is brought to justice. Therefore it is believed that these investigatory methods afford more protection to the public than allowing unlawful market operations to continue until it appears that sufficient evidence for a successful prosecution is obtainable.

*Trading investigations*

	"Quizzes"	Formal investigations
Pending June 30, 1949.....	137	18
Initiated in period July 1, 1949—June 30, 1950.....	117	3
Total to be accounted for.....	254	21
Closed or completed during fiscal year.....	174	10
Changed to formal during fiscal year.....	3	-----
Total disposed of.....	177	10
Pending at end of fiscal year.....	77	11

**Stabilization**

During the 1950 fiscal year many conferences were held with representatives of issuers and underwriters in order to assist them to avoid violation of the statutory provisions and rules of the Com-

mission dealing with stabilizing, manipulation, and fraud, and many written and telephone requests were answered. Formal Commission rules dealing directly with stabilization relate only to offerings "at the market" or at prices relating to market prices. The practice applicable to fixed price offerings is embodied in a wealth of interpretive material. It is the Commission's experience that such issuers and underwriters place great value on the immediate service which the Commission is able to render them by being at all times available to give them responsible advice as to problems dealing with proper stabilizing techniques in the offering of securities.

During the 1950 fiscal year the Commission continued the administration of rules X-17A-2 and X-9A6-1. Rule X-17A-2 and Form X-17A-1 (the form on which stabilizing transactions are reported) were amended in the interest of simplification and clarity. 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 and where any stabilizing operation is undertaken to facilitate the 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 almost 500 registration statements filed during the 1950 fiscal year, 220 contained a statement of intention to stabilize to facilitate the offerings covered by such registration statements. Each of the latter filings was examined as to the propriety of the proposed method of distribution and market support and the full disclosure thereof. Because a registration statement sometimes covers more than one class of security, there were 252 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 59 of these offerings, principally stocks. Offerings of stock issues aggregating 20,369,462 shares with an aggregate public offering price of \$408,092,189 were stabilized, but only 1 bond offering, having a principal amount of \$4,000,000, was stabilized. In connection with these stabilizing operations, 7,990 reports were filed with the Commission during the fiscal year. Each of these reports has been analyzed to determine whether the stabilizing activities were within permissible limits.

## SECURITY TRANSACTIONS OF CORPORATION INSIDERS

### Reports of Transactions and Holdings

To give information to the public about transactions by corporation insiders in securities of their companies, certain reports are required to be filed with the Commission by persons closely identified with the management or control of industrial, utility, and investment companies under the conditions specified in three of the acts which the Commission administers—sections 16 (a) of the Securities Exchange Act of 1934, 17 (a) of the Public Utility Holding Company Act of 1935, and 30 (f) of the Investment Company Act of 1940. An initial report must be filed disclosing the amount of such security holdings, and thereafter a report must be filed for each month in which any change occurs in these holdings. The reports show the relationship

of the reporting insider to his named company; the date, number of shares, and security involved in each transaction; the character of the transaction (whether a purchase, sale, gift, exchange, etc.); and the nature of ownership (whether direct or indirect through a holding company, partnership, trust, etc.).

#### **Publication of Data Reported**

The reports filed by insiders are available for public inspection from the time they are filed. However, it is impossible for the majority of investors personally to inspect them either at the Commission or at the national stock exchanges, where additional copies of the reports are filed. Accordingly, the Commission issues a monthly Official Summary of Security Holdings and Transactions which summarizes these reports. Before the close of the 1950 fiscal year, as a part of the Commission's management-improvement program, a study was made to reappraise the service afforded by this publication. In that connection, a card was attached to each copy of the summary distributed in March asking subscribers what use was made of the summary and what value it afforded them, and inviting their suggestions for ways in which it might be improved for the benefit of investors.

More than 1,400 replies were received representing nearly 40 percent of the 3,814 subscribers circularized. The replies indicated, in general, that five out of six subscribers own corporate securities—and that those who are not stockholders consist mainly of newspapermen, teachers, students, librarians, and government and trade association officials. Moreover, it was indicated that each copy of the summary is used by an average of 8.4 persons. The indirect coverage resulting from its use by newspapermen as a source for news stories is incalculable (167 newspapermen are subscribers). It was also found that approximately 50 percent of the summary subscribers are engaged in some form of the securities business, that 20 percent are primarily investors, that 20 percent are lawyers, engineers, accountants and corporation executives, and that the remaining 10 percent are journalists, teachers, and persons engaged in a variety of miscellaneous occupations. By and large the returns demonstrate that the summary is deemed by its users to be important particularly in reflecting insiders' opinions of the prospects of the corporation implicit in their transactions and holdings.

Subscribers offered a number of specific suggestions for improvement of the summary. Some of the suggested changes have already been put into effect, and a number of other suggestions proposed by subscribers, as well as by members of the Commission's staff, are being given further consideration with a view to improving the usefulness of the summary and cutting down its publication costs.

#### **Preventing Unfair Use of Inside Information**

For the purpose of preventing the unfair use of information which may have been obtained by a corporation insider by reason of his relationship to his company, section 16 (b) of the Securities Exchange Act further provides that any profit he realizes from any purchase and sale, or sale and purchase, of any equity security of the company within any period of less than 6 months shall be recoverable through

court action brought by the issuer or by any security holder acting in its behalf. Corresponding provisions are contained in section 17 (b) of the Public Utility Holding Company Act of 1935 and in section 30 (f) of the Investment Company Act of 1940. The reporting provisions of these acts have in a number of instances brought to light transactions involving substantial profits from short-term trades which were recovered by or in behalf of the issuers, either through voluntary repayment or as a result of court action.

#### Volume of Reports Filed and Examined

Members of the staff examine all reports of insider holdings and trading to determine their compliance with the statutory requirements. Amended reports are obtained where inaccuracies or omissions appear. Details as to the volume and kinds of reports filed during the year are shown in the following table.

*Number of security ownership reports of officers, directors, principal security holders, and certain other affiliated persons filed and examined during the fiscal year ended June 30, 1950*

Description of report <sup>1</sup>	Original reports	Amended reports	Total
Securities Exchange Act of 1934:			
Form 4.....	14,705	858	15,563
Form 5.....	424	15	439
Form 6.....	2,269	43	2,312
Public Utility Holding Company Act of 1935:			
Form U-17-1.....	58	0	58
Form U-17-2.....	643	20	663
Investment Company Act of 1940:			
Form N-30F-1.....	118	7	125
Form N-30F-2.....	616	33	649
Total.....	18,833	976	19,809

<sup>1</sup> Form 4 is used to report changes in ownership; Form 5, to report ownership at the time any equity security is first listed and registered on a national securities exchange; and Form 6, to report ownership of persons who subsequently become officers, directors, or principal stockholders of the issuer of such a listed and registered equity security, under sec. 16 (a) of the Securities Exchange Act of 1934. Form U-17-1 is used for initial reports and Form U-17-2 for reports of changes in ownership of securities, under sec. 17 (a) of the Public Utility Holding Company Act of 1935. Form N-30F-1 is used for initial reports and Form N-30F-2 for reports of changes in ownership of securities, under sec. 30 (f) of the Investment Company Act of 1940.

#### SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS

The Commission is authorized under three of the acts it administers to prescribe rules and regulations concerning the solicitation of proxies, consents, and authorizations in connection with securities of the company subject to those acts.<sup>13</sup> 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 when their proxies are being solicited. The rules afford investors an opportunity for active participation in the affairs of their company. Under regulation X-14 each person solicited must be furnished with such information as will enable him to act intelligently upon each separate matter in respect of which his vote or con-

<sup>13</sup> Sections 14 (a) of 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.

sent 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 1950 fiscal year, material relating to 1,668 different solicitations of proxies and "follow-up" material used in connection with 186 of these solicitations was filed with the Commission, 1,653 proxy statements were filed during the 1949 calendar year, practically the same number as in each of the four preceding calendar years. The comparative numbers of proxy statements filed by management and nonmanagement groups and the principal items of business for which stockholders' action was sought in these solicitations is shown in the table below for each of the past five calendar years.

	Year ended Dec. 31				
	1945	1946	1947	1948	1949
Proxy statements filed by management.....	1,570	1,664	1,613	1,648	1,625
Proxy statements filed by others than management..	24	21	32	29	28
<b>Total proxy statements filed.....</b>	<b>1,594</b>	<b>1,685</b>	<b>1,645</b>	<b>1,677</b>	<b>1,653</b>
For meetings at which the election of directors was one of the items of business.....	1,350	1,407	1,461	1,534	1,536
For meetings not involving the election of directors.....	213	244	149	115	97
For assents and authorizations not involving a meeting or the election of directors.....	31	34	35	28	20
<b>Total proxy statements filed.....</b>	<b>1,594</b>	<b>1,685</b>	<b>1,645</b>	<b>1,677</b>	<b>1,653</b>

The items of business other than that of election of directors were distributed among a somewhat wide variety of specific proposals as follows:

	Year ended Dec. 31				
	1945	1946	1947	1948	1949
Mergers, consolidations, acquisition of businesses, and purchase and sale of property.....	40	65	69	46	43
Issuance of new securities, modification of existing securities, recapitalization plans other than mergers or consolidations.....	227	249	223	154	193
Employees pension plans.....	94	75	66	59	49
Bonus and profit-sharing plans, including stock options.....	51	52	60	32	20
Indemnification of officers and directors.....	25	36	22	21	12
Change in date of annual meeting.....	33	28	27	24	9
Other miscellaneous amendments to bylaws, and miscellaneous other matters.....	217	309	207	215	187
Stockholder approval of independent auditors.....	296	304	312	365	381
Number of management's proxy statements containing stockholder proposals.....	14	19	15	38	43
Number of such stockholder proposals.....	34	34	29	57	68
Net number of stockholders whose proposals were included in management's proxy statements (each stockholder is counted only once in each year regardless of the number of companies that included his proposals in proxy statements).....	17	9	13	18	21

### Examination of Proxies

While proxy examination work occurs throughout the year, it has a seasonal peak during the spring. Thus, of 1,517 annual meetings

for which proxy statements were filed during the 1949 calendar year, 1,085 meetings, over 70 percent of the total, were held during March, April, and May; 544 of the total, 36 percent, took place in April alone; 160 meetings were held in the last week of April; and as many as 65 meetings were scheduled for 1 day, the fourth Tuesday in April.

*Pension plans.*—An outstanding feature of the year was the number of cases in which pension plans were presented to stockholders for approval. While the plans in a single industry followed a somewhat general pattern, there were variations due to differences in the financial condition of the companies and the differing approaches of management. A common characteristic of many plans was the 5-year term under which some managements insisted that the company's liability ran only to employees who qualified and elected to go on pension during the term. One plan of this type, submitted to its stockholders by a large steel producer, provided for payments into a trust in five annual installments so that the last payment would be made 4 years after the final year of the plan. Estimates showing the cost, assuming that all eligible employees would elect to take pensions, were clearly presented in a table by maturing classes and payments to the fund. Assuming that the plan might well be renewed on its expiration, the inclusion of a statement in the proxy soliciting material was obtained indicating an approximate range of annual cost if the plan were so continued. This company disclaimed any intention of funding past service cost for employees who would not qualify for pensions during the 5-year term of the plan.

In contrast to the position taken by the above-mentioned company, one of the leading steel producers solicited proxies with a view to amending its existing plan to increase the benefits and broaden the coverage, and presented in its proxy statement its summary of costs on the assumption that the plan would continue indefinitely even though the contract covered only 5 years specifically. In this case the summary presented a comparison of lump-sum costs of past service and the estimated comparative annual costs during 1950 for the existing and proposed plans. Because of the very substantial figures presented and the technical character of the references to income tax laws, the staff requested and obtained in the management's introduction to the summaries of costs a clear statement that the figures for costs were presented before giving effect to income taxes.

## **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 of 1934; exemption, however, is granted to those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. The following tabulation reflects certain data with respect to registration of brokers and dealers during the 1950 fiscal year:

*Registration of brokers and dealers under section 15 (b) of the Securities Exchange Act of 1934—fiscal year ending June 30, 1950*

Effective registrations at close of preceding fiscal year.....	3,924
Effective registrations carried as inactive.....	70
Registrations placed under suspension during preceding year.....	0
Applications pending at close of preceding fiscal year.....	23
Applications filed during fiscal year.....	493
<b>Total</b> .....	<b>4,510</b>
Applications withdrawn during year.....	13
Applications cancelled during year.....	0
Registrations withdrawn during year.....	418
Registrations cancelled during year.....	43
Registrations denied during year.....	0
Registrations suspended during year.....	0
Registrations revoked during year.....	12
Registrations expired by rule X-15B-3.....	1
Registrations effective at end of year.....	3,930
Registrations effective at end of year carried as inactive.....	170
Applications pending at end of year.....	23
<b>Total</b> .....	<b>4,510</b>

<sup>1</sup> Registrations on inactive status because of inability to locate registrant despite careful inquiry.

#### Administrative Proceedings

Section 15 (b) of the act provides that registration of a broker or dealer may be denied for specific types of misconduct on the part of an applicant. Registration may be revoked for such misconduct if the Commission finds after an appropriate record has been made that such denial or revocation is necessary in the public interest. The Commission's staff, therefore, examines all applications for registration and numerous other available sources of information to determine whether the applicant has engaged in any violations of law which would constitute a statutory basis for challenging the propriety of giving him the privileges of registration. When indications of such misconduct are discovered, the Commission orders proceedings to establish the facts. The applicant has full opportunity to be heard on the specified charges. Similar procedures are followed in revocation proceedings against registered brokers and dealers and in proceedings to determine whether to suspend or expel a broker or dealer from membership in a national securities exchange or association. The following tabulation reflects the number of proceedings instituted under sections 15 (b) and 15A <sup>14</sup> during the 1950 fiscal year and the disposition thereof.

*Record of broker-dealer registration proceedings and proceedings to suspend or expel from membership in a national securities exchange or association instituted pursuant to the Securities Exchange Act of 1934 for the 1950 fiscal year*

Proceedings pending at start of fiscal year to :	
Revoke registration.....	5
Revoke registration and suspend or expel from NASD.....	8
Deny registration to applicant.....	1
<b>Total proceedings pending</b> .....	<b>14</b>

<sup>14</sup> Section 15A of the Securities Exchange Act of 1934 provides for the registration of securities dealers associations and, among other things, outlines conditions of membership in such associations.

*Record of broker-dealer registration proceedings, etc.—Continued*

Proceedings instituted during fiscal year to:	
Revoke registration.....	13
Revoke registration and suspend or expel from NASD.....	10
Deny registration to applicants.....	9
Suspend or expel from NASD and exchanges.....	1
<b>Total proceedings instituted.....</b>	<b>33</b>
<b>Total proceedings current during fiscal year.....</b>	<b>47</b>

## DISPOSITION OF PROCEEDINGS

Proceedings to revoke registration:	
Dismissed on withdrawal of registration.....	1
Registration revoked.....	6
<b>Total.....</b>	<b>7</b>
Proceedings to revoke registration and suspend or expel from NASD: <sup>15</sup>	
Dismissed—registration and membership continued.....	2
Registration revoked and firm expelled from NASD.....	1
Registration revoked—no action taken on NASD membership.....	3
<b>Total.....</b>	<b>6</b>
Proceedings to suspend or expel from NASD and exchanges:	
Dismissed—memberships continued.....	1
<b>Total.....</b>	<b>1</b>
Proceedings to deny registration to applicants:	
Dismissed on withdrawal of application.....	2
Dismissed—registration permitted.....	6
<b>Total.....</b>	<b>8</b>
<b>Total proceedings disposed of.....</b>	<b>22</b>
Proceedings pending at end of fiscal year to:	
Revoke registration.....	11
Revoke registration and suspend or expel from NASD.....	12
Deny registration to applicants.....	2
<b>Total proceedings pending at end of fiscal year.....</b>	<b>25</b>
<b>Total proceedings accounted for.....</b>	<b>47</b>

<sup>15</sup> The National Association of Securities Dealers, Inc., is the only national securities association registered with the Commission.

As shown in the foregoing tabulation, nine proceedings involving the denial of registration as an over-the-counter broker or dealer were ordered during the 1950 fiscal year and one was pending at the beginning of the year. Two applications were withdrawn after the Commission had given notice of hearing. Six applications for registration were granted. Two proceedings were pending at the end of the year. One proceeding involved solely the question of suspension or expulsion from the NASD and various securities exchanges and in its findings and opinion the Commission determined that the imposition of a sanction was not necessary. Of the 23 revocation proceedings against registered brokers and dealers ordered during the fiscal year

and the 13 proceedings pending at the beginning of the year,<sup>16</sup> the Commission disposed of 13 as follows:

Registration revoked.....	9
Registration revoked and firm expelled from NASD.....	1
Proceedings dismissed and registration cancelled or withdrawn.....	1
Proceedings dismissed and registration continued in effect.....	2

*Registrations revoked (\* indicates expulsion from NASD was also ordered)*

<i>Firm</i>	<i>Securities Exchange Act Release No.</i>
Wendell M. Weston.....	4312
F. H. Winter & Co.....	4280
Pennaluna & Co. (a partnership).....	4314
D. S. Waddy & Co.....	4322
Browning & Co.....	4333
Walter J. Manning.....	4446
N. James Elliott*	4409
W. H. Bell & Co.....	4292
S. T. Jackson & Co., Inc.....	4459
J. C. Flannery & Co.....	4459

Most of the proceedings brought against brokers and dealers stem at least indirectly from the Commission's routine fraud detection procedures designed to detect and prevent violations of law.

In proceedings brought by the Commission against Wendell Maro Weston, doing business as Weston & Co. and Assured Warranty Corp., for the revocation of their registrations as a broker-dealer and investment adviser, respectively, the Commission found that over a long course of conduct Weston systematically defrauded a client who reposed great trust and confidence in him.

The client turned over to Weston \$97,000 in cash for safekeeping, and Weston soon induced her to invest \$84,631 of this in securities. Thereafter, Weston organized Assured Warranty Corp., in which he took a controlling interest, which issued 200 shares of preferred stock in his name. He held the stock for the client and paid the corporation \$20,000 of her money. The client entered into an investment advisory agreement with Assured Warranty by the terms of which Assured Warranty might give orders for purchase and sale of specified securities on her behalf with Weston as broker. Weston thereupon bought and sold securities for her account, utilizing the services of members of the New York and Boston Stock Exchanges. From time to time during the course of these transactions, Weston obtained a total of \$50,000 more from the client's account which he used for the purchase of additional preferred stock in Assured Warranty.

The Commission found that the client was unaware that her funds were being syphoned out of her account for the purchase of stock in an unsuccessful promotional company. The total gross income of the company was \$7,074 in a period when its expenses amounted to \$68,090, of which \$27,000 was paid to Weston as salary and advances. The total net loss was over \$61,000, of which over 90 percent was borne by her.

The Commission stated that Weston stood in the relation of fiduciary to his client because of the trust and confidence reposed in him by the

<sup>16</sup> Some of these proceedings, as shown in the tabulation, included the question of suspension or expulsion from the NASD.

client and because of the more formal obligation which he owed to her as an investment adviser. As a fiduciary, Weston was required to act in the utmost faith in every phase of their relations, to invest her funds carefully, and to exercise any special authority granted to him in connection with an unusual venture only when accompanied by full disclosure of the exact nature of the proposition and the risks undertaken. The Commission found that in putting his client's money to a speculative use for his personal benefit, and in designedly concealing his scheme by elaborate deceptions, Weston pursued a course of conduct which operated as a fraud on the client within the scope of rules X-10B-5 and X-15C1-2 (adopted under sections 10 (b) and 15 (c) (1) of the Securities Exchange Act of 1934), and section 17 (a) of the Securities Act of 1933. The Commission further found that in failing to deliver confirmations of transactions to the client Weston had wilfully violated section 15 (c) (1) of the Securities Exchange Act and rule X-15C1-4 thereunder.

Weston filed annual financial reports in 1945 and 1946 in which he failed to reflect a substantial claim of the client for the return of her misused funds and his liability on a promissory note issued in settlement of this claim, which the Commission found to be in wilful violation of section 17 (a) of the Securities Exchange Act and rule X-17A-5 thereunder.

The Commission revoked the registration of Weston & Co. as a broker-dealer.

Finding that in its application for registration as an investment adviser and in supplemental reports Assured Warranty Corp, had wilfully made untrue statements and misleading omissions as to the ownership of its stock and the nature of its activities, the Commission revoked the registration of Assured Warranty Corp. as an investment adviser.

Three cases decided during the year involved, in part, violations of section 5 (a) of the Securities Act of 1933. These cases involved Green & Co., the S. T. Jackson & Co., Inc., and J. C. Flannery & Co. All three respondents were found to have distributed the common stock of Columbia Machinery & Engineering Corp. when no registration was in effect as to such securities. The Commission found that in 1946 six Columbia stockholders, who constituted members of a group in control of Columbia, sold all their holdings of Columbia stock, consisting of 142,600 shares of 200,000 outstanding shares of common stock and 1,600 shares of 2,000 shares of outstanding preferred stock. Of the common stock, 138,300 shares were sold by the three companies, and the preferred stock was all sold to Jackson & Co. and Flannery & Co. acting in joint account. The Commission noted that the selling stockholders, either directly or through their representatives in the Columbia management, constituted a cohesive group which had organized Columbia and directed its affairs through their control of its board of directors and management. The sales of Columbia stock by these stockholders were not unrelated independent transactions but were the culmination of continuing efforts by principal stockholders of Columbia to dispose collectively of their interest. These efforts were known to the respondent firms which, from early in 1946, had cooperated among themselves in the sales of the Colum-

bia stock, were close to Columbia, and in fact took a hand in directing its course.

The Commission concluded that the sales effected by the respondent companies were knowingly made on behalf of members of a group in control of Columbia, that the respondents were underwriters within the definition contained in section 2 (11) of the Securities Act, and that registration of the Columbia stock which they distributed was required by that act. It found, therefore, that the S. T. Jackson & Co. Inc., Stacy T. Jackson, J. C. Flannery & Co., and Joseph C. Flannery wilfully violated section 5 (a) of the Securities Act in the sale of the common and preferred stock of Columbia, and that Greene & Co. and William F. Thompson wilfully violated that section in the sale of Columbia stock. The S. T. Jackson & Co., Inc. and J. C. Flannery & Co., in addition, were found to have engaged in fraudulent practices in connection with their sales of Columbia common and preferred stock.<sup>17</sup>

On findings of wilful violations of the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and other provisions of the latter act, the Commission revoked the registration of the S. T. Jackson & Co., Inc. and J. C. Flannery & Co., and found Stacy T. Jackson and Joseph C. Flannery to be causes of such revocations.

Proceedings instituted against Halsey, Stuart & Co., Inc., ("Halsey") and Harold L. Stuart, involved market activities in the 3½ percent series C first-mortgage bonds, due 1973, of Northern Indiana Public Service Co. and sales without delivery of prospectuses required by the Securities Act.

Halsey was syndicate manager of a group of 92 underwriters, which in 1943 purchased an issue of \$45,000,000 of the Northern Indiana Public Service Co. bonds from the issuing company. The bonds were registered under section 5 of the Securities Act but were not traded on any exchange.

When the underwriting syndicate terminated 12,561 bonds remained unsold. Halsey held 4,772, of these unsold bonds, most of them having been bought by Halsey from other underwriters at a bid slightly higher than cost to the underwriters. This bid had the effect of eliminating overhanging holdings in the hands of other underwriters, who might have thrown them onto the market with serious consequences to the distribution as a whole and in particular to Halsey's stake at that time of over \$2,000,000 in undistributed bonds.

In a period of about 400 business days Halsey published bids or invited offers of the bonds on 292 business days. In the earlier months following the close of the syndicate it was the heaviest known buyer in the dealer market and made most of its purchases from liquidating underwriters, often bidding and paying prices at increasingly higher levels. On the other hand, it sold comparatively few bonds in that market, confining most of its sales to customers. The post syndicate market developed in three stages: A first period marked by extensive

<sup>17</sup> While the Commission did not minimize the violation by Greene & Co. and William F. Thompson of the registration requirements of the Securities Act, it did not think it necessary, in the public interest, to impose remedial sanctions and dismissed the proceedings with respect to Greene & Co. and William F. Thompson.

liquidation by underwriters and a fall in prices to about 101; a second period marked by a tightening supply, reduced rate of activity, net accumulation of additional inventory by Halsey, and a price rise to about 103; a third period in which general activity was further reduced and Halsey undertook a consistent liquidation of net inventory as prices rose to about 107. Thereafter Halsey's trading thinned out to insignificant proportions.

The Commission found that Halsey's activities in the market forced not only its own bids but independent bids as well to be raised in order to attract bonds. Beginning even prior to the close of the syndicate, Halsey drained off the potential market over \$4,000,000 of bonds. Thereafter, it was an active purchaser whose pattern of conduct resulted in draining off the supply that came into the market and channeling it to investors who were not likely to become active traders. Halsey's purchases demonstrably could not have been made to satisfy existing orders. Halsey's trading created active and apparent activity and at times it raised prices directly either by bids or transactions. In addition, throughout long periods following the close of the syndicate, its transactions gave support to the wholesale market and tended to fix price floors, because of their volume, because of the fact that Halsey made large purchases while others were relatively inactive, and because the general pattern of Halsey's trading was to remove overhang from the dealer market and to place the bonds with investors.

The Commission found that Halsey engaged in such practices for the purpose of inducing others to buy. The Commission stated, "It is undisputed that it desired, in the period following close of the syndicate, to preserve as much of its inventory as it could in the hope and belief that the price would improve. Hope, belief, and motive are not 'purpose' in the legal sense applicable to this case. But 'purpose' must be inferred when hope, belief, and motive are implemented by activity objectively resulting in market support, price raising, sales at higher prices, and the protection of inventory." The Commission pointed out that Halsey had received Securities Exchange Act release No. 3505, which deals with the legality of transactions by underwriters during the course of a distribution and states that conduct which would violate section 9 (a) (2) of the Exchange Act would also constitute a violation of section 15 of that act and section 17 of the Securities Act.

The Commission found that Halsey had wilfully violated section 17 (a) of the Securities Act and sections 10 (b) and 15 (c) of the Exchange Act and the rules thereunder.

The Commission further found that from September 11, 1944 through April 2, 1945, Halsey sold these bonds without delivery of prospectuses as required by section 5 (a) (2) of the Securities Act. The violation was not characterized as wilful since Halsey in practice treated the bonds as fungible and had used prospectuses for a year to cover all of its sales for the year.

Concluding that it would not be in the public interest to take no action against Halsey, if it still maintained the view that it was free to engage in the activities described, the Commission afforded Halsey an opportunity to assure the Commission that it would in the future

comply with the Commission's enunciated principles. Halsey filed a statement of compliance and the Commission thereupon dismissed the proceedings.

### Broker-Dealer Inspections

The broker-dealer inspection program, initiated by the Commission in 1940 under section 17 (a) of the Securities Exchange Act, which authorizes the Commission to make periodic, special, and other examination of the books and records of brokers and dealers, is one of the Commission's important procedures in the detection and prevention of violations of law by broker-dealers. These inspections are conducted by the staff of the Commission's regional offices. They are sometimes limited to a particular phase of a firm's operations, such as its financial condition or its method of handling particular accounts, but generally they involve full-scale examination of all characteristic activities, culminating in a report on the extent to which its operations are in compliance with the standards established by the act and rules.

Regional offices reported on 906 inspections during the year. In 59 inspections the question of financial condition was a matter for consideration; 56 inspections involved noncompliance with the Commission's hypothecation rules; in 15 inspections secret profits in agency transactions were reported; in 165 inspections noncompliance with regulation T was reported, involving chiefly the failure to comply with the provisions of the regulation respecting cash accounts; other infractions too scattered to classify were noted in 113 inspections.

As a result of the Commission's policy of explaining the application of its rules and regulations and of urging management controls which will afford strict compliance therewith, many violations, particularly those involving improper hypothecation of securities, or the rule relating to the capital position of the firm, are frequently cured before the inspection has been completed. However, in connection with more than 40 inspections post-inspection surveillance or investigation beyond the scope of the inspection became necessary—to ascertain whether corrections had been made as promised and to determine whether disciplinary or remedial action was necessary. Two of the firms inspected retired from business during investigation and revocation proceedings are pending as to three others.

In addition to inquiry into the various matters mentioned above, the inspection procedures call for a test check to determine whether the firm inspected deals fairly with customers at prices reasonably related to the current market. These test checks have a dual purpose—first to enforce the principle, judicially established in *Charles E. Hughes & Co., Inc. v. S. E. C.*,<sup>18</sup> that it is fraudulent for a dealer to sell securities to customers, or buy from them, at prices not reasonably related to the market unless he discloses the variation from the market, and second to determine the effectiveness of the rules of the NASD relating to fair prices and fair and equitable principles of trade.

<sup>18</sup> 139 F. 2d 434 (C. A. 1943) cert. den. 321 U. S. 786 (1944). On Nov. 25, 1944, the board of governors of the NASD adopted an interpretation of sec. 1 of art. III of its Rules of Fair Practice holding that transactions by dealers at prices not reasonably related to the market constitute conduct inconsistent with just and equitable principles of trade.

### Pricing Practices

The following tabulation reflects information obtained in inspections made during the year with respect to pricing practices in sales to customers:

	NASD members	Others	Totals
Number of inspections.....	654	252	906
Number of inspections reporting sales to customers in which the customer paid more than 5 percent above the current market <sup>1</sup> .....	242	32	274
Number of sales reported.....	16,682	1,559	18,241
Number of sales analyzed <sup>2</sup> .....	14,241	1,281	15,522
Number of sales in which the customer paid more than 5 percent above the current market.....	1,697	575	2,272

<sup>1</sup> For test purposes in the case of unlisted securities the high offer in quotations among dealers as of the date of the sale is used; on exchange securities the high sale on the date of sale, or if there was no sale, the asked price, as reported by the exchange on which the security is traded, is used.

<sup>2</sup> Market prices as of the date of sale are not readily available in all instances. This is often true of securities inactively traded and generally true of securities having only a local market. There were 2,719 transactions reported in these inspections on which no market prices were readily available.

A further breakdown of the last item in the above tabulation shows substantial concentration of the total 2,272 sales made by members and nonmembers of NASD at more than 5 percent mark-up.

One hundred and thirty-four inspections in which 8,143 sales were analyzed accounted for only 384 sales at mark-ups of over 5 percent, and in no instance was the number of sales at such mark-ups a substantial part of the test check. However, the remaining 1,888 sales at such mark-ups, accounted for in 140 inspections, constituted over 25 percent of 7,379 sales analyzed. In each of these test checks, the number of sales made by the firm at mark-ups of over 5 percent constituted 10 percent or more of the firm's sales analyzed. The concentration of such transactions was in the 140 firms as indicated below:

	NASD members	Others	Total
Number of inspections in which the sales to customers at a mark-up of more than 5 percent over the current market represented more than 10 percent of the sales analyzed.....	112	28	140
Number of sales analyzed in such inspections.....	6,192	1,187	7,379
Number of such sales made at a mark-up of more than 5 percent over the current market.....	1,319	569	1,888

### Financial Reports

Brokers and dealers are required by rule X-17A-5 to file reports of financial condition during each calendar year. During the 1950 fiscal year a total of 3,581 financial reports were filed. Each report is examined to determine, among other things, whether there has been any violation of rule X-15C3-1, which provides that the aggregate indebtedness of a broker or dealer shall not exceed 20 times his net capital. When deficiencies are found steps are taken immediately to secure compliance in this important phase of the Commission's activities in affording protection to customers.

Failure to file the reports as required is an infraction of the rule and may lead to disciplinary proceedings. Frequently, small firms doing

relatively little or no business fail to file reports on time. These are handled by a procedure for cancellation of registration when the registrant's inactivity is established. Informal procedures are frequently used to procure filing by those who do not furnish reports on time. In some instances action becomes necessary to revoke registration. Proceedings were instituted during the year to revoke the registrations of six firms for failure to file financial reports.

### SUPERVISION OF NASD ACTIVITIES

#### Membership

At the end of the 1950 fiscal year there were 2,784 members of the National Association of Securities Dealers, Inc. (NASD), the only national securities association registered as such with the Commission. This represented an increase of 89 members in the year, as the result of 246 admissions and 157 terminations of membership. At the same date there were 28,794 individuals, including generally all partners, officers, traders, salesmen, and other persons employed by member firms in capacities which involved their doing business directly with the public, an increase of 1,545 during the year. This increase was the result of 5,444 initial registrations or reregistrations and 3,899 terminations of registration.

#### Disciplinary Actions

The Commission received from the NASD during the 1950 fiscal year reports of final action in 25 disciplinary cases in which formal complaints had been filed against members. Three of these complaints were dismissed on findings by the NASD district business conduct committee of initial jurisdiction that there had been no violations of the rules of fair practice. In the remaining 22 cases the committees found violations of such rules and imposed various penalties.

In 13 such cases the complaints were directed solely against member firms. In 9 of these cases fines were levied ranging from \$100 to \$2,000 and aggregating \$4,000. Of these 9 firms fined, 5 were also censured and costs of the proceedings were charged in 4 cases. One such firm was fined, censured, and suspended from membership for 90 days. In the remaining 4 cases, 1 member was expelled, 2 firms were censured, and 1 complaint was disposed of by acceptance by the committee of a statement pledging future observance and compliance with the rules of fair practice.

In nine other cases complaints were directed not only against member firms but also against registered representatives of such firms. The significance of this type of action arises from the NASD bylaws and rules under which registered representatives have the same rights, duties, and obligations and are subject to the same disciplinary procedures, penalties, and disqualifications as members. Thus, for example, revocation of registration by the NASD of a registered representative would operate as a barrier to membership and to employment by or affiliation with a member unless the Commission finds it appropriate in the public interest to approve or direct to the contrary.

In three such cases the complaints were dismissed as to the member firms although one registered representative was censured and two representatives had their registrations revoked; one firm was censured

and its registered representative was fined \$200; one firm was censured and fined \$200 and the registration of its representative was revoked; another firm was fined \$500 and both the firm and the representatives were censured. One such complaint was disposed of by acceptance by the committee from the firm of a statement of future observance and compliance with the rules of fair practice and the expulsion of the representative (who had been a partner) and the revocation of his registration. Another complaint filed jointly against two member firms and the principal of one firm, who was also a registered representative, resulted in a decision by the district business conduct committee to expel each firm from membership and to revoke the registration, as registered representatives, of the principal named in the complaint and of two principals of the other firm. In addition, costs to the maximum allowable amount of \$500 were assessed against each firm. One firm and its two principals appealed this decision to the board of governors and this appeal was pending at the year end.

During the year the Commission continued its practice of referring to the NASD, for appropriate action, facts concerning the business practices of members where there was some indication of possible violations of the rules of fair practice. Five such references were made in the year here under review and one had been in process at the start of that year. Reports of disposition were received during the year on two of these cases, both of which involved formal complaint procedure and are included in the description of the disposition of such cases recited above. Four such cases were in process at the year end.

During the 1950 fiscal year the Commission was not called upon to act in any matter arising from denial of membership by the NASD or on a petition for approval of, or continuation in, membership. At the year end there was before the Commission, on appeal by the aggrieved member, one disciplinary decision by the NASD. This was the only such matter to come before the Commission in the year here reviewed.

#### CHANGES IN RULES, REGULATIONS, AND FORMS

During the 1950 fiscal year, the Commission made a number of important changes in its application and report forms and related rules and regulations under the Securities Exchange Act.

*Form 10.*—This form, the principal form for the registration on an exchange of securities of commercial and industrial companies, was completely revised. The revision merges into this form eight other registration forms previously prescribed for various classes of registrants. Among the more important changes made were the amplification of the items and instructions calling for a description of business and property so as to indicate more precisely the information required, the disclosure of material litigation, and the amendment of the remuneration items to correspond with the requirements of the Commission's proxy rules.

*Form 10-K.*—This is the principal form for annual reports of listed companies under the Securities Exchange Act and for registrants under the Securities Act required to report under section 15 (d) of the Securities Exchange Act. It was revised along lines similar to the revision of Form 10 and likewise supersedes several other forms previ-

ously prescribed for the annual reports of various classes of registrants. The revised form also eliminates certain duplication which had previously existed between the requirements of this form and Form 8-K for current reports.

Subsequent to this revision of Form 10-K, it was further amended to permit electric utilities and natural gas companies which file annual reports with the Federal Power Commission on that Commission's Form No. 1 or Form No. 2 to file copies of such reports with this Commission in satisfaction of most of the requirements of Form 10-K. This provision is optional and any company may file its report either in accordance therewith or on Form 10-K in accordance with the previously existing requirements.

*Form 8-K.*—This form prescribed for current reports was amended to require the reporting of certain events with respect to which reports had not previously been required. The principal additional events required to be reported are the acquisition or disposition of a substantial amount of assets; the institution or termination of important litigation; the guaranteeing of securities of other issuers; and defaults upon senior securities.

*Form 9-K.*—The Commission also adopted Form 9-K, a new quarterly report form, replacing item 11 of old Form 8-K for reporting gross sales and operating revenues. Except for providing a separate form for such reports and some amplification of the instructions to include certain administrative interpretations, this new form did not make any substantial change in the requirements with respect to such reports.

*Form 8.*—During the year the Commission also revised Form 8 which is a one-page form used as a cover or facing page for amendments to applications for registration, and annual, quarterly, and current reports filed under the Securities Exchange Act. Use of the form had previously been restricted to listed companies. However, under the revision, the form is also available for use by registrants under the Securities Act which are required to file annual and other reports under section 15 (d) of the Securities Exchange Act.

*Revision of rule X-12A-4—Exemption for certain short-term warrants.*—In addition the Commission adopted a revised rule X-12A-4. This rule exempts certain short-term warrants from registration under section 12 (a) of the Securities Exchange Act. Previously, the exemption had been limited to issued warrants, and under this revision the rule has been broadened to exempt unissued warrants as well. The Commission adopted at the same time a new Form AN-4, which is prescribed for the exemption statements required by rule X-12A-4, and rescinded Form 15-AN, heretofore prescribed for such statements.

#### LITIGATION UNDER THE SECURITIES EXCHANGE ACT

During the past year the Commission's litigation under the Securities Exchange Act consisted principally of injunction actions instituted by the Commission and its participation as *amicus curiae* in private suits involving important questions of construction of various provisions of the act and rules thereunder.

### Injunction Actions

A permanent injunction was obtained in *S. E. C. v. Walter G. Furlong*<sup>18</sup> against a broker-dealer who had not registered as required by section 15.<sup>19</sup> In addition to this violation, the complaint alleged that the defendant had falsely represented that he was employed by a brokerage firm, had obtained secret profits from its customers by selling securities at prices substantially above the prevailing market prices and had converted customers' funds to his own use.

A number of other injunctions were sought in cases involving registered broker-dealers.<sup>20</sup> Most of these were based on charges of failure to conform to required financial standards. The common element in *S. E. C. v. General Stock and Bond Corp.*<sup>21</sup> and *S. E. C. v. Adams & Co., et al.*<sup>22</sup> was solicitation of business by the defendants while their liabilities exceeded their assets. In the *General Stock and Bond* case, where a permanent injunction was obtained by consent, the complaint also charged violation of the Commission's rule X-15C3-1, in that the firm permitted its indebtedness to exceed 20 times net capital. Additional violations charged in the *Adams* case included the hypothecation of customers' securities without their consent.<sup>23</sup> In that case the company's affairs were placed in the hands of a receiver in order to obtain equitable treatment for its customers. An injunction was obtained in *S. E. C. v. Gordon B. Todd*,<sup>24</sup> where the defendant had violated the margin requirements and had failed to keep books and records in the manner required by law.

Violation of the antimanipulation provisions of the act, sections 9 (a) (1) and (2), was enjoined in *S. E. C. v. Henry M. Stanley*.<sup>25</sup> The complaint alleged that Stanley effected a series of transactions in a security listed on the Detroit Stock Exchange to create actual and apparent trading in the security for the purpose of inducing others to purchase the stock and that he consummated "wash sales" and entered "matched" orders to cause a false and misleading appearance with respect to the market for the security.

The Commission's proxy regulations were involved in *S. E. C. v. John A. Topping*,<sup>26</sup> where a decree was obtained by consent permanently enjoining a shareholder of Certain-Teed Products Corp., a registered corporation, from further violation of section 14 (a) of the act and the rules and regulations issued thereunder. It was based upon the defendant's failure to file with the Commission letters to various common stockholders preliminary to a proposed solicitation of proxies<sup>27</sup> and certain false and misleading statements in this material.

<sup>18</sup> Civil Action No. C 862-49, D. N. J., Nov. 1949.

<sup>19</sup> For violation of the injunction in *S. E. C. v. Kirby*, Civil Action No. 25742, N. D. Ohio, Apr. 28, 1949, against acting as a broker-dealer without registration, referred to in 15 SEC Ann. Rep. 66, contempt proceedings were instituted during the fiscal year. See p. 151, *infra*.

<sup>20</sup> For litigation against broker-dealers under the criminal provisions of the Securities Act see pp. 150-151.

<sup>21</sup> Civil Action No. 50-236, D. Mass., Mar. 31, 1950.

<sup>22</sup> Civil Action No. 49 C 1145, N. D. Ill., July 18, 1949 (temporary restraining order issued and continued at various dates; final judgment still pending).

<sup>23</sup> The complaint also alleged violations of secs. 17 (a) (2) and (3) of the Securities Act of 1933.

<sup>24</sup> Civil Action No. 55, 384, S. D. N. Y., Feb. 10, 1950.

<sup>25</sup> Civil Action No. 9079, D. Mich., Mar. 13, 1950.

<sup>26</sup> Civil Action No. 50-79, S. D. N. Y., Sept. 27, 1949.

<sup>27</sup> See *S. E. C. v. Topping*, 85 F. Supp. 63 (S. D. N. Y., May 24, 1949); 15 S. E. C. Ann. Rep. 72.

The first litigated case in which the Commission relied on its power to bring an action in the United States district courts to enforce compliance with section 13 of the act and rules thereunder requiring the filing of annual and quarterly reports by a listed corporation registered under the act was *S. E. C. v. Atlas Tack Corporation*.<sup>28</sup> It was alleged that Atlas Tack Corp. had failed to file annual reports for the years 1947 and 1948, had submitted materially deficient annual reports for the years 1945 and 1946, had failed to file a number of quarterly reports and had made such tardy filing in most instances that investors were deprived of the timely information with which the statute is designed to provide them. The evidence was clear that the Commission had made repeated requests for the information before resorting to judicial compulsion. This litigation resulted in a decree after the close of the fiscal year compelling correction of the deficiencies in past filings and requiring the corporation to file reports at the times and in the manner prescribed by the statute and regulations.

#### Participation as *Amicus Curiae*

Most of the cases in which the Commission participated as *amicus curiae* involved construction of section 16 (b) of the act, which accords to a corporation the right to recapture short-swing (less than 6 months) profits realized from transactions in its equity securities by "insiders." Whether a production manager was an "insider" within the intent of section 16 (b) was the question posed in *Colby v. Klune*.<sup>29</sup> The district court in granting summary judgment for the defendant held that the employee involved was not an "officer" subjected to liability by the statute. The Commission, though taking no position upon the ultimate issue, appeared *amicus curiae* on the appeal and submitted a memorandum urging that whether a person is an officer depends upon the employee's "responsibility for the policy of at least a substantial segment of the corporation's affairs" and "participation in executive councils of the corporation as an officer." The appellate court remanded the case to the district court to take evidence on the question whether the defendant performed "important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions."<sup>30</sup>

An interpretation dealing with the valuation of stock purchase warrants was rendered in *Truncale v. Blumberg et al.*,<sup>31</sup> where plaintiff, a stockholder in Universal Pictures Co., invoked section 16 (b) to recover on behalf of the corporation profits which he alleged the defendants, who were officers and directors of the company, had made. It appeared that, pursuant to an employment contract, the defendants received 3,000 warrants for the purchase of stock of the company. At the time they were received, these warrants were worth \$11,500. Within 6 months prior to their receipt the defendants had sold, for \$120,688, 3,000 other warrants they owned. Plaintiff, contending that the warrants had a cost basis of zero, sought

<sup>28</sup> Civil Action No. 50-143, D. Mass., July 17, 1950.

<sup>29</sup> 83 F. Supp. 159 (S. D. N. Y., 1949).

<sup>30</sup> *Colby v. Klune*, 178 F. 2d 872 (C. A. 2, 1949).

<sup>31</sup> 88 F. Supp. 677 (S. D. N. Y., 1950), *aff'd per curiam sub nom. Truncale v. Scully*, unreported (C. A. 2, Jan. 23, 1950). For another phase of this litigation see *Truncale v. Blumberg, et al.*, 80 F. Supp. 387 (S. D. N. Y., 1948) discussed in 15 SEC Ann. Rep. 70.

to recover the entire sale price. The district court held no profit was realized. On appeal the Commission took the position that whether these warrants were considered as compensation or not there was no recoverable profit. As compensation their cost basis would be the value of the services performed which might properly be valued in excess of the sales price. If considered as an incentive payment, no profit was realized under the circumstances of this case because there was no causal relationship between the purchase and sale such as the statute was designed to reach. The court of appeals affirmed on the basis of the opinion of the district court.

The issue in *Arbetman v. Playford, et al.*,<sup>32</sup> in which the Commission appeared *amicus curiae*, was whether an insider must account for profits from a purchase and sale within a 6 months period, where the profit is realized by sale which follows registration but purchase preceded registration. The Commission took the position that an insider should be liable under such circumstances because a contrary construction would defeat the purpose of the statute by allowing an opportunity for abuse of inside information. No opinion on the merits was reached, however, because the litigation was terminated by a settlement between the parties.

In another case, *R. Hoe & Co., Inc. v. McCune*,<sup>33</sup> a corporation proposed to compromise a claim, based on section 16 (b), against one of its directors and by motion requested a district court to approve the settlement. In answer to an order to show cause, the Commission advised that the Court should not undertake to pass upon the adequacy of the settlement in any manner which would prejudice the right of action of plaintiff's shareholder to sue on behalf of the corporation for the full amount of the profit involved. This position was adopted by the court in its opinion.<sup>34</sup>

The Commission also participated as *amicus curiae* in *Robinson et al. v. Difford et al.*, E. D. Pa., Civil Action No. 10, 322, which invoked section 10 (b) of the act and rule X-10B-5 thereunder. The Commission opposed the contention, presented by a motion to dismiss the complaint, that the provisions do not apply to so-called private transactions in securities, i. e., transactions in securities not registered on an exchange nor traded over-the-counter by securities brokers and dealers. The fraudulent transactions charged in this case were purchases by a majority "control group" (including officers and directors) of a closely held corporation of the stock holdings of minority shareholders allegedly by means of fraudulent misrepresentations, half truths and omissions of material facts. As indicated above, the complaint did not aver that the stock was registered upon an exchange or had ever been the subject of trading by a broker or dealer. On July 14, 1950, shortly after the close of the fiscal year, the court denied the motion to dismiss in an opinion which upheld the Commission's view that the section was applicable.<sup>35</sup> The same question, among others,

<sup>32</sup> Civil Action No. 47-278 (S. D. N. Y.); see 83 F. Supp. 335 (S. D. N. Y., 1949).

<sup>33</sup> Civil Action No. 45-311 (S. D. N. Y.).

<sup>34</sup> *Ibid.*, (S. D. N. Y., Nov. 11, 1949).

<sup>35</sup> CCH Fed. Sec. L. Serv. par. 90,486. The court rejected the contention that there can be no private right of action for violation of rule X-10B-5, relying *inter alia* upon *Kardon v. National Gypsum Co.*, 69 F. Supp. 512 (E. D. Pa., 1946), and *Slavin v. Germantown Fire Insurance Co.*, 174 F. 2d 799 (C. A. 3, 1949), in both of which the Commission, as an *amicus curiae*, had successfully argued that such action could be maintained.

is now awaiting decision by the Delaware Federal district court in *Speed et al. v. Transamerica Corp.*, Civil Action No. 480, in which the Commission is also participating as an *amicus curiae*.<sup>36</sup>

### Appellate Proceedings

During the course of the year only one petition for review of an order of the Commission revoking a broker-dealer registration was filed, and the case was dismissed by order of the Court because of the petitioner's failure to prosecute the appeal.<sup>37</sup> The decision on the merits in *Norris & Hirshberg v. S. E. C.*, 177 F. 2d 228 (C. A. D. C., 1949), sustaining the revocation order of the Commission was handed down during the past fiscal year. This litigation has been discussed in previous annual reports.<sup>38</sup>

### THE KAISER-FRAZER INVESTIGATION AND THE LITIGATION WITH OTIS & CO.

Early in 1948, the Commission instituted an investigation into the circumstances surrounding the failure of a stock offering by Kaiser-Frazer Corp., and there ensued a series of administrative and court proceedings which, from the standpoint of sheer volume, have been among the most extensive in the history of the Commission. By June 30, 1950, the administrative and judicial proceedings (including private suits) aggregated nine in number, not counting numerous appeals, and attorneys for the Commission had prepared a total of 35 briefs or documents in the nature of briefs, and 43 other legal documents such as pleadings and affidavits. The history of these proceedings is discussed in some detail in the Fifteenth Annual Report of the Commission.<sup>39</sup>

During the past fiscal year the Commission obtained a decision in the Supreme Court of the United States<sup>40</sup> which left it free to commence hearings in an administrative proceeding under the Securities Exchange Act to determine whether Otis & Co., an investment banking concern, had violated the act and the rules thereunder in connection with the Kaiser-Frazer stock offering, and, if so, whether the registration of Otis & Co. as a broker-dealer should be revoked and whether it should be suspended or expelled from the National Association of Securities Dealers, Inc. (NASD).

After the disposition of various prehearing motions, the hearings were finally commenced in the Spring of 1950. Thereafter they were suspended while counsel attempted to settle the details involved in incorporation by reference of major blocks of testimony adduced in the Commission's earlier investigation, which had been conducted without cross-examination. This was the status of the hearings at the close of the fiscal year.

<sup>36</sup> For previous comment on the *Speed* case see 13 SEC Ann. Rep. 63, and 15 SEC Ann. Rep. 72. Oral argument in this case preliminary to judgment on the merits was held on June 22, 1950.

<sup>37</sup> *Southeastern Securities Corp. and Eugene F. Luck v. S. E. C.*, Civil Action No. 12947, C. A. 5, Mar. 29, 1950.

<sup>38</sup> See 13 SEC Ann. Rep. 35-36, 41; 13 SEC Ann. Rep. 61; 14 SEC Ann. Rep. 53; and 15 SEC Ann. Rep. 67-68.

<sup>39</sup> Pages 73-77.

<sup>40</sup> *S. E. C. v. Otis & Co.*, 338 U. S. 888 (1949).

While the hearings were proceeding at the administrative level, the Commission was continuing its efforts to clarify certain issues raised in claims of *res judicata* advanced by Otis & Co. Following a decision on this point in the Court of Appeals for the District of Columbia Circuit,<sup>41</sup> (which the court indicated was intended to defer the issue for later consideration) the Commission applied to the Supreme Court (after the close of the fiscal year) for a petition for a writ of certiorari.<sup>42</sup>

Meanwhile the NASD had pressed to a conclusion a proceeding of its own to determine whether Otis & Co., a member of the Association, had violated the Association's rules in refusing, upon a claim of attorney-client privilege, to supply certain information to an investigating committee of the NASD which was also examining the Kaiser-Frazer stock offering. The outcome of this proceeding was a 2-year suspension of Otis & Co. from membership in the NASD. Otis & Co. appealed to the Commission under section 15A (g) of the Securities Exchange Act of 1934, which provides for an automatic stay of the NASD's action pending the Commission's decision. This appeal was still pending before the Commission at the end of the fiscal year.

Otis & Co. had unsuccessfully attempted in the courts to stay this NASD proceeding and to stay the Commission from taking any action in the matter as well. During the fiscal year Otis & Co. had continued its efforts in this direction by way of appeal to the United States Court of Appeals for the District of Columbia Circuit,<sup>43</sup> but this appeal was voluntarily dismissed following the Supreme Court decision above noted.

So far as concerns the stockholders' actions which were instituted against Kaiser-Frazer Corp. after the collapse of its stock offering in 1948, the Commission, in accordance with its usual practice, had not participated (except to the limited extent noted at page 77 of the Fifteenth Annual Report) because of the general absence of issues bearing on the construction of the securities laws. During the fiscal year, however, attempts were made by litigants in two of these actions to subpoena large numbers of interpretations rendered by the Commission in matters other than the Kaiser-Frazer stock offering. Upon the Commission's explanation of the public interest reasons which have caused it from its inception to keep such interpretations confidential except in very unusual circumstances, the subpoenas were quashed by the court.<sup>44</sup>

The various stockholders' actions, which involved largely overlapping claims, moved far towards a conclusion during the fiscal year when a proposed settlement in one of the suits was approved by the court after extensive hearings in which the parties to the other suits were heard on the question of the adequacy of the settlement.<sup>45</sup> After the close of the fiscal year, however, certain of the parties filed a notice of appeal from the order approving the settlement.

<sup>41</sup> *S. E. O. v. Harrison et al.* (No. 10043, C. A. D. C. 1950).

<sup>42</sup> *S. E. O. v. Harrison et al.* (No. 345, October Term, 1950).

<sup>43</sup> An application for an injunction pending the outcome of the appeal was denied on Sept. 9, 1949. *Otis & Co. v. NASD et al.* (No. 10397, C. A. D. C. 1949).

<sup>44</sup> *Stella v. Kaiser et al.* (Civil No. 45-750, S. D. N. Y. 1950); *In re S. E. O.* (No. M8-85 S. D. N. Y. 1950).

<sup>45</sup> *Pergament et al. v. Frazier et al.* (Civ. No. 7354, E. D. Mich. 1950).

## PART III

### ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 was passed by the Seventy-fourth Congress following an extensive investigation by the Federal Trade Commission. That investigation disclosed a variety of abuses in public-utility holding company finance and operations, the more significant of which 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 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 statute provides for regulation of public-utility holding company systems which are engaged in the electric utility business or in the retail distribution of natural or manufactured gas. The provisions of the act are in two basic categories. The first deals with the financing and operations of holding company systems. These regulations, however, are carefully designed not to conflict with, but to supplement and strengthen State regulation. Thus, the jurisdiction of the act does not extend to rate making and does not authorize the Commission to prescribe accounting systems for operating subsidiaries, except in a comparatively few instances where there are neither State nor other Federal laws prescribing such accounting systems. The second area of regulatory jurisdiction under the act provides for the geographical integration and corporate simplification of holding company systems.

#### THE PUBLIC UTILITY INDUSTRY UNDER THE ACT

Public utility properties subject to the Holding Company Act on June 30, 1950 continue to represent an important segment of the electric and gas utility industries of the United States, despite the release of 98 companies from the regulatory jurisdiction of the Commission during the past year. At the close of the fiscal year, there were registered with the Commission 46 holding company systems whose aggregate consolidated system assets on that date amounted to ap-

proximately \$12,822,000,000. These figures may be compared with 46 systems on June 30, 1949, having system assets of \$14,294,000,000.

The decrease of approximately \$1,472,000,000 represents a net change reflecting primarily the difference between divestments of companies which are no longer subject to the act with aggregate assets of \$2,231,000,000 and property additions totaling some \$600,000,000, which were occasioned by the tremendous growth in the industry in evidence since the close of World War II. Because of this expansion in plant facilities, not only by utility subsidiaries, but also by non-utility subsidiaries of holding company systems, it is not possible to present an intelligent comparison of those assets of registered holding company systems which were subject to the act when the statute was first enacted with the assets of systems subject to the act at the present time.

On June 30, 1950 there were 543 companies subject to regulation by the Commission under the act as registered holding companies and subsidiaries thereof. These included 68 holding companies, 223 electric and gas utility companies, and 252 nonutility companies. Corresponding data for June 30, 1949 showed 641 companies subject to regulation, consisting of 72 holding companies, 274 electric and gas utility companies, and 295 nonutility companies. The changes in the number of companies subject to regulation under the act during the past year, and for the entire period of the Commission's administration of the statute, are summarized in the following tables.

*Companies released from regulatory jurisdiction of the Commission*

	Total companies subject to act during period <sup>1</sup>	Absorbed by merger or consolidation	Sales dis-solutions and other divest-ments	Exemption by rule or order	Other dispos-als	Total	Compa-nies sub-ject to act as of June 30
<i>Fiscal year ending June 30, 1950</i>							
Holding companies.....	73	2	1	2		5	68
Electric and/or gas companies.....	275	11	37	4		52	223
Nonutilities plus utilities other than electric and/or gas companies.....	307	1	52	2		55	252
Total companies.....	655	14	90	8		112	543
<i>Fiscal year ending June 30, 1949</i>							
Holding companies.....	78		3	3		6	72
Electric and/or gas companies.....	315	9	31		1	41	274
Nonutilities plus utilities other than electric and/or gas companies.....	327	3	19	5	5	32	295
Total companies.....	720	12	53	8	6	79	641
<i>Period from June 15, 1938 to June 30, 1950</i>							
Holding companies.....	211	25	73	36	9	143	68
Electric and/or gas companies.....	919	147	436	64	49	696	223
Nonutilities plus utilities other than electric and/or gas companies.....	1,035	103	523	65	92	783	252
Total companies <sup>2</sup> .....	2,165	275	1,032	165	150	1,622	543

<sup>1</sup> Reflects company additions and classification adjustments during the period indicated.

<sup>2</sup> A few companies have been subject and not subject to the act a number of times. These instances contribute some insignificant duplication to the reported company totals.

While it is not possible at this date to predict accurately the ultimate disposition of all holding company systems it is estimated that, when all problems arising under section 11 (b) have been settled, there will remain subject to the Commission's continuing regulatory jurisdiction approximately 20 systems with aggregate assets of 6 or 7 billion dollars.

### PROGRESS UNDER SECTION 11—OVER-ALL SUMMARY

The fiscal year ended June 30, 1950 has been a significant year from the standpoint of consummation of reorganization and dissolution plans under section 11. Seventy-eight companies with aggregate assets of \$2,231,000,000 were divested by holding companies and, as a result, are no longer subject to the act. This compares with the divestment of 44 companies with assets of \$1,749,000,000 in the fiscal year 1949 and 111 companies with assets of \$1,244,000,000 in 1948. In addition, holding companies divested themselves of 52 other companies with assets aggregating some \$2,000,000,000 which continued subject to the act on June 30, 1950 as registered holding companies or subsidiaries thereof. Of this latter number, 25 companies with assets of approximately \$1,200,000,000 are expected to remain subject to regulation by the Commission indefinitely as components of simplified and integrated holding company systems meeting all of the requirements of section 11 (b).

During the entire 15-year life of the statute, 751 companies with assets of \$10,326,000,000 have been divested from holding company control and are, therefore, no longer subject to regulation by the Commission. Divested companies in the "still subject" category for the 15-year period number 233 with aggregate assets of \$5,692,000,000.

Of this number, 166 companies with assets of \$4,541,000,000 are presently expected to continue in operation as holding company systems subject to the Commission's regulatory supervision under the act.

Analyses of these divestments by types of companies and method of divestment are presented in the following tables.

*Electric, gas, and nonutility companies divested under the Public Utility Holding Company Act of 1935 (no longer subject to the act as registered holding companies or subsidiaries thereof as of June 30, 1950)*

Companies	Dec. 1, 1935 to June 30, 1950		July 1, 1949 to June 30, 1950	
	Number of companies	Assets <sup>1</sup>	Number of companies	Assets <sup>1</sup>
Electric utility.....	245	\$8,488,717,201	28	\$1,953,578,329
Gas utility.....	147	696,168,110	10	137,363,968
Nonutility.....	359	<sup>2</sup> 1,141,536,507	40	<sup>2</sup> 140,015,340
<b>Total.....</b>	<b>751</b>	<b>10,326,421,818</b>	<b>78</b>	<b>2,230,957,637</b>

<sup>1</sup> As of divestment date or year end next preceding date of divestment.

<sup>2</sup> A small percentage of the assets of nonutility companies was included in the consolidated assets of the electric and/or gas utilities.

*Estimated future status of companies and assets divested from holding companies Dec. 1, 1935, to June 30, 1950, and still subject to the Public Utility Holding Company Act as registered holding companies and subsidiaries thereof as of June 30, 1950*

	Companies divested				Assets divested			
	Electric	Gas	Non-utility	Total	Electric	Gas	Nonutility	Total
<b>A. Companies continuing in existence:</b>								
1. Companies and assets expected to remain under the act.....	110	30	20	160	\$3,520,330,798	\$894,742,595	\$111,233,692	\$4,516,307,085
2. Companies and assets expected to be released from jurisdiction of the act.....	5	6	9	20	226,259,859	130,193,604	1,996,897	358,450,360
3. Future status of companies and assets under the act cannot be estimated at this time.....		3	41	44		369,423,854	409,759,395	779,183,249
Totals—companies and their assets subject to the act and continuing in existence.....	115	39	70	224	3,746,590,657	1,384,360,053	522,989,984	5,653,940,694
<b>B. Companies dissolved or expected to dissolve; assets sold to other companies:</b>								
1. Assets expected to remain under the act.....	5	1		6	25,016,892	415,000		25,431,892
2. Assets expected to be released from jurisdiction of the act.....	1			1	222,588			222,588
3. Future status of assets under the act cannot be estimated at this time.....	2			2	12,516,195			12,516,195
Totals—companies dissolved or expected to dissolve; assets sold to other companies.....	8	1		9	37,755,675	415,000		38,170,675
Grand totals—companies and assets.....	123	40	70	233	3,784,346,332	1,384,775,053	522,989,984	5,692,111,369
<b>Summary—Total assets divested still subject to the act:</b>								
1. Total assets expected to remain under the act.....					3,545,347,600	885,157,595	111,233,692	4,541,738,977
2. Total assets expected to be released from jurisdiction of the act.....					226,482,447	130,193,604	1,996,897	358,672,948
3. Total assets, the future status of which under the act cannot be estimated at this time.....					12,516,195	369,423,854	409,759,395	791,699,444
Grand totals—assets divested and sold; still subject to the act.....					3,784,346,332	1,384,775,053	522,989,984	5,692,111,369

*Divestments by sales of partial segments of properties under the Public Utility Holding Company Act of 1935 ( no longer subject to the act as of June 30, 1950)*

	Dec. 1, 1935 to June 30, 1950		July 1, 1949 to June 30, 1950	
	Number of companies involved	Consideration received	Number of companies involved	Consideration received
Electric utility.....	87	\$91,172,569	5	\$1,661,423
Gas utility.....	24	11,205,516	-----	-----
Nonutility.....	49	37,074,458	5	9,464,703
<b>Total.....</b>	<b>160</b>	<b>139,452,543</b>	<b>10</b>	<b>11,126,126</b>

*Divestments of partial segments of electric and gas utility properties still subject to the Public Utility Holding Company Act as of June 30, 1950*

	Number of selling companies			Consideration received		
	Electric	Gas	Total	Electric	Gas	Total
<i>Dec. 1, 1935, to June 30, 1950</i>						
1. Purchasers expected to remain subject to the act.....	8	5	13	\$17,295,208	\$1,607,323	\$18,902,531
2. Purchasers expected to be released from jurisdiction of the act.....	2	2	4	317,969	638,000	955,969
3. Future status of purchasers cannot be estimated at this time.....	2	2	4	2,407,899	2,237,500	4,645,399
<b>Totals.....</b>	<b>12</b>	<b>9</b>	<b>21</b>	<b>20,021,076</b>	<b>4,482,823</b>	<b>24,503,899</b>
<i>July 1, 1949, to June 30, 1950</i>						
1. Purchasers expected to remain subject to the act.....	3	1	4	15,109,801	196,000	15,305,801
2. Purchasers expected to be released from jurisdiction of the act.....	-----	-----	-----	-----	-----	-----
3. Future status of purchasers cannot be estimated at this time.....	-----	-----	-----	-----	-----	-----
<b>Totals.....</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>15,109,801</b>	<b>196,000</b>	<b>15,305,801</b>

Further evidence of the impact upon the utility industry of the transition in ownership of operating companies under section 11 is afforded by noting the increase in trading activity in common stocks of the classes A and B electric utilities, as classified by the Federal Power Commission. At December 31, 1939, there were 383 companies in these categories and, of this number, only 56 companies or 14.6 percent had common stock in which there was some evidence of trading activity. At December 31, 1949, the total number of companies in classes A and B had declined to 316, but of this number, 130 or 41.1 percent had all or a substantial proportion of their common shares in the hands of the public and hence were listed on an exchange or traded in the over-the-counter market. Eight additional stocks became available for public trading during the period from January 1 to June 30, 1950. A few of the companies in this group remained subject to the Holding Company Act because they are holding com-

panies as well as operating companies, or because a portion of their common stock was still held by a holding company subject to future divestment. Most of the 130 companies, however, are now independent operating utilities no longer subject to Commission jurisdiction.

Of the balance of 186 companies whose stocks were not actively traded at the close of 1949, 109<sup>1</sup> were still subject to the Holding Company Act, although this number has been further reduced by divestments, mergers, and exemptions which have occurred in 1950. Most of the companies which are now subject to the Holding Company Act, and whose common stocks are not traded, are expected to remain in that status as subsidiaries of continuing holding companies. In these instances, however, the public has access to the common stocks of integrated parent holding companies which have gone through the processes of section 11.

### PROGRESS UNDER SECTION 11—SURVEY OF INDIVIDUAL SYSTEMS

During the past year the task of bringing the holding company systems into conformity with section 11 has gone forward at a rapid pace. Many of the important interpretive problems, which in earlier years required extensive consideration by the Commission as well as frequent judicial review, are now resolved and the patterns for achievement of compliance are well established. In addition, the condition of the security market during the past year has been generally favorable to the consummation of necessary portfolio security offerings.

Outstanding among the section 11 (e) plans (or segments thereof) consummated during the past fiscal year were those of the Commonwealth & Southern Corp., American Power & Light Corp., Niagara Hudson Power Corp. and United Light & Railways Co. During the same period, the extensive reorganization plans of Long Island Lighting Co. and Pittsburgh Railways Co. were approved by the Commission and, with court approval, were expected to be consummated within a short time.

The Commission also issued three supplemental orders which determined the respective rights of the preferred stockholders of Electric Bond & Share Co. and Federal Light & Traction Co. and the prior lien preferred stockholders of New England Public Service Co. to receive certain cash payments in addition to the sum of involuntary liquidating values and accrued dividends.

The achievements in these and other systems are described in the following summaries which set forth with respect to each of 19 systems the historical developments and current progress toward compliance with section 11.

#### Cities Service Company

Cities Service Co., at the time of its registration in 1941, was the top holding company in a system containing 125 companies of which 49 were electric and gas utility companies with consolidated assets of

<sup>1</sup>The balance of the classes A and B electric utilities consists of companies which are not subject to the Holding Company Act and whose stocks are not actively traded. Generally speaking, these are either subsidiaries of holding companies exempt from the provisions of the act or are companies of small size whose stocks are closely held.

approximately \$1,000,000,000. This system owned or operated properties in each of the 48 States and in several foreign countries. Utility properties were held by three subholding companies, Cities Service Power & Light Co., Federal Light & Traction Co., and Arkansas Natural Gas Corp., each controlling one or more utility systems.

In proceedings under section 11 (b) of the act, the Commission found that Cities should be limited in its operations to those of a single integrated gas utility system and required Cities to dispose of its other interests.<sup>2</sup> However, Cities expressed a desire to retain instead its nonutility businesses and, accordingly, the Commission modified its section 11 (b) (1) order so as to permit Cities to effect compliance by disposing of all of its utility interests.<sup>3</sup>

Cities Service Power & Light Co., pursuant to a plan approved on March 14, 1944,<sup>4</sup> simplified its corporate structure by eliminating its debentures and preferred stocks. In August 1946, Power & Light liquidated and dissolved, transferring to Cities its portfolio holdings.<sup>5</sup> These consisted of an interest of approximately 65 percent in Federal Light & Traction Co., the common stocks of four operating utility companies, Ohio Public Service Co., Spokane Gas & Fuel Co., the Toledo Edison Co., and Doniphan County Light & Power Co., and other miscellaneous holdings.

Federal Light & Traction Co. has likewise completed liquidation proceedings. A number of its smaller properties were sold to individuals or other private purchasers and the stock of Tucson Gas, Electric Light & Power Co. was sold to underwriters for public distribution. Federal also merged four of its subsidiaries to form Public Service Co. of New Mexico and the stock of this company was distributed to Federal's common stockholders.

Federal distributed to its preferred stockholders \$100 per share plus accrued and unpaid dividends, but the Commission at that time reserved jurisdiction with respect to the right of the preferred stockholders to receive any additional amount. This right was evidenced by certificates of contingent interest. By order dated June 19, 1950, the Commission determined this reserved issue and ordered that holders of the certificates be paid \$10 per share together with compensation for delay in payment at the rate of 5.45 percent per annum from October 2, 1947.<sup>6</sup>

On January 26, 1950, Arkansas Natural Gas Corp. filed a new plan under section 11 (e) designed to effect compliance with the requirements of section 11 (b). It provides for simplification of the company's corporate structure and for the disposition by Arkansas Natural, as a partial liquidating dividend, of its stock holdings in Arkansas-Louisiana Gas Co., a natural gas utility subsidiary. Its other subsidiary, Arkansas Fuel Oil Co., will then merge with Arkansas Natural. This plan is still pending before the Commission.

On April 24, 1947, the Commission approved a section 11 (e) plan filed by Cities for the simplification of its corporate structure. This plan provided for the issuance of approximately \$115,000,000 prin-

<sup>2</sup> Holding Company Act releases Nos. 4489 and 4551.

<sup>3</sup> Holding Company Act release No. 5350.

<sup>4</sup> Holding Company Act release No. 4944.

<sup>5</sup> Holding Company Act release No. 6865.

<sup>6</sup> Holding Company Act release Nos. 9931 and 9981.

cipal amount of new debentures to the holders of Cities' outstanding preferred and preference stocks representing a principal amount equivalent to the redemption prices of the three series of preferred and preference stocks plus accumulated dividend arrears of approximately \$50,000,000.<sup>7</sup> In addition, provision was made for the immediate retirement of approximately \$40,000,000 of the company's previously existing long-term debt and for the application of anticipated proceeds from the disposition of its utility subsidiaries to the retirement of the remaining old debt plus a reduction in the amount of the new debentures. Since consummation of that plan in June 1947, Cities has disposed of its interests in the common stocks of Public Service Co. of New Mexico (acquired through liquidation of Federal Light & Traction Co.), Ohio Public Service Co., and the Toledo Edison Co. Proceeds derived from the sales of these holdings together with other available cash have been employed to reduce the outstanding debt of Cities by more than \$87,400,000.

#### **The Commonwealth & Southern Corporation**

At the time of its registration as a public utility holding company in March 1938, the Commonwealth & Southern Corp. controlled a holding company system consisting of some 43 companies. Its principal subsidiaries were 11 public utility companies all of which rendered electric service and some of which also furnished gas, transportation, and other services. These companies conducted their operations in five Northern and six Southern States. Although some of the electric properties in the south were interconnected, the northern electric properties for the most part were situated in separate and distinct areas. The publicly held securities of the subsidiaries, consisting primarily of bonds and preferred stocks, aggregated about \$711,000,000 while Commonwealth's own debt securities and preferred stock totaled about \$52,000,000 and \$150,000,000 respectively. Thus the system had outstanding an extremely large amount of senior securities ranking ahead of Commonwealth's common stock. Dividends on this common stock had not been paid since March 1932 and dividends on the cumulative preferred stock had been paid at a reduced rate for several years resulting in dividend arrearages of about \$18,000,000.

Divestments from time to time eliminated from Commonwealth's holding company system all the transportation companies and nearly all the small nonutility companies. Commonwealth also sold its interests in three utility subsidiaries operating in Tennessee, South Carolina, and Indiana, and transferred its interests in the public utility companies which conduct integrated electric operations in Georgia, Alabama, Florida, and Mississippi to the Southern Co., a newly organized public utility holding company.

The past fiscal year witnessed the consummation of the final section 11 plan of Commonwealth, after its approval by this Commission<sup>8</sup> and upon order for enforcement by the District Court of the United States for the District of Delaware.<sup>9</sup> This plan, which became effec-

<sup>7</sup> Holding Company Act release No. 7368.

<sup>8</sup> Holding Company Act release No. 8633.

<sup>9</sup> 84 F. Supp. 809 (D. Del., 1949).

tive on October 1, 1949, provided for the distribution of common stock of Consumers Power Co. and Central Illinois Light Co., together with \$1 per share in cash, in exchange for the preferred stock of Commonwealth, and for the distribution of Commonwealth's remaining assets, after provision for its liabilities, in exchange for Commonwealth's common stock. These remaining assets consisted chiefly of common stock of the Southern Co. and Ohio Edison Co. Pursuant to the plan, Commonwealth was dissolved as of October 1, 1949, and is in the final stages of liquidation.

Thus the original system of 43 companies has been resolved into a number of independent operating companies, and two integrated regional holding company systems which are expected to continue under the jurisdiction of the Commission. One of these systems consists of Ohio Edison Co. and its subsidiary, Pennsylvania Power Co.; the other is composed of the Southern Co. and its 4 interconnected public utility subsidiaries.

In connection with the consummation of Commonwealth's plan, the Commission, in September 1949, approved an application to change the mutual service company of Commonwealth's holding company system into an independent service company.<sup>10</sup> The Commission, at the same time, approved the organization of a new company, Southern Services, Inc., to become a mutual service company for the subsidiary companies of the Southern Co.

#### **Electric Bond and Share Company**

The Electric Bond & Share Co. system was the largest to register under the Holding Company Act. At the time of its registration in 1938, it controlled 121 domestic subsidiaries including 5 major subholding companies with combined assets of nearly 3½ billion dollars. These subholding companies were American & Foreign Power Co. Inc., American Gas & Electric Co., American Power & Light Co., Electric Power & Light Corp., and National Power & Light Co. Of these, American Gas & Electric and American Power & Light have been severed from the system. Electric Power & Light has been dissolved pursuant to a plan consummated in May and July 1949. National Power & Light has disposed of substantially all of its holdings and has few remaining assets.

Pursuant to plans filed in 1945 and 1946, which were approved by the Commission and ordered enforced by the district court, Bond & Share paid \$100 per share, or an aggregate amount of \$104,328,000, to the holders of its \$5 and \$6 preferred stocks and, in addition, delivered to each of such holders a certificate evidencing the right to receive any additional amounts which the Commission or the courts might approve or direct.<sup>11</sup>

On April 7, 1947, Bond & Share filed plan II-B in which it proposed that no further payment be made to the certificate holders. On June 19, 1950, after hearings and oral argument, the Commission issued its order in connection with plan II-B and held that the holders of certificates issued with respect to the \$6 preferred stock should

<sup>10</sup> Holding Company Act release No. 9362.

<sup>11</sup> Holding Company Act release No. 6768.

receive \$10 per share together with compensation for delay in payment at the rate of 5.45 percent from March 6, 1947, and that no further payments should be made to holders of certificates issued with respect to the \$5 preferred stock.<sup>12</sup>

In the past, Bond & Share had filed plans with the Commission which contemplated the divestment of all of its public utility holdings in the United States in order that its status might be changed to that of an investment company. However, in September 1949, Bond & Share applied to the Commission for relief from its commitment to dispose of the stock of United Gas Corp. received in connection with the dissolution of Electric Power & Light Corp.

The plan described in this application contemplates the disposition of all domestic utilities other than United Gas, the creation of a "pool of capital" by Bond & Share to be invested in special situations and the exemption of Bond & Share from the Holding Company Act except with respect to reorganization proceedings affecting American & Foreign Power Co., Inc. and with respect to distributions of securities not theretofore authorized by the Commission. Hearings have been completed in respect to that phase of the proceeding involving Bond & Share's request for relief of its commitment to dispose of its holdings in United Gas Corp.

During December 1949, Bond & Share distributed and sold its holdings of the common stock of Middle South Utilities, Inc. which had been received in connection with the dissolution plan of Electric Power & Light Corp.<sup>13</sup> Subsequent to the close of the past fiscal year, Bond & Share filed an application to acquire 381,067½ shares of common stock of the Southern Co. in exchange for its holdings of 254,045 shares of common stock of Birmingham Electric Co.<sup>14</sup>

#### **American & Foreign Power Company, Inc.**

American & Foreign Power Co., Inc. (an Electric Bond & Share subsidiary) controls a mutual service company and some 70 subsidiary companies located in Central and South America, Cuba, Mexico, China, and India. Since the operations of all of Foreign Power's subsidiaries are in foreign countries, the Commission's principal concern is with respect to the simplification of the company's corporate structure and its relationship to Electric Bond & Share Co. Foreign Power's capital structure at December 31, 1949, consisted of debentures, serial notes, bank notes, three classes of preferred stock with dividend arrearages of some \$410,000,000, common stock, and option warrants. Bond & Share holds all the serial notes and substantial blocks of the junior securities.

On October 24, 1944, Foreign Power and Bond & Share filed a plan for the reorganization of Foreign Power. After extensive hearings, this plan was amended by the two companies and on November 19, 1947, the Commission approved such amended plan after the filing of certain additional modifications.<sup>15</sup> The plan, as approved by the Com-

<sup>12</sup> Holding Company Act release Nos. 9931 and 9930.

<sup>13</sup> Middle South Utilities, Inc., was organized in the preceding fiscal year as a new registered holding company to acquire a group of electric utility companies operating in the South Central States which were formerly direct subsidiaries of Electric Power & Light Corp.

<sup>14</sup> It is contemplated that Birmingham will ultimately be merged into Alabama Power Co., a subsidiary of the Southern Co.

<sup>15</sup> Holding Company Act releases Nos. 7815 and 7849.

mission, was subsequently approved by the United States District Court for the District of Maine.<sup>16</sup>

However, because the company could not effectuate the financing necessary to consummate the plan, both the district court and the Commission vacated their orders approving it. On May 2, 1949, the Commission issued an order pursuant to section 11 (b) (2) of the act requiring Bond & Share and Foreign Power to take steps to reorganize Foreign Power in such a manner that its resulting capital structure will consist only of common stock plus such amount of debt as will meet the applicable standards of the act.<sup>17</sup>

During December 1949, pursuant to authority granted by the Commission, Bond & Share transferred to Foreign Power \$19,500,000 principal amount of past due 6 percent debentures of Cuban Electric Co. and \$30,000,000 principal amount of past due serial notes of Foreign Power in exchange for \$49,500,000 principal amount of new 6-year notes of Foreign Power. This step was taken to facilitate the reorganization of Foreign Power's Cuban subsidiaries and to enable Foreign Power to obtain a bank credit of \$15,000,000.<sup>18</sup>

Early in 1950, Foreign Power prepared and made available to representatives of its security holders detailed information concerning the operations of the company and its subsidiaries. It invited suggestions from security holders with respect to a new overall reorganization plan. As of the close of the fiscal year, the company was considering such suggestions and contemplated filing a new plan within the next few months.

#### **American Power & Light Co.**

On August 22, 1942, American Power & Light Co. (an Electric Bond & Share subsidiary) was ordered to dissolve on grounds similar to those set forth with regard to National Power & Light Co. At the time of the issuance of this dissolution order, American controlled directly or indirectly 35 subsidiaries, 16 of which were public utility companies. American's capital structure consisted of long-term debt, two classes of cumulative preferred stock with dividend arrearages of more than \$35,000,000, and common stock. By the close of the past fiscal year, this company had accomplished the major phases of its program of compliance with section 11 and controlled only 2 utility subsidiaries.

Earlier steps taken by American included disposition of its interest in Nebraska Power Co., Arizona Light & Power Co., and New Mexico Electric Service Co. and retirement of its long-term debt. In October 1945, the Commission approved the formation by American of a new Texas holding company, Texas Utilities Co., which acquired from American its interest in Texas Electric Service Co. and Texas Power & Light Co. and from Electric Power & Light Corp., the latter's interest in Dallas Power & Light Co.

In April 1947, two other subsidiaries, Northwestern Electric Co. and Pacific Power & Light Co. were merged with Commission authorization. The stockholdings of American in Kansas Gas & Electric Co.

<sup>16</sup> 80 F. Supp. 514 (D. Me., 1947).

<sup>17</sup> Holding Company Act release No. 9044.

<sup>18</sup> Holding Company Act release No. 9589.

were disposed of in two public offerings made in May 1948 and July 1949.

In October 1949, the Commission approved the section 11 (e) plan of American<sup>19</sup> which was subsequently ordered enforced by the United States district court. The plan was consummated on February 15, 1950 and pursuant thereto, American distributed to its preferred stock and common stockholders its holdings of stock of Texas Utilities Co.,<sup>20</sup> Florida Power & Light Co., Minnesota Power & Light Co., and the Montana Power Co., as well as shares of new common stock in American. Coincidentally with this distribution, settlement of claims against Bond & Share by American and its subsidiaries was accomplished through the payment to American of \$2,500,000 by Bond & Share. Part of this amount was contributed by American to a number of its subsidiaries.

Prior to consummation of this plan, American sold its holdings of common stock of Pacific Power & Light Co. to a group of underwriters for a cash consideration of \$16,125,000. It has since proposed to distribute the proceeds of this sale to its present stockholders. The distribution was approved by the Commission in June 1950<sup>21</sup> and following the close of the fiscal year has been ordered enforced by the United States district court.

At June 30, 1950, American's remaining assets consisted of the common stock of the Washington Water Power Co., the common stock of Portland Gas & Coke Co., a substantial amount of cash and other miscellaneous assets. Portland Gas & Coke Co. has on file with the Commission an extensive plan of reorganization. Proceedings on this plan are now in progress.<sup>22</sup>

#### **Electric Power & Light Corp.**

At the time the Commission issued its dissolution order against Electric Power & Light Corp. (an Electric Bond & Share subsidiary), this company controlled directly or indirectly 24 subsidiaries, 10 of which were public utility companies under the act. Electric's capital structure at that time consisted of long-term debt, 3 classes of cumulative preferred stock with aggregate arrearages of \$53,000,000, common stock and option warrants. Before consummation of the final section 11 plan, which resulted in the dissolution of Electric during the past fiscal year, it had already disposed of its holdings in Idaho Power Co. and Dallas Railway & Terminal Co. through sales to the public. Its holdings in Dallas Power & Light Co. had been sold to the new Texas Utilities Co. organized by American Power & Light Co. Its holdings in Utah Power & Light Co. were disposed of pursuant to a reorganization of the latter company which provided, in part, for the reclassification of Utah's preferred and common stocks into a new common stock.<sup>23</sup> United Gas Corp., Electric's principal subsidiary, was reorganized under section 11 in a proceeding which resolved all claims of United

<sup>19</sup> Holding Company Act release Nos. 9359-A and 9389.

<sup>20</sup> In April 1950, the Commission granted an exemption to Texas Utilities Co. from the provisions of the act. This exemption granted pursuant to section 3 (a) was based upon the intrastate character of its utility operations. Holding Company Act release No. 9786.

<sup>21</sup> Holding Company Act release No. 9948.

<sup>22</sup> Holding Company Act release No. 9366.

<sup>23</sup> Holding Company Act release No. 6212.

and Electric against Electric Bond & Share Co., arising out of the formation and financing of United.<sup>24</sup>

In 1945, Electric retired its outstanding long-term debt with the proceeds derived from the disposition of properties described above and from retained earnings. In addition, the accounts and capital structures of Electric's remaining subsidiaries were brought into compliance with the requirements of the act.

The dissolution plan filed by Electric and approved by the Commission on March 7, 1949<sup>25</sup> was subsequently approved by the United States district court and by the Court of Appeals for the Second Circuit.<sup>26</sup> Stays were denied by the court of appeals and by the Supreme Court<sup>27</sup> and the plan was consummated by the end of July 1949. Under the plan a new holding company, Middle South Utilities, Inc., was created. It acquired Electric's holdings of the common stocks of Arkansas Power & Light Co., Louisiana Power & Light Co., Mississippi Power & Light Co., New Orleans Public Service Co., Inc., and Gentilly Development Co. The common stocks of Middle South and of the United Gas Corp. previously held by Electric were then distributed to Electric's stockholders in exchange for its outstanding securities. At the same time, a settlement of all suits and claims against Bond & Share by and on behalf of Electric and its subsidiaries was consummated with a cash payment of \$2,200,000 by Bond & Share.

Thus the Electric system as such has been entirely eliminated. The only aspect remaining for determination arises in connection with applications for compensation and reimbursement of expenses, aggregating approximately \$1,300,000. These are now pending before the Commission.

#### **National Power & Light Co.**

On August 23, 1941, pursuant to proceedings instituted by the Commission, National Power & Light Co. (an Electric Bond & Share subsidiary), was ordered to dissolve, because it constituted an undue and unnecessary complexity in the Bond & Share system.<sup>28</sup> At the time of the issuance of this order, National had 27 subsidiaries, 9 of which were public utility companies. The work of bringing about National's ultimate dissolution is now nearing completion. All of its long-term debt has been retired through the use of treasury cash and its preferred stock has been retired partly through a voluntary exchange for common stock of Houston Lighting & Power Co. and in part by cash at the rate of \$100 per share derived from the sale of other shares of Houston stock. In May 1946, the Commission approved a plan for the settlement of all suits and claims against Bond & Share by or on behalf of National, its subsidiary and certain former subsidiaries, through payment of \$750,000 by Bond & Share.<sup>29</sup>

This settlement was subsequently approved by the United States district court and in August 1946, National distributed the common stocks of Pennsylvania Power & Light Co., Carolina Power & Light Co. and Birmingham Electric Co., its principal remaining subsidiaries,

<sup>24</sup> Holding Company Act release No. 5271.

<sup>25</sup> Holding Company Act releases Nos. 8889 and 8906.

<sup>26</sup> 176 F. 2d 687 (C. A. 2, 1949).

<sup>27</sup> 337 U. S. 903 (1949).

<sup>28</sup> 9 S. E. C. 978.

<sup>29</sup> Holding Company Act release No. 6663.

pro rata to its common stockholders, including Bond & Share. After distribution of these companies, National's only remaining subsidiaries were Lehigh Valley Transit Co., the Memphis Street Railway Co., and Memphis Generating Co.

National's interest in Memphis Street Railway was subsequently eliminated through a reorganization plan consummated in May 1949. In May 1950, its security holdings in Memphis Generating Co. were sold to the Tennessee Valley Authority for a consideration of \$1,405,000. In April 1950, National also entered into a contract for the sale of its holdings of common stock of Lehigh Valley Transit Co. (received as a result of the reclassification of that company's stock pursuant to a section 11 (e) plan) to Cincinnati, Newport & Covington Railway Co., a nonaffiliated company. Upon consummation of this sale, National's only remaining assets will consist of 34,156 common shares of Pennsylvania Power & Light Co. and approximately \$2,475,000 in cash.

#### **General Public Utilities Corp.**

This company is the top holding company emerging from reorganization of the former Associated Gas & Electric Co. system. Associated Gas & Electric Co. and its immediate subsidiary Associated Gas & Electric Corp. registered as holding companies on March 28, 1938. At that time, the system consisted of 164 companies, including 11 subholding companies, and was unequalled for the complexity of its corporate structure. Four of the utility companies were as many as 6 tiers of subholding companies removed from the top holding company. The system was engaged in business in 26 States scattered from Maine to Arizona and in the Philippine Islands; the businesses included such diverse activities as electric, gas, water, ice, street railway, bus, heating, hotel, insurance, real estate, engineering, marine towing, toll bridge, coal mining, and ferry operations. Associated Gas & Electric Co., itself, had outstanding 10 different kinds of fixed-interest debt obligations, several series of income debentures, a number of securities variously known as convertible debenture certificates and convertible obligations, two different classes of preferred stock, a class A stock, a class B stock, a common stock and warrants to purchase common stock.

Most of Associated's subsidiaries also had senior securities outstanding in the hands of the public. The consolidated assets of the system were stated at a little over \$1,000,000,000 and the corporate assets of Associated Gas & Electric itself were stated at approximately \$450,000,000.

In 1940, Associated Gas & Electric Co. and Associated Gas & Electric Corp. filed petitions for reorganization pursuant to chapter X of the Bankruptcy Act. In 1942, pursuant to the provisions of section 11 (b) (1) of the act, the trustees of Associated Gas & Electric Corp. were ordered to divest themselves of all their interests in some 114 companies located primarily outside the 3 States of New York, Pennsylvania, and New Jersey, no determination being made at that time as to the status of the majority of the properties in these last-named States.<sup>30</sup> Of the 114 companies, 112 have been divested. The two

<sup>30</sup> 11 S. E. C. 1115.

that remain operate in the Philippine Islands and as to these our divestment order has been temporarily suspended.

As at January 1, 1946, a comprehensive plan of reorganization of Associated Gas & Electric Co. and Associated Gas & Electric Corp. was consummated pursuant to chapter X and section 11 (f) of the act. In place of the two companies and their many securities there was substituted a single company, General Public Utilities Corp., which had a security structure consisting of 10-year convertible debentures, bank loans, and common stock. The debentures were redeemed in 1947 and at June 30, 1950, GPU had outstanding only \$3,950,000 of notes payable to banks, maturing during the period 1951 to 1955, and common equity of \$120,000,000.

After consummation of the plan of reorganization in 1946, the assets of GPU consisted primarily of securities of three subholding companies which in turn controlled the operating utility properties. Two of these subholding companies have since been dissolved, and during the past fiscal year, all debt securities of the third company, Associated Electric Co., totaling over \$52,000,000, have been retired.

Funds for this purpose were derived principally from the proceeds of sales made by GPU of its common stock holdings in New York State Electric & Gas Corp. (\$35,282,208), Rochester Gas & Electric Corp. (\$22,998,726), and its preferred holdings in Staten Island Edison Corp. (\$4,000,000). With these proceeds, GPU made capital contributions totaling \$49,000,000 to Associated Electric, less the amount of \$1,492,704 representing consideration paid for 107,000 of its common shares repurchased from Associated Electric and canceled.

In March 1950, the Commission approved the sale by GPU of its common stock interest in Staten Island Edison Corp. to Consolidated Edison Co. of New York, Inc. for \$10,720,000. In May, it also approved the merger of Edison Light & Power Co. into Metropolitan Edison Co. The latter company is a direct subsidiary of GPU.

Since June 1949, section 11 (b) (1) proceedings have been continuing before the Commission for the purpose of determining what further steps should be taken by General Public Utilities to bring its system into conformity with the standards of that section. While these proceedings have been in progress, GPU has completed the divestment of all of its New York companies and contends that it should be permitted to retain its present group of subsidiaries in New Jersey and Pennsylvania as one or more integrated public utility systems and incidental businesses.

#### **International Hydro-Electric System**

At the time of registration, International Hydro-Electric System (IHES), a Massachusetts voluntary association, owned directly Gatineau Power Co., a Canadian public utility company, and two wholesale electric utilities operating in the United States. It also owned the equity in New England Power Association, which since its reorganization is known as New England Electric System (NEES). NEES was a holding company in its own right and while the managements of the two companies were interrelated they functioned separately. Accordingly the reorganizations of the two companies were handled in separate proceedings.

Originally, IHES had outstanding debentures due in 1944, preferred stock, class A stock, class B stock, and common stock. The company was in a precarious financial position, having a huge deficit in its earned surplus account. It performed no functions for its subsidiaries and voting control was vested in the stock junior to the preferred stock. Moreover, NEES, its subsidiary holding company, had two layers of intermediate holding companies beneath it, with the result that the corporate structures of both IHES and NEES violated the "great-grandfather clause" of section 11 (b) (2) of the act.

The Commission initiated proceedings under section 11 (b) (2) with respect to IHES. The first important step in these proceedings was to cause the cancellation of the class B and common stock. Subsequently, in 1942, the Commission directed IHES to liquidate and dissolve.<sup>31</sup> However, many system problems had to be resolved before the portfolio securities of IHES could be distributed. Among these were litigation of claims on behalf of IHES against its former parent, International Paper Co., the reorganization of NEES, and the merger of IHES's two New York subsidiaries into a single company. These matters were not fully disposed of until 1947, when the reorganization of NEES was completed and the sum of \$10,000,000, together with other considerations, was finally paid to IHES in settlement of the claims against International Paper Co.

The separate reorganization of NEES was, of itself, a major operation. NEES had five subholding companies, in two tiers, over its operating subsidiaries. Under a voluntary plan filed under section 11 (e) of the act the subholding companies were eliminated by the retirement of their securities in exchange for cash or new common stock of NEES.<sup>32</sup> NEES emerged from the reorganization with two classes of securities, debt and common stock, which replaced 18 classes of old securities. IHES now owns only 8 percent of the common stock of NEES, and is no longer a holding company with respect to it.

While it is contemplated that NEES will continue indefinitely as a registered holding company, steps are being taken toward the eventual liquidation and dissolution of IHES. During the past fiscal year, the Commission approved the second step of the Trustee's four phase plan of liquidation. This proposal was designed to eliminate all of IHES outstanding debentures which had previously been reduced by cash payments from \$1,000 to \$600 principal amount per unit. With the approval of the Commission<sup>33</sup> and the United States district court, the Trustee developed a plan which included (1) an exchange offer to the holders of the debentures of 600,000 shares of Gatineau Power Co. common stock, (2) an agreement for the underwriting of the sale or exchange of a minimum of 340,000 shares of Gatineau common with an option to the underwriters to purchase the balance of 260,000 shares and (3) the negotiation of a 2-year loan of not more than \$10,000,000 to secure the balance of funds required to retire the debentures not surrendered for exchange. Consummation of these transactions occurred at the close of the fiscal year.

<sup>31</sup> 11 S. E. C. 888.

<sup>32</sup> Holding Company Act release No. 6470.

<sup>33</sup> Holding Company Act release No. 9917.

**Long Island Lighting Co.**

On March 27, 1936, pursuant to section 3 (a) (1) of the act, the Commission granted Long Island, as a holding company, and each of its subsidiary companies as such, an exemption from all the provisions of the act.<sup>34</sup> However, on April 21, 1945, pursuant to section 3 (c), the Commission modified the exemption order so as to subject Long Island and its subsidiary companies to certain provisions of the act, particularly the reorganization provisions of section 11.<sup>35</sup> The order of modification was entered in view of the fact that the financial situation of Long Island and its subsidiaries had deteriorated materially since the entry of the exemption order. As the Commission noted in its opinion, Long Island, on December 31, 1935, was not in arrears on its preferred stock dividends whereas by September 30, 1944, an aggregate of \$10,384,075 of arrears had accumulated, which represented unpaid dividends for a period of 6½ years. Further, unpaid dividends on the publicly held preferred stocks of its public utility subsidiary companies had also accumulated to the extent of \$4,740,699. An analysis of the financial aspects of the system, including the foregoing accumulation of arrears, the grossly inflated property accounts, and the earnings history of the system, caused the Commission to conclude that the common stock of Long Island exercised voting control of the system with "disproportionately small investment."

In addition, Long Island, on December 16, 1944, after the Commission had instituted the modification proceeding, had filed in the office of the Secretary of State of the State of New York a certificate of reduction of capital which, among other things, provided for a reduction of 40 percent in the par value, redemption value, and future dividend rights of the preferred stock, and for the cancellation of the then existing common stock and the issuance of 503,800 shares of new common stock to its preferred and common stockholders on the basis of 1 share of new common stock for each share of preferred stock and for each 12 shares of common stock outstanding. Under such plan of recapitalization, the holders of the preferred stock would have received 50.38 percent of the new common stock and the holders of the common stock would have received 49.62 percent of the new common stock. The Commission commented on the plan, although the plan was not before it for determination, and the Commission stated that the plan failed to give adequate recognition to the rights and claims of the preferred stockholders and that it was extremely doubtful that the plan could be found to satisfy the "fair and equitable" standard of section 11 (e) or that the proposed capital structure could be approved under other standards of the act.

As a result of certain legal proceedings involving the Commission and Long Island, none of the certificates contemplated by the certificate of reduction of capital has been issued and none of the accounting entries contemplated in connection therewith has been made upon its books.<sup>36</sup> After the Commission entered its order modifying the ex-

<sup>34</sup> 1 S. E. C. 345.

<sup>35</sup> Holding Company Act release No. 5746.

<sup>36</sup> *S. E. C. v. Long Island Lighting Co.*, 59 F. Supp. 610 (E. D. N. Y. 1944), affirmed 148 F. 2d 252 (C. A. 2, 1945), a judgment vacated and remanded to the district court to dismiss the complaint on the ground the cause became moot. 325 U. S. 833 (1945).

emption of Long Island, the company, on April 23, 1945, filed a notification of registration as a holding company pursuant to section 5 (a) of the act.

Thereafter, on October 25, 1945, pursuant to section 11 (e), Long Island filed a plan which, as amended, provided for the consolidation of itself with its two principal subsidiary public utility companies. On November 9, 1945, the Commission instituted proceedings under section 11 (b) (2) directed to Long Island and each of its public utility subsidiary companies in order to determine whether voting power was unfairly and inequitably distributed among the security holders of each of the companies and what action, if any, should be taken.

The two proceedings were consolidated and, on August 25, 1948, the Commission entered an order in the section 11 (b) (2) proceeding which ordered each of the companies to be recapitalized on the basis of a single class of stock, i. e., common stock, and that the new common stock be distributed among the holders of each company's preferred and common stock in a fair and equitable manner.<sup>37</sup> Subsequently, on November 16, 1949, the Commission approved the section 11 (e) plan which provided for the consolidation of the three companies, the resultant consolidated company to have outstanding only one class of new common stock, which was to be apportioned among the common stockholders of Long Island and the preferred stockholders of the three companies.<sup>38</sup> In place of the preferred stocks of the three companies, having an aggregate par value of \$34,792,200 with dividend arrears thereon totaling \$27,406,105 as at June 30, 1950, and of old common stock having a stated value of \$3,000,000, the consolidated company would have new common stock which at June 30, 1950, would have a stated value of \$33,650,848. The accounts of the consolidated company would be stated in such form as to exclude all items in its property accounts in excess of original cost and all its accounts would be stated in conformity with the requirements of the New York Public Service Commission.

The plan was approved and ordered enforced by the United States district court on February 17, 1950.<sup>39</sup> Upon appeal, by opinion entered June 1, 1950, the court of appeals affirmed the decision on all issues, except with respect to one item as to which the proceeding was remanded to the Commission.<sup>40</sup> On July 5, 1950, subsequent to the close of the fiscal year, upon the filing with the court of appeals by the Commission of a petition for modification of decision, the court of appeals modified its former opinion and affirmed the order of the district court in all respects.<sup>41</sup> A petition for certiorari was filed.

#### **The Middle West Corp.**

The Middle West Corp. (Middle West), successor in bankruptcy to Middle West Utilities Co., registered under the act in December 1935. At that time it had 152 subsidiaries, including 62 electric or gas utility companies and 15 subholding companies; 16 of the 152 sub-

<sup>37</sup> Holding Company Act release No. 8449.

<sup>38</sup> Holding Company Act releases Nos. 9473 and 9510.

<sup>39</sup> 89 F. Supp. 513 (E. D. N. Y.).

<sup>40</sup> 183 F. 2d 45 (C. A. 2).

<sup>41</sup> 183 F. 2d 45, 52 (C. A. 2).

subsidiaries were themselves in process of reorganization under the Bankruptcy Act, and these, in turn, controlled an additional 74 of the system companies. In contrast, Middle West at June 30, 1950 had divested itself of every subsidiary company except United Public Service Corp. which is presently in liquidation.

As a result of proceedings under section 11 (b) (1) of the act, Middle West was ordered in January 1944 to sever its relations with all properties, operations, and companies except Central Illinois Public Service Co. and its subsidiaries, and Kentucky Utilities Co. and its subsidiaries, jurisdiction being reserved to consider the retainability of these companies.<sup>42</sup>

In 1947, however, the management of Middle West decided to dissolve the corporation and a resolution was presented to stockholders who voted in favor of the dissolution. Pursuant to this decision, Middle West distributed to its stockholders its principal assets, consisting of the common stocks of Central Illinois Public Service Co., Kentucky Utilities Co., Public Service Co. of Indiana, and Wisconsin Power & Light Co.<sup>43</sup> Many of its smaller properties were sold or merged into other companies in the system.

In April 1946, the Commission approved the creation of the Central & South West Corp. system<sup>44</sup> which is comprised of four electric utility companies of substantial size. The new system was formed by merging two subholding companies which between them had four outstanding issues of 6 and 7 percent preferred stock with dividend arrearages totaling about \$16,000,000. These shares were retired at the redemption price plus accrued dividends. The merger also resulted in increasing the combined common equity from 9.5 percent of total capitalization and surplus to 29.5 percent. The new Central & South West Corp. continues to be subject to the act as a registered holding company controlling an integrated electric utility system.

During the past fiscal year, Middle West has completed its divestment program by disposing of its interest in four service companies and selling its common stockholdings in Upper Peninsula Power Co. and in Middle West Utilities Co. of Canada, Ltd. In addition, Sand Springs Water Co., a nonutility subsidiary, sold its water plant and distribution system and is in process of liquidation. On June 5, 1950, the Commission approved the final plan of Middle West under which it will make an initial cash distribution to its stockholders and thereafter seek to convert all remaining assets to cash, in order to effect a final distribution after December 31, 1951, and bring about its liquidation and dissolution.<sup>45</sup> This plan was approved by the United States district court on June 29, 1950.

#### **National Gas & Electric Corp.**

National Gas & Electric Corp. (National) registered under the Holding Company Act in December 1935. It had nine subsidiary companies engaged in the production and sale of manufactured and natural gas and oil as well as the sale of electric energy. Its properties were scattered over the six States of Ohio, Michigan, Virginia,

<sup>42</sup> 15 S. E. C. 309.

<sup>43</sup> Holding Company Act releases Nos. 8642 and 8788.

<sup>44</sup> Holding Company Act release No. 8606.

<sup>45</sup> Holding Company Act release No. 9899.

North Carolina, South Carolina, and Colorado. At the time National registered with the Commission, the total assets of the system amounted to \$6,461,000. Thereafter, through the process of merging some properties and selling others, the system was reduced to four subsidiaries. A final plan under section 11 (e) was filed in June 1949. The Commission approved the plan on November 30, 1949,<sup>46</sup> after which it was ordered enforced by the United States district court.

The plan provided, among other things, for the merger of National into its subsidiary, National Gas & Oil Corp. (Gas & Oil), and for the distribution to National's common stockholders, in respect of each share held, of one share of new common stock of Gas & Oil and one-half share of new common stock of another subsidiary, National Utilities Co. of Michigan (Michigan).

The plan effected a divorcement of Michigan from the system, eliminated National as a holding company and resulted in Gas & Oil, a nonutility, becoming the parent of Newark Consumers Gas Co., a utility, and the Fritz Oil & Gas Co., a nonutility. The surviving Gas & Oil and its two subsidiaries are all Ohio corporations and operate within the State of Ohio.

On June 16, 1950, the Commission issued an order exempting Gas & Oil and its subsidiaries from the provisions of the Holding Company Act pursuant to section 3 (a) (3).<sup>47</sup>

#### **New England Public Service Co.**

New England Public Service Co. (NEPSCO), at the time of its registration, had five major operating subsidiaries, of which two operated in Maine, one in New Hampshire and two in New Hampshire and Vermont. It also owned, through an industrial subsidiary, five textile mills, a paper company, and a forest products manufacturing company. The company was heavily overcapitalized, having outstanding two classes of prior lien preferred stock and, junior thereto, four classes of preferred stock. All these preferred issues had substantial dividend arrearages. As a result of simplification proceedings instituted by the Commission under section 11 (b) (2) of the act, the company was directed, in 1941, to reorganize on a one-stock basis, or, in the alternative at its election, to liquidate and dissolve.<sup>48</sup> The company did not appeal this decision and has elected to dissolve. The industrial companies were sold for cash. NEPSCO has merged Cumberland County Power & Light Co. into Central Maine Power Co. It has also caused Public Service Co. of New Hampshire to acquire the New Hampshire properties of the Twin State Gas & Electric Co. and Central Vermont Public Service Corp. to acquire the Vermont properties of the Twin State company.

In 1947, the Commission approved a modified plan under section 11 (e) as a result of which NEPSCO paid \$100 per share plus accrued dividends on its outstanding \$7 series and \$6 series prior lien preferred stocks and deposited in escrow the difference between these payments and voluntary redemption values on the two series. The Commission at that time reserved for future determination the question as to what

<sup>46</sup> Holding Company Act release No. 9531.

<sup>47</sup> Holding Company Act release No. 9929.

<sup>48</sup> 9 S. E. C. 239.

additional amounts, if any, should be paid on these shares. In June 1950 it acted on this issue and ordered that the \$7 series should receive an additional payment of \$12.25 per share and the \$6 series \$2.25 per share, together with compensation for delay in payment at the rate of 5.5 percent per annum from October 10, 1947.<sup>49</sup> Since the close of the fiscal year application has been made to the United States district court for enforcement of this order.

In February 1950, a motion was filed with the Commission by counsel for a protective committee for the holders of preferred stock requesting an order of the Commission affirmatively directing NEPSCO on or before May 15, 1950, to sell 200,000 shares of the common stock of Public Service Co. of New Hampshire, or, in the alternative, a sufficient number of shares of common stock of Central Maine Power Co. to raise an equivalent sum, and to apply the proceeds of such sale to the payment of outstanding notes payable to banks which then aggregated \$9,900,000.

Oral argument was held before the Commission on this motion after which the Commission issued a memorandum opinion<sup>50</sup> in which it afforded NEPSCO an opportunity to amend a pending declaration so as to effect a sale. Subsequently, NEPSCO filed a new declaration proposing to sell, at competitive bidding, 260,000 shares of its holdings of the common stock of Central Maine Power Co.

Superimposed on NEPSCO is Northern New England Co., a voluntary association, which owns approximately one-third of the former company's common stock. The Commission has approved a plan for the partial liquidation of this company by distribution of cash to its stockholders.<sup>51</sup> At the same time it directed that the company liquidate and dissolve. Northern New England Co. is awaiting the filing and approval of a final plan by NEPSCO, in which the participation to be accorded to the common stock of the latter company will be determined, before it can take the required steps to complete its liquidation.

#### **Niagara Hudson Power Corp.**

In 1942, the Commission instituted proceedings under section 11 (b) (2) in respect of the Niagara Hudson Power Corp. system at which time it included 26 corporate entities. Among the more important problems under section 11 (b) (2) were those related to the system's western companies, which were subsidiaries of Buffalo Niagara & Eastern Power Corp. (BNE), a holding company subsidiary of Niagara Hudson. In June 1944, an order was issued requiring BNE to recapitalize on a one-stock basis.

BNE and Niagara Hudson then filed plans providing for the consolidation of BNE and certain of its subsidiaries into Buffalo Niagara Electric Corp. as a surviving company.<sup>52</sup> To accomplish this reorganization, Niagara Hudson used funds totaling approximately \$63,000,000 in retiring the publicly held second preferred stock of BNE at its call price plus accrued dividends. These funds were obtained from bank loans, treasury cash, and proceeds from the sale of

<sup>49</sup> Holding Company Act releases Nos. 9931 and 9982.

<sup>50</sup> Holding Company Act release No. 9781.

<sup>51</sup> Holding Company Act release No. 8401.

<sup>52</sup> Holding Company Act release No. 6083.

certain of Niagara Hudson's portfolio securities. The total effect of plans and refinancing proposals was to eliminate, by June 30, 1949, 13 corporate entities from the system and to simplify security structures of the remaining subsidiaries.

During the past fiscal year Niagara Hudson carried forward its program of merger and consolidation which has now resulted in the formation of one of the largest utility operating companies in the United States. Preliminary steps in this program included the merger of Ticonderoga Electric Light & Power Co. into New York Power & Light Corp. in July 1949; and in September 1949, the mergers of Old Forge Electric Corp. into Central New York Power Corp. and Union Bag & Paper Corp. into New York Power & Light Corp.

On January 5, 1950, the "Consolidation plan" and the "Dissolution plan" of Niagara Hudson became effective pursuant to the order of this Commission<sup>53</sup> and the subsequent order of the United States district court.<sup>54</sup> An appeal taken in respect to one phase of the "Dissolution plan" is still in litigation. In accordance with these plans, the principal remaining subsidiaries of Niagara Hudson, Buffalo Niagara Electric Corp., Central New York Power Corp., and New York Power & Light Corp., were merged into a new operating utility company, Niagara Mohawk Power Corp. The common stocks of the former subsidiaries were converted into shares of Niagara Mohawk which were then reclassified into class A stock and new common stock.

Niagara Hudson also contributed to Niagara Mohawk its common stock holdings in its other subsidiaries including Frontier Corp., the Oswego Canal Co., and St. Lawrence Co., Ltd., together with miscellaneous investments.

The class A stock of Niagara Mohawk was distributed in exchange for the outstanding preferred stock of Niagara Hudson. Holders of Niagara Hudson common shares had the right until July 5, 1950, either to exchange their shares together with a cash payment for shares of Niagara Mohawk or to retain their shares until the final distribution of Niagara Hudson's holdings is effected. Cash payments made by holders effecting the immediate exchange were applied to the repayment of Niagara Hudson's outstanding bank loan.

After the closing date of the exchange period, July 5, 1950, Niagara Hudson still held 2,209,955 shares of Niagara Mohawk Power Corp. common stock as compared with 7,473,172 shares originally received. Its bank loan had been reduced from \$9,580,000 to \$1,500,000.

In application for a supplemental order in connection with the "Dissolution plan," filed after the close of the fiscal year, Niagara Hudson has proposed steps to expedite the liquidation of its remaining indebtedness and the distribution of its remaining holdings in Niagara Mohawk. The Commission issued its supplemental order on September 7, 1950<sup>55</sup> approving the final steps in connection with the consummation of the "Dissolution plan," and on September 28, 1950 the United States District Court of the Northern District of New York issued its order enforcing the supplemental order of the Commission.

<sup>53</sup> Holding Company Act release No. 9270.

<sup>54</sup> 86 F. Supp. 697 (N. D. N. Y., 1949), reversed and remanded, *sub. nom.*, *Leventritt v. S. E. C. et al.*, 179 F. 2d 615 (C. A. 2, 1950). Petition for cert. filed July 20, 1950.

<sup>55</sup> Holding Company Act release No. 10083.

**The North American Co.**

At its registration in 1937, the North American Co. was the top holding company in a system, which through several subholding companies, controlled 36 utility and 46 nonutility subsidiaries. Electric utility operations were conducted by system companies in 10 States and the District of Columbia; gas utility operations were conducted in 9 States. The consolidated balance sheet of North American and its subsidiaries showed assets of over \$900,000,000, and, through the direct and indirect ownership of securities, North American controlled an empire whose aggregate value was stated to be approximately \$2,200,000,000.

During the last 5 years, North American has taken substantial steps toward compliance with the Commission's section 11 (b) (1) order, which was issued in 1942.<sup>56</sup> By a number of means, including dividend payments in portfolio securities, outright distribution, the issuance of purchase warrants to its stockholders and sale at competitive bidding, North American has disposed of nearly all of its assets except Union Electric Co. of Missouri, Missouri Power & Light Co., and several minor nonutility subsidiaries.

Among major interests which have been divested are those in Pacific Gas & Electric Co., Cleveland Electric Illuminating Co., Wisconsin Electric Power Co., Potomac Electric Power Co., Detroit Edison Co., Illinois Power Co., St. Louis County Gas Co., Northern Natural Gas Co., Des Moines Electric Light Co. and Illinois Terminal Co.

During the past fiscal year North American sold its interest in the capital stock of Kansas Power & Light Co. and its holdings in Capital Transit Co. It distributed its investment in West Kentucky Coal Co. after transferring a portion of that company's assets to the Poplar Ridge Coal Co. which was organized as a subsidiary of Union Electric Co. of Missouri.

The North American Co. which, concurrently with its divestment program, eliminated all of its outstanding debt and preferred stock, has indicated its intention to submit to the Commission a plan designed to effect its merger into Union Electric Co. of Missouri its principal remaining utility subsidiary. However, no formal application in respect to such a program had been received at the close of the fiscal year.

**North Continent Utilities Corp.**

North Continent Utilities Corp. registered as a holding company in 1938 and, at that time, owned or controlled nine utility and eight non-utility subsidiary companies. The subsidiaries were engaged in the electric, gas (manufactured and natural), water, ice, cold storage, coal, coke, oil, feed, and telephone business. The operations of the subsidiary companies were conducted in seven widely separated States, Arizona, Colorado, Illinois, Kansas, Minnesota, Montana, and New Mexico, and in the provinces of Ontario and Alberta, Canada.

In 1943, North Continent filed a plan under section 11 (e) which, as amended, provided generally for the sale or distribution in kind of its interests in its subsidiaries and application of the proceeds to the retirement of its bonds and preferred stock. North Continent had

<sup>56</sup> 11 S. E. C. 194 (1942), affirmed *sub. nom.* *The North American Co. v. S. E. C.*, 133 F. 2d 148 (C. A. 2, 1943), affirmed 327 U. S. 686 (1946).

paid no dividends on its stock for a considerable time prior to a recapitalization effected in 1935 and had paid none thereafter. At the time the plan was filed the company was faced with the early maturity of its bonded indebtedness. The plan was consolidated with proceedings instituted by the Commission and was approved in November 1943,<sup>57</sup> the Commission ordering North Continent to take such steps as may be necessary to cause its liquidation and dissolution and reserving jurisdiction with respect of the treatment to be accorded the preferred and common stockholders.

The plan was enforced by a United States district court shortly thereafter.<sup>58</sup> Pursuant to the plan, North Continent disposed of six electric and gas companies, principally by piecemeal sales to cooperatives and municipalities, and two nonutility companies by sales of securities to the public. North Continent from time to time applied the proceeds from these sales to the reduction of its bonds and these were fully retired on July 1, 1947.

In February 1950, the Commission approved a supplemental plan<sup>59</sup> which provided for the allocation of North Continent's assets between its preferred and common stockholders and for the immediate distribution to its stockholders of all of its available cash and all of its portfolio securities, except its investment in one foreign public utility company which was not in distributable form. Pending disposition of the foreign subsidiary, North Continent was to be recapitalized on a one-stock basis. This program was ordered enforced by the United States district court in April and was consummated on June 1, 1950.

#### **Standard Power & Light Corp. and Standard Gas & Electric Co.**

The Standard holding company system presented in extreme degree the evils of corporate pyramiding and scatteration of properties which the integration and simplification provisions of the act were designed to eliminate. In 1936, the Standard system consisted of 105 active companies operating in 20 States and in Mexico; it contained 9 registered holding companies including the 2 top companies, Standard Power & Light Corp. and its subsidiary, Standard Gas & Electric Co. By June 30, 1950, the number of active companies had been reduced to 58 (including 43 street railway companies, which are part of one transit system) operating in 5 States. The important remaining utility subsidiaries of the system are Duquesne Light Co. (a subsidiary of Philadelphia Co.), Wisconsin Public Service Corp., and Oklahoma Gas & Electric Co.

The most significant developments in the Standard system during the last fiscal year were concerned with subholding companies of Philadelphia Co.

On October 10, 1949, the United States Court of Appeals for the District of Columbia unanimously affirmed an order of the Commission dated June 1, 1948, issued under section 11 (b) of the act, directing Philadelphia Co. to dispose of its interests in the gas utility and transportation business and thereafter to liquidate and dissolve.<sup>60</sup>

<sup>57</sup> 14 S. E. C. 656 (1943).

<sup>58</sup> 54 F. Supp. 527 (D. Del., 1944).

<sup>59</sup> Holding Company Act release No. 9682.

<sup>60</sup> *Philadelphia Co. v. S. E. C.*, 177 F. 2d 720 (C. A. D. C., 1949).

In March 1950, Philadelphia Co. effected a reorganization of its natural gas subsidiaries by transferring its stockholdings in Kentucky-West Virginia Gas Co. and Pittsburgh & West Virginia Gas Co. to Equitable Gas Co.<sup>61</sup> and thereafter sold to underwriters the common stock of Equitable Gas Co. for \$45,755,000. Philadelphia Co. utilized the major portion of the proceeds from this sale to redeem all of its outstanding funded debt amounting to approximately \$36,000,000. In the reorganization of its former gas subsidiaries, Philadelphia Co. received \$17,500,000 principal amount of debentures of Equitable Gas Co. In June 1950, Philadelphia Co. sold \$11,000,000 of these debentures utilizing the proceeds to redeem all of its outstanding \$6 cumulative preference stock, aggregating \$10,000,000 in par value. Thus during the fiscal year Philadelphia Co. eliminated \$46,000,000 in face amount of its senior securities.

Substantial progress was also made toward the reorganization of Philadelphia Co.'s subsidiary, Pittsburgh Railways Co., which has been in bankruptcy since 1938. Pittsburgh Railways operates the transit system in the city of Pittsburgh under lease and operating agreements covering the properties owned by 55 separate corporations. Philadelphia Co. itself has guaranteed the payment of lease rentals, bond interest, taxes, and other obligations of some of the underlying companies. During 1949, hearings were held on a combined plan for reorganization of the railways system which was filed jointly by Philadelphia Co. and the trustee of Pittsburgh Railways under section 11 of the act and chapter X of the Bankruptcy Act. The plan provides for the formation of a new company to replace all the existing companies; the security structure of the reorganized company would consist of common stock, not more than \$6,000,000 principal amount of first mortgage bonds, and equipment obligations. Under the plan, Philadelphia Co. would be discharged from its guaranty obligations and would receive 51 percent of the common stock of the new company. The balance of the common stock, all the bonds and approximately \$17,000,000 of cash would be distributed to the public holders of securities of Pittsburgh Railways and its underliers.

The Commission approved the combined plan on March 27, 1950, subject to the subsequent reexamination of certain aspects of the plan<sup>62</sup> and on May 1, 1950, the United States District Court for the Western District of Pennsylvania entered its order approving the plan. Thereafter, the plan was submitted to the security holders for their approval. Subsequent to the close of the fiscal year, the necessary assents to the plan had been secured and it is expected that the plan will be consummated in the near future.

In October 1949, Standard Gas filed an amended plan for simplification of the corporate structure of the Philadelphia Co. system. It provided, among other things, for the elimination of the noncallable preferred stocks of Philadelphia Co. and its inactive subsidiary, The Consolidated Gas Co. of the City of Pittsburgh. Extensive hearings were held, but were adjourned pending consummation of the reorganization of the gas properties and the sale of the common stock of Equitable Gas Co. The plan was thereafter further amended to pro-

<sup>61</sup> Holding Company Act releases Nos. 9740 and 9786.

<sup>62</sup> Holding Company Act release No. 9759.

vide for the retirement of all of Philadelphia Co.'s remaining preferred stocks and the preferred stock of The Consolidated Gas Co. of the City of Pittsburgh, having aggregate par values of approximately \$31,700,000.

Standard Gas & Electric Co. in September 1949, also effected the sale of 250,000 shares of its common stock holdings in Louisville Gas & Electric Co. for \$7,441,250. Since this reduced Standard's voting interest in Louisville to less than 10 percent, that company is no longer a statutory subsidiary in the Standard system.

#### **The United Corp.**

The United Corp. registered as a holding company in March 1938, at which time its portfolio was comprised largely of the common stock of four holding company subsidiaries. These subsidiaries, with the percentage of voting control held by United, were as follows: The United Gas Improvement Co., 26.2 percent; Public Service Corp. of New Jersey, 13.9 percent; Niagara Hudson Power Corp., 23.4 percent; and Columbia Gas & Electric Corp. (now the Columbia Gas System, Inc.), 19.6 percent.

In June 1941, the Commission instituted proceedings with respect to United under sections 11 (b) (1) and 11 (b) (2) of the act. At that time the 125 companies in the United system operated in 22 States and in Canada. Their combined total assets approximated \$2,765,000,000. Subsequently, the Commission by order dated August 14, 1943, directed United to change its existing capitalization, which consisted of preferred and common stocks, to one class of stock and to cease to be a holding company.<sup>63</sup>

United has since retired all of its preferred stock by exchanging therefor certain portfolio securities and cash. Through the retirement of its preferred stock and sales of portfolio securities, United reduced its percentage of voting securities to 7.7 percent in UGI, 6.41 percent in Columbia and 5.71 percent in Public Service. Through the reorganization of Public Service it had, however, acquired another subsidiary, South Jersey Gas Co., 28 percent of whose voting securities it now holds.

On October 20, 1949, the Commission approved a plan filed by United whereby it distributed to its stockholders, as a special dividend, one-tenth of a share of common stock of its subsidiary, Niagara Hudson Power Corp., for each share of United common.<sup>64</sup> This distribution reduced United's holdings of the outstanding voting securities of Niagara Hudson from 28.5 percent to 14.1 percent. Approval of this plan was granted on condition that United undertake to file promptly a comprehensive plan under section 11 (e) detailing the remaining steps to be taken, and the timing thereof, to complete its transformation into an investment company. Such a plan was filed in December 1949.

Among the provisions contained in this proposed program, was the exchange by United of its holdings of preferred stock in Niagara Hudson for the class A stock of its successor, Niagara Mohawk Power Corp., and the exchange of its common holdings in Niagara Hudson,

<sup>63</sup> Holding Company Act release No. 4478.

<sup>64</sup> Holding Company Act release No. 9431.

together with the requisite amount of cash, for new common shares of Niagara Mohawk. It also proposed the prompt sale of the Niagara Mohawk class A stock to be received by United. These transactions were approved by Commission orders issued in February and April 1950.<sup>65</sup> Jurisdiction was reserved on other matters and the plan has been amended several times since initial filing.

As amended, the pending proposals include (1) the sale by United of its entire interest in South Jersey Gas Co.; (2) an offering to each qualified common stockholder of United, owning 99 shares or less, to purchase his shares for cash; (3) an offering to holders of more than 100 shares to exchange their stock for the common shares of Niagara Mohawk; and (4) the sale by United of sufficient shares of its holdings in the Columbia Gas System, Inc., the United Gas Improvement Co. and Niagara Mohawk Power Corp. to reduce its holdings in each to not in excess of 4.9 percent of the voting stock outstanding.

#### **The United Light & Railways Co.**

On February 18, 1938, the United Light & Power Co. registered as a holding company with a system comprised of 10 holding companies, 7 of which were registered holding companies, 21 electric and gas utility subsidiaries, 20 nonutility subsidiaries, and a service company. In 1941 the Commission directed the dissolution of United Light & Power Co. and United American Co., a subholding company.<sup>66</sup> By a subsequent order the Commission directed the divestment of the interests of United Light & Power Co. and the subholding companies in 22 subsidiaries in order to comply with the standards of section 11 of the act.<sup>67</sup>

After a series of transactions designed to enable United Light & Power to comply with the outstanding order of dissolution, the Commission approved a plan which provided, in substance, for the distribution of United Light & Power's remaining investment, the common stock of United Light & Railways Co., to its common stockholders.<sup>68</sup> The residual net assets of United Light & Power were transferred to United Railways, and United Light & Power was dissolved. Thus, United Railways became the system's top holding company with two principal subholding company systems, Continental Gas & Electric Corp., and American Light & Traction Co.

In June 1947 United Railways and American Light filed a plan which provided, among other things, for the divestment by United Railways of its entire interest in American Light and the continuation of the latter as a registered holding company "controlling" an integrated gas utility system. American Light had, in the interim, embarked on a program to finance and construct a large interstate natural gas pipeline from the operating areas of its natural gas subsidiaries to fields in the Hugoton area. Other more important provisions of the plan provided for the divestment of the common stock of Detroit Edison Co. and Madison Gas & Electric Co. held by American Light and United Railways and the retirement of the preferred

<sup>65</sup> Holding Company Act releases Nos. 9652 and 9821.

<sup>66</sup> 8 S. E. C. 837.

<sup>67</sup> 9 S. E. C. 833.

<sup>68</sup> Holding Company Act release No. 3242 and 10 S. E. C. 945.

stocks of the two holding companies. After appeals were taken by two stockholders, this plan was approved by the court of appeals in November 1948<sup>69</sup> and consummated early in 1949. American Light changed its name and is now known as the American Natural Gas Co.

In February 1949, United Railways and Continental publicly announced their intention to liquidate and dissolve and a plan under section 11 (e) was accordingly filed with the Commission. On December 30, 1949, the plan was approved by the Commission subject to certain amendments including provision for cumulative voting rights and the listing on a national securities exchange of the subsidiary stocks being distributed within 6 months after the date they became available for distribution.<sup>70</sup> The company filed appropriate amendments to comply with these requirements.

Pursuant to the plan, the common stocks of St. Joseph Light & Power Co. and Iowa Power & Light Co. have been distributed and the stock of Kansas City Power & Light Co. has been sold to the stockholders of United Railways pursuant to a rights offering. In addition, two mining company investments have been disposed of and Continental has been liquidated. Subsequent to the close of the fiscal year, distribution of the stocks of Eastern Kansas Utilities, Inc. and Iowa-Illinois Gas & Electric Co. was also effected. In connection with each of these divestments certain other transactions have been required which were designed to strengthen the capital structures of those operating utilities being freed from holding company control.

#### THE CONTINUING HOLDING COMPANY SYSTEMS

Although enforcement of the Holding Company Act is bringing about the complete liquidation of many of the multitiered and widely scattered holding-company systems of the past, it will not eliminate the holding company as a useful corporate device in the public utility field. A holding company system which can measure up to the physical integration and corporate simplification requirements of section 11 (b) is expressly permitted by the act to function and develop as a regional system. Such a system, of course, remains subject to the general, regulatory jurisdiction of the Commission with respect to financing, intercompany transactions, servicing arrangements, and other transactions in order to insure that there will be no recurrence of those abuses which reduced the holding company to a state of public disfavor prior to passage of the act.

A number of the continuing systems have completed their compliance programs; others still have important problems to solve. It has been estimated that about 20 regional systems with aggregate assets of \$6 or \$7 billion will remain permanently subject to the act. In general, these continuing systems are of three major types. The first is the electric holding company system, which usually consists of one holding company above a number of interconnected electric operating companies. In this category one finds such systems as those of the American Gas & Electric Co., Central and South West Corp., the Southern Co., and Middle South Utilities, Inc.

<sup>69</sup> *Panhandle Eastern Pipe Line Co. v. S. E. C.* 170 F. 2d 453 (C. A. 8, 1948) and *Lewis v. S. E. C.* 170 F. 2d 467 (C. A. 8, 1948).

<sup>70</sup> Holding Company Act release No. 9587.

The second type is the natural gas holding company system which may control gas transmission as well as gas distribution companies. Typical of this group are Columbia Gas System, Inc., American Natural Gas Co., and Consolidated Natural Gas Co.

The third type is the operating-holding company system. The holding company in this group derives a substantial portion of its total income from its own utility operations, but also has one or more subsidiary operating companies. The Delaware Power & Light Co., Ohio Edison Co., and Interstate Power Co. are representative of this type.

The holding company system can be justified as a continuing enterprise only if its component companies are knit together as a compact group having basic functional relationships with one another. There must be a showing of important economies from group operation, and, in addition, each system should be able to meet the problems of plant expansion and to undertake the requisite financing on a sound and economical basis. Because it must approve all proposals for financing and supervise servicing arrangements and intercompany transactions, the Commission retains substantial jurisdiction over these systems.

The following summaries provide a review of the more important actions taken by the Commission during the past year in respect to several of the continuing holding-company systems. At this point it should be emphasized that a number of these systems still have residual problems to be solved under sections 11 (b) (1) and 11 (b) (2), and, in one or two cases, registered holding companies may eventually be able to qualify for exemption from the act pursuant to the provisions of section 3 (a).

#### **American Gas & Electric Co.**

With consolidated assets of over \$750,000,000, American Gas & Electric Co. is the largest of the continuing holding company systems. Its operations, almost wholly electric, extend over a seven State area from Kentucky to Michigan. As in other systems, the rapid post war expansion of electric power demand has required the operating subsidiaries of American to carry forward a tremendous program of new construction. This, in turn, has been accomplished by the undertaking of a large amount of financing by the subsidiary operating companies. Before granting approval of \$18,000,000 of bank borrowings by one major subsidiary, Appalachian Electric Power Co., the Commission in July 1949 gave careful consideration to the over-all financing program of American as well as to the program of Appalachian and devoted particular attention to the responsibility and intentions of the holding company to preserve the balance of underlying equity in the system.

American, in response to this inquiry, placed before the Commission the details of its 3-year construction and financing program amounting to more than \$250,000,000. Proposed financing included \$86,000,000 of mortgage bond offerings, \$10,500,000 of temporary bank loans, and common stock financing to the extent of 913,150 shares. The Commission observed that the financing program " \* \* \* appears feasible and sound in the light of the standards of the act." <sup>71</sup>

<sup>71</sup> Holding Company Act release No. 9234.

An important step in this program was taken with the sale in October 1949 of 498,081 shares of its common shares by means of a rights offering. Of the proceeds derived from this sale approximately \$20,000,000 was earmarked for investment in the equity of Appalachian Electric Power Co.<sup>72</sup> The balance was to be used for equity investments in other subsidiaries and for other purposes. American contemplates the sale of the additional common shares in 1951.

In past years, American has effected several acquisitions of property in the interest of rounding out its service area. This program was continued during the fiscal year 1950 when its subsidiary, Indiana & Michigan Electric Co., negotiated an exchange of electric properties with its nonaffiliated neighbor, Public Service Co. of Indiana. The exchange of properties was arranged to promote more efficient service in each of the companies and to achieve certain economies of operation.<sup>73</sup> Another subsidiary, the Ohio Power Co., purchased from Public Service Co. of Indiana its interest in Union City Electric Co. for a cash consideration of \$294,000.<sup>74</sup>

In April 1950, the Commission approved the sale by American of \$27,000,000 of serial notes with maturities of \$500,000 in each of the years 1952 to 1955 and \$2,500,000 in each of the years 1956 to 1965.<sup>75</sup> Proceeds of the issue were used by American to redeem the company's 151,623 shares of outstanding preferred stock as well as to repay \$10,300,000 of outstanding serial bank loan notes. The Commission noted, among other things, that while it generally disfavors the issuance of senior securities by holding companies, having subsidiaries with publicly-held senior securities, the pending issue was, in effect a replacement of senior securities already outstanding. It noted also that the effect of the gradual retirement of debt would be to improve the consolidated capitalization ratios of the system and the end result would be the elimination of all corporate debt from the capital structure of American.

#### **American Natural Gas Co.**

On December 30, 1947, the Commission approved a plan pursuant to section 11 (e) of the act which provided, in part, that American Light & Traction Co. (now American Natural Gas Co.) would be divested by its former parent, United Light & Railways Co. and would undergo a comprehensive reorganization of its capital structure.<sup>76</sup> American also proposed to retire its 6 percent noncallable preferred stock, divest itself of certain nonretainable holdings and make a substantial investment in a newly organized gas transmission pipeline (Michigan-Wisconsin Pipe Line Co.) which was to bring natural gas from the Hugoton field in Texas to the gas utility subsidiaries of American.

The past 3 years have witnessed the consummation of these proposals and the rapid growth of Michigan-Wisconsin Pipe Line Co. as a major long-distance transmission system. Because of the heavy cash requirements and the absence of earnings income during the

<sup>72</sup> Holding Company Act release No. 9371.

<sup>73</sup> Holding Company Act release No. 9758.

<sup>74</sup> Holding Company Act release No. 9776.

<sup>75</sup> Holding Company Act release No. 9819.

<sup>76</sup> Holding Company Act release No. 7951.

construction period, the debt financing of Michigan-Wisconsin presented the Commission with difficult regulatory problems. In this instance, it permitted the initial bonding of property at 75 percent of net bondable value instead of the 60 percent rate usually required; it also granted an exemption from competitive bidding and permitted private placement of \$66,000,000 of first mortgage bonds.<sup>77</sup>

The first phase of this program is now substantially completed but American plans to expand the capacity of Michigan-Wisconsin and to undertake other system construction which, in total, will amount to approximately \$110,000,000 for the 2-year period 1950-51. This, in turn, will require some \$70,000,000 of additional system financing to be undertaken, subject to Commission approval.

In line with this rapid growth, American increased its common equity in November 1949<sup>78</sup> through the sale by means of a rights offering to common stockholders of 276,805 additional shares. A second offering of 380,607 shares was pending at the close of the fiscal year. On July 25, 1950, the Commission also permitted American's subsidiary, Michigan-Wisconsin Pipe Line Co., to enter a credit agreement with banks to cover note borrowing up to \$20,000,000. This is an interim step after which it is contemplated that additional bonds and common stock will be issued by the company.<sup>79</sup>

On January 24, 1950, the Commission approved the organization of American Natural Gas Service Co. and conduct of its business as a subsidiary service company in the American Natural holding company system.<sup>80</sup> The order was conditioned in several respects, however, to enable the Commission to review the company's cost allocations and operations at any future time and, if necessary, after notice and opportunity for hearing, to revoke, suspend, or modify the permission granted to continue operations.

#### **Central and South West Corp.**

Central and South West Corp. and its four electric utility subsidiaries were divested by Middle West Corp. in 1947 and have operated since that time as a separate holding company system, having complied with the integration and simplification requirements of section 11. They served a four-State area including communities in Texas, Oklahoma, Louisiana, and Arkansas.

To keep pace with the increased demand for electric service, the Central and South West system expended over \$33,000,000 during the past fiscal year for new construction. To finance this program some \$17,000,000 of senior securities were sold by the utility subsidiaries and the parent company in November 1949 undertook its second common stock rights offering which yielded approximately \$9,000,000 in proceeds.<sup>81</sup> As a result of this step, common stock equity of the system was increased to 34 percent of total capitalization and surplus.

#### **The Columbia Gas System, Inc.**

The Columbia Gas System, Inc. (formerly Columbia Gas & Electric Corp.) is the parent company in a large holding company system

<sup>77</sup> Holding Company Act release No. 8600.

<sup>78</sup> Holding Company Act release No. 9501.

<sup>79</sup> Holding Company Act release No. 9990.

<sup>80</sup> Holding Company Act release No. 9625.

<sup>81</sup> Holding Company Act release No. 9447.

engaged in the production, transmission, and distribution of natural gas in an area embracing seven States and the District of Columbia. Prior to the issuance of orders by the Commission under section 11 of the act, Columbia Gas was a subsidiary of the United Corp. and, in addition to its gas properties, controlled through subsidiaries substantial electric facilities in Ohio, Kentucky, and Indiana. The holdings of the United Corp. have since been reduced to less than 10 percent and divestment of Columbia's electric properties was completed in 1946. Columbia is expected to continue as a registered holding company system.

Financing procedure in the Columbia system differs somewhat from that of many other holding company systems. Instead of permitting subsidiary companies to undertake public senior financing when necessary Columbia retains complete ownership of all outstanding securities of its operating subsidiaries. Public financing of the system, both in respect to debt and equity requirements, is provided at the holding company level. Thus, the senior securities of Columbia Gas take the form of unsecured debentures having a broad claim on all system properties rather than the mortgage bond form generally employed by operating companies for debt financing. The Commission has approved this arrangement as long as overall system capitalization ratios are maintained in accordance with statutory standards.

During the postwar period, the Columbia system has carried forward an aggressive program of developing sources of gas supplies and expanding its transmission service and distribution facilities. It is presently initiating service to the city of Baltimore, Md.; Charlottesville, W. Va.; and Poughkeepsie, Newburg, Beacon, and Kingston in the State of New York. Other connections are in prospect.

This growth is reflected in its active program of financing which has continued without interruption. In January 1950, the Commission approved the sale by Columbia of 304,998 shares of its common stock.<sup>82</sup> On June 13, 1950, Commission approval was granted to Columbia to issue \$110,000,000 principal amount of debentures due 1975. Proceeds of this offering were to be used in part for refunding purposes; the balance for construction.<sup>83</sup> Another declaration proposing an additional offering of \$90,000,000 of debentures was filed with the Commission and approved by it just after the close of the fiscal year.<sup>84</sup>

#### **Consolidated Natural Gas Co.**

Consolidated Natural Gas Co. was organized in 1942 by Standard Oil Co. of New Jersey. Standard Oil then transferred to Consolidated its holdings in certain operating subsidiaries engaged in the transmission and distribution of natural gas. By a subsequent distribution of its holdings in Consolidated, Standard Oil completed divestment of its utility properties.<sup>85</sup>

Consolidated is expected to continue as a registered holding company system. It has operations in West Virginia, Ohio, Pennsylvania, and New York and reports assets in excess of \$360,000,000.

<sup>82</sup> Holding Company Act release No. 9611.

<sup>83</sup> Holding Company Act release No. 9920.

<sup>84</sup> Holding Company Act release No. 9993.

<sup>85</sup> Holding Company Act release Nos. 4617 and 4864.

Though the system has shared fully in the postwar growth of the natural gas industry, it has not been required to do as much public financing as other systems. This factor is explained in part by the conservative dividend policy of the management which has retained out of net income approximately \$20,000,000 during the past 3-year period.

However, Consolidated has sold, with Commission approval, 545,672 shares of common stock with net proceeds of \$20,270,000 in July 1947, and \$30,000,000 of debentures in 1948. In March 1950, the Commission approved the additional sale by Consolidated, pursuant to a loan agreement with four commercial banks, of an aggregate of \$14,000,000 of promissory notes to be issued during 1950.<sup>86</sup> This borrowing was undertaken as an interim step in Consolidated's long-range financing program. Proceeds will be used primarily to finance the construction and gas-storage programs of two of the operating subsidiaries. Consolidated had almost no indebtedness prior to the postwar expansion program, and, even with the \$54,000,000 of debt incurred during the past year, the present debt ratio of the system remains under 20 percent.

#### **Delaware Power & Light Co.**

Delaware Power & Light Co. is an operating-holding company subject to Commission jurisdiction because of its operations through subsidiaries in Maryland and Virginia. Delaware was formerly a subsidiary of United Gas Improvement Co., but achieved independent status in 1943 with the distribution by the latter of its stockholdings in the company.

Substantial growth in recent years has necessitated considerable financing activity by Delaware and, beginning in 1947, the Commission approved five proposals submitted by the company. In March 1947, the company sold \$5,000,000 of preferred stock at competitive bidding. This was followed by another \$5,000,000 in July 1949 together with \$10,000,000 of mortgage bonds. Offerings of additional common stock to shareholders were made in February 1949 and again in April 1950 with proceeds aggregating over \$9,000,000. These offerings enabled Delaware, while proceeding with necessary debt financing, to retain a ratio of common equity to total capitalization and surplus in excess of 33 percent.

#### **Interstate Power Co.**

Interstate Power Co. is an operating-holding company which together with its two subsidiaries is engaged principally in the electric utility business in Minnesota, Iowa, South Dakota, Illinois, and Wisconsin. Pursuant to a plan filed under section 11 (e) of the act, Interstate underwent a complete financial reorganization in March 1948.<sup>87</sup> Prior to this, the company was burdened with a very top-heavy capital structure, including excessive indebtedness and preferred stocks with large dividend arrearages.

Through operation of the reorganization plan, the former parent-subsidary relationship existing between Ogden Corp. and Interstate

<sup>86</sup> Holding Company Act release No. 9727.

<sup>87</sup> Holding Company Act release No. 7955.

was eliminated and 944,961 shares of Interstate's new common shares were placed in escrow for the benefit of the holders (including Ogden) of its old securities junior to its old mortgage bonds. Proceedings relating to the plan for distribution of these escrowed shares are still in progress before the district court and the Commission.

Although Interstate's reorganization of March 1948 resulted in a substantially improved financial position, the exigencies of that reorganization nevertheless still left the company's capital structure far from ideal. This situation required that subsequent security sales by Interstate be carefully scrutinized by the Commission to assure that each successive financing operation, in connection with the company's large construction program, would bring about a strengthening of Interstate's common stock equity, preserve its financial integrity, and facilitate the economical financing of its expanding business.

In November 1949, Interstate's new money requirements were met, with Commission approval, by the sale of 300,000 shares of additional common stock.<sup>88</sup> In May 1950, after extensive preliminary conferences with the Commission's staff, the company consummated a broad financing program, which not only satisfied its capital requirements, but greatly strengthened its capital structure. This undertaking included the sale of \$3,000,000 of mortgage bonds, 100,000 shares of new preferred stock and 275,000 shares of additional common stock.<sup>89</sup> Proceeds were applied, in part, for construction needs and also to the retirement of certain outstanding debt securities. In addition, Interstate successfully negotiated with the holder of its \$5,000,000 outstanding 4¾ percent Debentures for a reduction of interest rate to 3¾ percent.

The rapid improvement in the company's credit rating is clearly indicated by a comparison of the annual interest cost of 4.5 percent on its mortgage bonds sold in October 1948 with those sold in May 1950 at a cost of 2.9 percent. This substantial change is due in large part to the fact that, in the period following Interstate's reorganization in 1948, its common equity, after giving effect to the sale of common stock in May 1950, has increased from 17 percent to 26.5 percent of total capitalization and surplus. If the new preferred issue is included, aggregate underlying equity as a percentage of capitalization and surplus has now reached 37.6 percent.

#### **Middle South Utilities, Inc.**

Middle South Utilities, Inc. is a registered utility holding company serving through its subsidiaries a three-State area including Arkansas, Louisiana, and western Mississippi. While its revenues are derived predominantly from sales of electricity, it is also engaged in the sale of natural gas and in transportation operations. The company was organized in May 1949 and acquired from Electric Power & Light Corp., the latter's holdings in four subsidiary utility companies and a small land company. Since the divestment by Electric and its parent, Electric Bond & Share Co., of their holdings in the company, Middle South has become an independent regional holding company system. The Commission has reserved jurisdiction, however, to insti-

<sup>88</sup> Holding Company Act release No. 9435.

<sup>89</sup> Holding Company Act release No. 9845.

tute such further proceedings under section 11 (b) with respect to Middle South as it may consider necessary or appropriate.

The construction program of the Middle South system has been estimated to require expenditures over the 2-year period 1950-51 of more than \$92,000,000. To finance the initial portion of these requirements, Middle South sold 640,000 shares of its common stock in January 1950 for which it received net proceeds of \$11,868,000.<sup>90</sup> In June 1950, the Commission approved additional financing proposals. These included the sale of mortgage bonds by two subsidiaries, the sale of new preferred stock by three subsidiaries and an offer by Middle South to holders of outstanding preferred in the three subsidiaries to exchange new shares of Middle South common for shares of outstanding preferred.<sup>91</sup> The sale of new preferred by the subsidiaries and the exchange offer by Middle South were proposed primarily to facilitate elimination of the high dividend preferred stocks of three subsidiaries and to provide funds for construction.

After submitting both the bond and preferred stock offerings to competitive bidding, sales of the two subsidiary bond issues were consummated promptly, yielding approximately \$13,500,000 in proceeds. However, all bids on the preferred offerings were rejected as not representing fair value for the securities offered. This, in turn, caused Middle South to request a suspension of action on other related proposals until a further amendment could be filed.

#### **National Fuel Gas Co.**

The construction program of National Fuel Gas Co., unlike most systems, has been on a modest scale and has not required any long-term financing during the past year. However, progress has been made in further simplifying the system by effecting a reduction in the number of subsidiary corporate entities and effecting through mergers and consolidations a number of operating economies.

On June 15, 1949 the Commission approved the merger of Iroquois Gas Corp. a gas utility subsidiary of National, with Wanakah Gas Corp., its wholly owned gas utility subsidiary.<sup>92</sup> The merger was effected on November 18, 1949. On August 12, 1949, the Commission also approved the dissolution of Hanover Gas Corp., a small producing subsidiary and the distribution of its remaining assets to National.<sup>93</sup>

In June 1950, National and five of its utility subsidiaries filed a joint declaration proposing the merger of the five subsidiaries into one gas utility company. On June 30, 1950, the Commission approved certain transactions proposed to be effected prior to the merger and reserved jurisdiction over all other aspects of the proposed transactions.<sup>94</sup>

#### **New England Electric System**

New England Electric System (NEES) has the largest number of subsidiary companies of all the registered holding company systems. As previously indicated, NEES underwent a major reorganization in

<sup>90</sup> Holding Company Act release No. 9595.

<sup>91</sup> Holding Company Act release Nos. 9916 and 9919.

<sup>92</sup> Holding Company Act release No. 9166.

<sup>93</sup> Holding Company Act release No. 9272.

<sup>94</sup> Holding Company Act release No. 9956.

1947 and, since that time, it has been confronted with the need for extensive system expansion, which is not expected to be completed until 1952.

Of direct concern to the Commission has been the approach of the system to its problems of permanent financing for this construction. In the middle of 1948 and early 1949, the Commission permitted 23 of the subsidiary companies to borrow on promissory notes as a temporary step in the financing program.<sup>95</sup> It was represented at that time that the subsidiaries would obtain a substantial amount of cash to retire a portion of their note indebtedness from the sale of common stock to NEES, and that NEES would purchase these shares, in part, out of proceeds derived from the sale of its own common stock.

In 1949, however, NEES indicated that, while it contemplated the issuance of common stock, it was not able to state when additional stock would be sold nor the amount to be sold. In April 1949, the Commission reconsidered its approval of the issuance of the promissory notes and ordered<sup>96</sup> that NEES, and the subsidiary companies involved show cause why its order should not be amended to the extent necessary to terminate, in whole or in part, its authorization with respect to notes not already issued, or to impose additional terms and conditions with respect to such notes. In a memorandum opinion<sup>97</sup> the Commission stated that the system had financed its needs almost wholly by the issuance of debt securities and stated that NEES should sell additional common stock. Subsequently, as part of its financing program for the current fiscal year, NEES made a public offering of common stock in the amount of \$7,029,000.

Subsequent to this offering, NEES submitted a general financing program proposing the sale of \$7,500,000 of convertible preferred stock and \$5,000,000 of debentures by the parent company. In a second memorandum opinion dated September 29, 1949,<sup>98</sup> the Commission found that the proposal was faulty in failing to provide for additional common equity to balance the large amount of senior securities proposed to be issued. It indicated that a minimum acceptable position might be reached if the \$7,500,000 now proposed to be raised through convertible preferred stock were raised instead through the sale of additional common shares.

#### **New England Gas & Electric Association**

New England Gas & Electric Association (NEGEA), a Massachusetts trust, registered as a holding company in 1938. Because of a top-heavy capital structure, which included five debenture issues and two classes of preferred shares with large arrearages, the Commission instituted section 11 (b) (2) proceedings against NEGEA in September 1941.<sup>99</sup> Added to the capitalization problem was the presence of a complex situation involving claims and counterclaims between NEGEA and the trustees of Associated Gas & Electric Co. and Associated Gas & Electric Corp. After lengthy hearings and extensive consideration by the Commission a second plan, which was

<sup>95</sup> Holding Company Act release Nos. 8253 and 8927.

<sup>96</sup> Holding Company Act release No. 8995.

<sup>97</sup> Holding Company Act release No. 9212.

<sup>98</sup> Holding Company Act release No. 9377.

<sup>99</sup> Holding Company Act release No. 3035.

an alternate to the initial plan of recapitalization,<sup>100</sup> was approved by the Commission and consummated in April 1947.<sup>101</sup> It is expected that NEGEA, which now has a simplified capital structure, more equitable voting rights for stockholders and restated investment accounts, will continue as a holding company system.

Like other systems, NEGEA is presently carrying on an extensive construction program to meet additional demands for service and to replace existing property. An estimate of net additions to be made in the period from 1949 to 1952 totals approximately \$23,700,000. On September 16, 1949, the Commission approved the sale by NEGEA of 124,601 shares of additional common stock for approximately \$1,400,000. At the same time it approved the sale of notes by seven subsidiaries.<sup>102</sup> A second sale of 173,126 common shares with proceeds of \$2,500,000 was approved by the Commission in May 1950.<sup>103</sup> Proceeds of the second stock sale were used by NEGEA to acquire additional common stock in its subsidiaries. Proceeds of the prior sale were used to retire outstanding bank debt previously incurred by the parent company for the same purpose.

During the past fiscal year, NEGEA participated with two other nonaffiliated companies in the organization of the Algonquin Gas Transmission Co.<sup>104</sup> The new company was organized for the purpose of building or participating in the building of a pipeline for the transmission of natural gas from points in New York, New Jersey, or Connecticut to the New England area. Participating with New England Gas & Electric are Eastern Gas & Fuel Associates and the Providence Gas Co. Other gas companies in New England have also been invited to invest in the new enterprise.

#### **Northern Natural Gas Co.**

The primary business of Northern Natural Gas Co. is the purchase, transmission, and wholesale distribution of natural gas which is carried from gas fields in Texas, Oklahoma, and Kansas to utility companies located principally in Minnesota, Iowa, and Nebraska. The company has one wholly owned gas utility subsidiary, Peoples Natural Gas Co., and as a holding company is therefore subject to regulation by this Commission. On September 25, 1950, however, Northern filed an application with this Commission pursuant to section 3 (a) (3) seeking exemption for itself as a holding company and for each subsidiary thereof as such from the provisions of the act.

Financing undertaken by the company to meet its construction needs has been planned so as to preserve the substantial equity ratio which has been a characteristic of the system for many years. Thus, in March 1949, the company sold 406,000 common shares pursuant to a rights offering and realized gross proceeds of \$11,977,000.<sup>105</sup> Again in May 1950, an additional 304,500 shares were sold in the same manner yielding proceeds of \$9,591,750.<sup>106</sup> Subsequent thereto, the company

<sup>100</sup> The original plan of recapitalization could not be consummated after its approval by the Commission and by the United States district court because of adverse market conditions.

<sup>101</sup> Holding Company Act releases Nos. 7181 and 7295.

<sup>102</sup> Holding Company Act release No. 9340.

<sup>103</sup> Holding Company Act release No. 9843.

<sup>104</sup> Holding Company Act release No. 9694.

<sup>105</sup> Holding Company Act release No. 8963.

<sup>106</sup> Holding Company Act release No. 9833.

completed its financing program for 1950 with the sale of \$40,000,000 of 2½ percent serial debentures after approval was granted by the Commission on May 29, 1950.<sup>107</sup>

#### Northern States Power Co.

Northern States Power Co. is a holding operating company engaged, either directly or through subsidiaries, in the electric and gas business in the States of Minnesota, Wisconsin, North Dakota, and South Dakota. Incorporated in Minnesota, it was formerly controlled by a company of the same name, organized in Delaware. The latter company was dissolved in December 1949.<sup>108</sup>

The construction program of Northern States (Minnesota), which in 1947 was expected to amount to \$96,000,000 over a 5-year period, has since been increased to the present estimate for the same period of \$160,000,000. During 1948 and 1949, mortgage bonds and preferred stocks totaling \$55,000,000 were issued by the system. Since the system had been financed for some time by the sale of senior securities, the staff of the Commission indicated its concern over the prospective deterioration of the system's capital structure and its lack of equity financing. Before the issuance of bonds was approved by the Commission, Northern States amended its declaration stating that it would offer common stock within the succeeding few months. On November 17, 1949, the company, with Commission approval, made a rights offering of 1,584,238 shares to its stockholders. The offering yielded proceeds of \$16,238,677.<sup>109</sup>

During the past fiscal year Northern States also accomplished a further step in the simplification of its system. Two subsidiaries, Interstate Light & Power Co. (Delaware) and Interstate Light & Power Corp. (Illinois) were merged with and into a third subsidiary, the Elizabeth Light & Power Co. Upon effectuation of the merger in August 1949, the name of the surviving company was changed to Interstate Light & Power Co. The latter company will continue as a direct subsidiary of Northern States.<sup>110</sup>

#### Ohio Edison Co.

Upon consummation of the section 11 (e) plan of Commonwealth & Southern Corp. on October 1, 1949,<sup>111</sup> Ohio Edison Co. became an independent operating-holding company, subject to the jurisdiction of this Commission by virtue of its stock ownership in Pennsylvania Power Co., its only subsidiary.

Shortly after its divestment by Commonwealth & Southern Corp., Ohio Edison made application to acquire from Cities Service Co., at a cost of \$35,000,000, the latter's holdings in Ohio Public Service Co. common stock as an initial step in a program to merge Ohio Public Service into Ohio Edison. Funds for this purchase were to be derived from an underwritten offering of additional common stock by Ohio Edison, subject to a rights offering to existing common stockholders. Ohio Edison also proposed an exchange offer of its com-

<sup>107</sup> Holding Company Act release No. 9890.

<sup>108</sup> Holding Company Act releases Nos. 7950 and 7976.

<sup>109</sup> Holding Company Act release No. 9484.

<sup>110</sup> Holding Company Act release No. 9305.

<sup>111</sup> Holding Company Act release No. 8633.

mon stock for shares of Ohio Public Service common stock held by the public.

In addition to financial problems posed by this application and declaration of Ohio Edison, substantial questions were present under section 10 (c) (2) of the act which provides that the Commission shall not approve an acquisition of securities unless it finds that "such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public utility system." On December 2, 1949, the Commission issued its findings and opinion approving the proposed transactions.<sup>112</sup> In reaching this decision, the Commission considered among other things, the fact that the operating areas of the two companies were contiguous for some 200 miles. Some interconnections had been made in the past and combined operation offered many possibilities for additional tie-ins. Evidence indicated that substantial economies could be effected through coordination of facilities and unified operations. Although the resultant system would be a large one, the Commission noted the populous and highly industrialized area of its operations and found it "not so large as to impair the advantages of localized management, efficient operation, and effectiveness of regulation."

In February 1950, after acquiring about 97 percent of the common stock of Ohio Public Service, Ohio Edison filed an application-declaration for authority to merge the two companies. This proposal involved the assumption of the debt of Public Service by Ohio Edison, an exchange of Ohio Edison preferred stock for Public Service preferred stock, and an exchange of Ohio Edison common stock for the remaining publicly held common stock of Public Service. The proposals were approved by the Commission on March 29, 1950,<sup>113</sup> and were consummated shortly thereafter. The resultant Ohio Edison Co. and its subsidiary, Pennsylvania Power Co., have a combined gross utility plant of about \$306,000,000 and annual operating revenues approximating \$80,000,000.

#### **The Southern Co.**

Like Ohio Edison Co., the Southern Co. became an independent holding company upon consummation of the section 11 (e) plan of the Commonwealth & Southern Corp. in October 1949. The integrated electric system which it controls furnishes service, through four electric utility subsidiaries, in Georgia, Alabama, Florida, and Mississippi. Consolidated system assets are about \$615,000,000 and annual electric revenues are in excess of \$115,000,000. It is second largest of the continuing holding company systems.

During the calendar year 1949, capital expenditures for the system total \$57,345,000 and the company expects to make additional expenditures during the period 1950-52 of approximately \$197,000,000. This rapid rate of expansion has given rise to substantial financing problems during the past fiscal year and will pose similar recurring problems for the management and the Commission in the years ahead. In November 1949, the Commission approved the sale by Southern of

<sup>112</sup> Holding Company Act release No. 9539.

<sup>113</sup> Holding Company Act release No. 9771.

1,500,000 additional shares of its common stock.<sup>114</sup> Proceeds realized from this sale at competitive bidding were in excess of \$17,300,000. As a result of this sale consolidated common stock equity in relation to total capitalization and surplus was raised from 26 percent to 29 percent.

In the early months of 1950, bond financings were carried out by three of the subsidiaries and at the close of the fiscal year there was pending a declaration filed by Southern covering the proposed sale of 1,000,000 additional common shares to assist further in the financing of construction expenditures by the subsidiaries. After a temporary postponement due to unsettled market conditions, this sale was consummated in October 1950 with proceeds of approximately \$10,950,000.

Subsequent to the close of the fiscal year, the Southern Co., together with Electric Bond & Share Co., filed applications and declarations proposing, among other things, that Southern acquire from Bond & Share the latter's common-stock holding in Birmingham Electric Co. through an exchange of the Southern Co.'s common shares. The exchange proposal was also to be made to the public stockholders of Birmingham. Alabama Power Co., a subsidiary of the Southern Co., proposed to acquire the outstanding shares of Birmingham's preferred stock through an exchange offer of its own preferred. Other steps contemplated the eventual disposition by Birmingham Electric of its transportation properties and the acquisition of that company's electric properties by Alabama Power through merger, liquidation or otherwise. Approval of these transactions was granted by the Commission on August 24, 1950.<sup>115</sup>

On September 23, 1949, the Commission approved Southern Services, Inc. as a mutual service company for the Southern system.<sup>116</sup>

While an appropriate showing was made that Southern Services would be operated economically and efficiently for the benefit of the companies which it proposes to serve, the Commission conditioned its order in several respects to permit a review of its cost allocations and operations at any future time.

#### **Utah Power & Light Co.**

Utah Power & Light Co. was removed from the control of Electric Power & Light Corp. as a result of its recapitalization plan approved by the Commission in 1945.<sup>117</sup> The company is an operating-holding company, subject to Commission jurisdiction by virtue of its ownership of securities in Western Colorado Power Co.

The expansion program of Utah Power & Light and its subsidiary calls for expenditures of \$61,000,000 during the period 1949 to 1953. During the past fiscal year, the parent company sold \$3,000,000 of mortgage bonds with Commission approval, as well as 148,155 common shares marketed pursuant to a rights offering to stockholders with proceeds of \$3,481,000.<sup>118</sup> In March 1950, the company received authorization to borrow up to \$10,000,000 from banks on a short-term

<sup>114</sup> Holding Company Act release No. 9503.

<sup>115</sup> Holding Company Act release No. 10055.

<sup>116</sup> Holding Company Act release No. 9362.

<sup>117</sup> Holding Company Act release No. 6212.

<sup>118</sup> Holding Company Act release No. 9309.

basis.<sup>119</sup> It was indicated that subsequent permanent financing to be undertaken later in 1950 would include the sale of additional common stock as well as mortgage bonds.

#### **The West Penn Electric Co.**

The West Penn Electric Co. is the parent company in a utility system which derives about 90 percent of its revenues from sales of electric power and services a territory located principally in Pennsylvania, West Virginia, and Maryland, also in small adjacent sections of Ohio and Virginia. West Penn was formerly a subsidiary of American Water Works & Electric Co., which was liquidated in January 1948.<sup>120</sup>

During the past fiscal year, West Penn has consummated a number of transactions designed to simplify the corporate structure of the system and, in addition, a thorough-going recapitalization of the parent company was successfully completed. Prior to July 1949, the common stock of West Penn Power Co. and the common stock of Monongahela Power Co., two of the three principal utility subsidiaries of West Penn, were held in two separate blocks within the system. Two-thirds of West Penn Power's common stock was owned by West Penn and 27.9 percent by West Penn Railways, with a small percentage publicly held; 45.3 percent of the common stock of Monongahela was owned by West Penn and 54.7 percent by West Penn Power. As a result of the section 11 (e) plan approved by the Commission on July 28, 1949,<sup>121</sup> all of the cross holdings of stock in West Penn Power and Monongahela have now been eliminated and all shares held by the system are owned by West Penn. In addition, the same plan provides for an accounting reorganization of West Penn Railways and the elimination of substantial inflation in the statement of its assets.

In September 1949, West Penn effected a complete recapitalization. Prior to this financing, the company had one class of debt securities, three classes of preferred stock, a "class A" stock and common stock outstanding. Upon consummation of the refinancing, West Penn had outstanding \$31,000,000 of 3½ percent sinking fund collateral trust bonds and 3,200,000 shares of common stock. A small issue of West Penn Traction Co. bonds, assumed by West Penn in connection with the corporate simplification, remained in its capitalization. The new collateral trust bonds are to be retired through annual sinking-fund payments over their 25-year life. The new common stock, to the extent of 388,274 shares, was offered to holders of preferred and class A stock, in exchange for their holdings; the remaining 468,621 shares were offered to the holders of common stock. In each instance the offers were oversubscribed and no shares remained for distribution by the underwriters. The approved plan also resulted in a downward adjustment by West Penn of its carrying value in subsidiary companies and necessitated charges to its earned surplus and capital surplus accounts of \$1,402,324 and \$14,078,119 respectively.

In its opinion approving the recapitalization,<sup>122</sup> the Commission commented "that the resulting consolidated common stock equity is substantially less than we consider appropriate for utility systems"

<sup>119</sup> Holding Company Act release No. 9731.

<sup>120</sup> Holding Company Act release Nos. 7091 and 7208.

<sup>121</sup> Holding Company Act release No. 9255.

<sup>122</sup> Holding Company Act release No. 9329.

and that "the issuance of debt by a holding company whose subsidiaries have substantial amounts of debt and preferred stocks in the hands of the public also raises a serious problem under the standards of the act." It noted, however, that the proposed sale of new common stock by West Penn was a substantial one which increased the number of outstanding common shares by 37 percent, and that the sinking-fund provisions on the new debt called for its complete retirement by maturity. Since the program also facilitated the future financing of system construction requirements, the Commission determined that it could be approved, indicating its intention, however, to require that future financings be designed to strengthen the common equity of West Penn in all possible ways.

#### ISSUES OF SECURITIES, ASSUMPTIONS OF LIABILITY, AND ALTERATIONS OF RIGHTS

During the past fiscal year, 319 applications and declarations covering issues of securities under sections 6 and 7 and assumptions of liabilities and alterations of rights under section 7 were filed with the Commission. Action was completed and Commission approval granted in 337 cases, including some which were instituted prior to that period. As in the preceding year, most applications under sections 6 and 7 were undertaken to enable electric and gas utility companies under the Commission's jurisdiction to proceed with their plans for extensive plant expansion. However, there was also a noticeable increase in the number of bond-refunding operations.

On an industry-wide basis, construction expenditures of electric and gas utilities, exclusive of expenditures by natural gas transmission companies, are estimated to have been in excess of \$2,500,000,000 in the past fiscal year. While it had been envisioned that these expenditures would begin to taper off within the near future as increased facilities approached power requirements, the recent trend of domestic and international events suggests that no early decline in the pace of growth is in sight.

The sustained volume of construction has, of course, necessitated a heavy program of financing. This is demonstrated by the following tabulation showing security sales of electric and gas utilities for the fiscal years 1948 to 1950.

*Security issues sold for cash and issued in exchange for refunding purposes by electric and gas utilities—fiscal years 1948 to 1950 (includes all issues subject to provisions of the Public Utility Holding Company Act of 1935 and to registration requirements under the Securities Act of 1933)*<sup>1</sup>

	July 1, 1947, to June 30, 1948	July 1, 1948, to June 30, 1949	July 1, 1949, to June 30, 1950
Bonds.....	\$1,087,266,075	\$899,434,729	\$953,782,240
Debentures.....	146,307,321	241,238,500	104,700,235
Preferred stock.....	229,443,828	192,779,280	362,015,050
Common stock.....	226,439,063	364,016,666	501,460,071
Total <sup>2</sup> .....	1,689,456,287	1,697,469,175	1,921,957,596

<sup>1</sup> This table is presented in order to give some data on an industry-wide basis. It includes financing effected by companies subject to the jurisdiction of the Commission under the Public Utility Holding Company Act as well as financing by other public utility companies whose securities were registered under the Securities Act of 1933. Since private placements are not registered under the latter act the chart does not include data with respect to private placements of public utilities not subject to the jurisdiction of the Public Utility Holding Company Act.

The amount of private placements by companies not subject to the act is estimated to have been in the area of \$300,000,000 during the last fiscal year.

<sup>2</sup> In addition, utility companies subject to the Holding Company Act, sold notes with maturities of 5 years or more in the following amounts:

1948.....	\$79,200,000
1949.....	\$62,090,000
1950.....	\$23,200,000

Total financing during the past fiscal year was higher than that of the two preceding years, and a portion of this increase is attributable to a renewal of refinancing activity. Of particular significance, however, is the steady upward trend in the proportion of common stock financing from 13.4 percent for the fiscal year 1948 to 26.1 percent for the fiscal year 1950. This trend may be accounted for in part by the receptivity of the market to new common stock offerings during most of the past year, but it also reflects an awareness and responsiveness on the part of public utility management to the necessity of maintaining a strong foundation of equity capital. As a result, utility companies not only are assured of meeting their cash requirements for near term construction needs but are afforded protection against periods of market uncertainty when it becomes more difficult to obtain funds through offering of common stock.

As the program of integration and simplification under section 11 progresses and companies are divested from holding company systems, that segment of electric and gas utility financing subject to the provisions of sections 6 and 7 declines accordingly. Although some further contraction is anticipated new financing undertaken by those holding companies and subsidiary operating companies which are expected to remain subject to regulation by the Commission, will continue to represent a substantial portion of the industry total. The following tables set forth, in summary form, security sales approved under sections 6 (b) and 7 of the act for the fiscal years 1950 and 1949. Information is provided with respect to registered holding companies and their electric and gas subsidiaries and nonutility subsidiaries. These totals include all cash sales and refundings accomplished by direct exchanges. Sales from portfolios and issues offered in connection with reorganization under section 11 are excluded.

*Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1949, to June 30, 1950*<sup>1</sup>

	Number of issues	Total security sales <sup>2</sup>	Application of net proceeds <sup>2</sup>		
			New money purposes	Refinancing of short-term bank loans <sup>3</sup>	Refunding
<b>Sales by electric and gas utilities:<sup>4</sup></b>					
Bonds.....	39	\$402,095,635	\$219,628,040	\$103,853,561	\$73,618,144
Debentures.....	2	45,523,735	41,011,210	4,100,000	
Notes <sup>5</sup> .....	21	23,200,000	23,173,710		
Preferred stock.....	15	58,064,970	42,812,177	9,869,959	4,018,743
Common stock.....	73	235,380,176	182,875,058	46,016,170	3,006,452
<b>Total.....</b>	<b>150</b>	<b>764,264,516</b>	<b>509,500,195</b>	<b>163,839,690</b>	<b>80,643,339</b>
<b>Sales by holding companies:</b>					
Bonds (collateral trust).....	1	31,783,000	8,633,353		22,751,416
Debentures.....	2	125,883,050	30,990,034		93,750,000
Notes <sup>5</sup> .....	1	27,259,508	17,53,887		26,978,530
Common stock.....	12	114,983,705	87,911,631	3,492,201	19,717,423
<b>Total.....</b>	<b>16</b>	<b>290,909,383</b>	<b>127,588,905</b>	<b>3,492,201</b>	<b>163,197,369</b>
<b>Sales by nonutility companies:</b>					
Bonds.....	4	48,010,000	43,891,620	4,001,850	
Notes <sup>5</sup> .....	12	17,600,000	17,594,779		
Common stock.....	4	6,812,500	5,566,660	498,050	675,000
<b>Total.....</b>	<b>20</b>	<b>72,422,500</b>	<b>67,053,059</b>	<b>4,499,900</b>	<b>675,000</b>

<sup>1</sup> Data limited to sales by issuing companies; offerings from portfolio are not included.

<sup>2</sup> Difference between total security sales and total proceeds is represented by flotation costs to the issuing companies.

<sup>3</sup> Notes and bank loans of less than 5 years maturity, usually for construction purposes.

<sup>4</sup> Includes sales by registered operating-holding companies which derive a substantial proportion of income from their own operations, but which also may have one or more utility subsidiaries.

<sup>5</sup> With maturities of 5 years or more.

*Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1948, to June 30, 1949*<sup>1</sup>

	Number of issues	Total security sales <sup>2</sup>	Application of net proceeds <sup>2</sup>		
			New money purposes	Refinancing of short-term bank loans <sup>3</sup>	Refunding
<b>Sales by electric and gas utilities:<sup>4</sup></b>					
Bonds.....	56	\$368,209,514	\$246,174,609	\$95,620,052	\$17,955,072
Debentures.....	5	106,551,165	46,615,225	41,358,800	17,303,000
Notes <sup>5</sup> .....	31	62,090,000	44,793,050	14,850,000	2,100,000
Preferred stock.....	17	74,859,040	43,062,350	26,254,700	4,000,000
Common stock.....	74	197,610,057	146,218,297	30,713,805	18,730,750
<b>Total.....</b>	<b>183</b>	<b>809,319,776</b>	<b>526,863,531</b>	<b>208,797,357</b>	<b>60,088,822</b>
<b>Sales by holding companies:</b>					
Debentures.....	2	33,878,815	20,646,890		12,850,000
Notes <sup>5</sup> .....	6	18,272,500	3,272,500		15,000,000
Common stock.....	8	69,893,184	68,546,045		
<b>Total.....</b>	<b>16</b>	<b>122,044,499</b>	<b>92,465,435</b>		<b>27,850,000</b>
<b>Sales by nonutility companies:</b>					
Bonds.....	4	49,295,080	43,807,210	5,000,000	
Common stock.....	8	9,875,000	9,279,301		575,000
<b>Total.....</b>	<b>12</b>	<b>59,170,080</b>	<b>53,086,511</b>	<b>5,000,000</b>	<b>575,000</b>

<sup>1</sup> Data limited to sales by issuing companies; offerings from portfolio are not included.

<sup>2</sup> Difference between total security sales and total proceeds is represented by flotation costs to the issuing companies.

<sup>3</sup> Notes and bank loans of less than 5 years maturity, usually for construction purposes.

<sup>4</sup> Includes sales by registered operating-holding companies which derive a substantial proportion of income from their own operations, but which also may have one or more utility subsidiaries.

<sup>5</sup> With maturities of 5 years or more.

A comparison of the security sales by electric and gas utilities, approved under sections 6 (b) and 7, in the fiscal years 1949 and 1950 reflects a decline in the number of offerings from 183 to 150 and in the total dollar volume of sales from \$809,319,776 to \$764,264,516. Sales of both mortgage bonds and common stocks increased during 1950, whereas sales of other securities declined. Mortgage bonds, moreover, represented 52.6 percent of total security sales in 1950 as against 45.5 percent in the fiscal year 1949. The proportion of common stock financing climbed from 24.4 percent to 30.8 percent, and the relative proportions of other types of financing declined.

Because the common equity of so many utility subsidiary companies is wholly owned by the parent holding companies, the subsidiaries are primarily dependent on the holding companies as sources of equity capital. In the fiscal year 1949, registered holding companies purchased common shares of subsidiary companies to the extent of \$150,000,000. During 1950, this figure amounted to \$134,000,000. The availability of funds for these intrasystem stock purchases depends directly upon the adequacy and appropriateness of public financing undertaken by the holding companies.

In past years, substantial amounts of cash have been made available from the sale of nonretainable subsidiaries, but this source of funds ceases to be important as holding companies become streamlined. As a result, sales of common stock by registered holding companies are increasing. They rose from \$70,000,000 in 1949 to \$115,000,000 in the fiscal year 1950. (These figures exclude sales by operating-holding companies.)

The Commission must bear in mind standards designed to assure that the pressure of heavy cash requirements will not result in any over-all deterioration in the consolidated capital structure and in the quality of securities outstanding. By insisting that parent holding companies undertake common stock financing periodically to match increases in system debt financing, the Commission seeks to prevent a return of the high-leveraged, unwieldy structures which led to the legislation it now administers. Many holding companies have recognized their responsibilities in this respect and a number of the regulated systems have already reached a point where the market receptivity to their common stock offerings is almost comparable with that accorded to the stock of good quality operating companies.

#### COMPETITIVE BIDDING

Offerings of securities by issuing companies under sections 6 (b) and 7 of the act and portfolio offerings by holding companies under section 12 (d) are required to be made at competitive bidding in accordance with the provisions of rule U-50. Certain types of sales are automatically exempted from the requirement. In addition, the Commission retains the right to grant exemptions in other instances, when unusual circumstances make such action appropriate.

Securities sold at competitive bidding under rule U-50 from its effective date, May 7, 1941, to June 30, 1950, total in excess of \$6,216,000,000. A tabular presentation showing the various classes of securities, number of issues, and the respective amounts, is set forth below :

*Sales of securities pursuant to rule U-50—May 7, 1941, to June 30, 1950*

	Number of issues	Amount
Bonds.....	261	<sup>1</sup> \$4, 295, 679, 000
Debentures.....	30	<sup>1</sup> 614, 435, 000
Notes.....	5	<sup>1</sup> 52, 750, 000
Preferred stock.....	77	<sup>2</sup> 688, 964, 700
Common stock.....	62	<sup>2</sup> 564, 807, 836
Total.....	435	6, 216, 639, 536

<sup>1</sup> Principal amount.<sup>2</sup> Par value.<sup>3</sup> Proceeds to company.

While the experience of the Commission during the past 9 years has amply demonstrated the workability of rule U-50 and its effectiveness in achieving competitive conditions and minimum costs of flotation, the Commission has always recognized that appropriate administration of the rule requires flexibility of application. Thus, in the period since the rule became effective, a total of 192 security issues amounting to \$1,414,000,000 have been exempted by Commission order from competitive bidding requirements. This is exclusive of the automatic exemptions. The following table summarizes the exempted sales by type of security and also provides a breakdown of the total amounts showing those issues which were underwritten and those completed without an underwriting:

*Sales of securities pursuant to orders of the Commission granting exemptions from competitive bidding requirements under the provisions of paragraph (a) (5) of rule U-50<sup>1</sup>—May 7, 1941, to June 30, 1950*

	Underwritten transactions		Nonunderwritten transactions		Total—all issues	
	Number of issues	Amount <sup>2</sup>	Number of issues	Amount <sup>2</sup>	Number of issues	Amount <sup>2</sup>
Bonds.....	4	\$27, 027, 500	53	\$462, 484, 714	57	\$489, 512, 214
Debentures.....	3	83, 425, 000	5	36, 779, 939	8	120, 204, 939
Notes.....			19	32, 894, 158	19	32, 894, 158
Preferred stock.....	10	60, 868, 703	23	257, 610, 344	33	318, 479, 047
Common stock.....	31	275, 074, 100	44	178, 392, 341	75	453, 466, 441
Total.....	48	446, 395, 303	144	968, 161, 496	192	1, 414, 556, 799

<sup>1</sup> Exclusive of automatic exemptions afforded by clauses (1) through (4) of paragraph (a) of rule U-50.<sup>2</sup> Proceeds to the company.

As the foregoing table reveals, most of the exempted transactions were not underwritten. The major portion of the underwritten exempt sales consisted of common stock offerings aggregating \$275,074,100. While these exemptions may not be attributed to any single factor, they reflect the greater difficulties sometimes encountered in the marketing of common stocks owing to either the nature of the issue or to security market conditions. By comparison, however, common stock sales through underwriters at competitive bidding were twice as much in both amount and number of issues.

The substantial number of exemptions granted with respect to both underwritten and nonunderwritten preferred stock transactions represented principally the exchange of new lower dividend preferred stocks to refund outstanding shares of higher rate. Beginning with the Oklahoma Gas & Electric case in March 1946,<sup>123</sup> however, the Commission announced the policy that future preferred stock exchange offerings would be required to be made at competitive bidding. More recently, the limited receptivity accorded to medium grade preferred issues has also necessitated the granting of exemptions for some underwritten issues.

Most of the exempted nonunderwritten bond and debenture offerings are represented by private placements made by the issuers. The aggregate figure comprises a considerable number of issues of small size and a small group of very large offerings exempted because of unique circumstances present at the time of sale. Of the note offerings, exempted and not underwritten, only a small portion was placed with banks and insurance companies; the balance was represented by sales of an unusual nature to private persons or groups, to other utilities or holding companies, or to other parties. Exempted common stock sales which were not underwritten consisted mainly of (1) sales to other utilities, other holding companies, or to private persons or groups (portfolio sales) and (2) rights offerings to stockholders made without underwriting assistance.

Because rule U-50 covers not only sales by issuers under sections 6 (b) and 7 of the act, but also portfolio sales under section 12 (d), there is substantial variety in the nature of circumstances which, over the years, have necessitated the granting of exemptions. Each exemption request, however, has been appraised in the light of the particular situation under which it is made.

In general, rule U-50 is now recognized as a practical and successful aid to regulation. The Federal Power Commission during the past fiscal year adopted a similar rule.

#### **Cooperation With State and Local Regulatory Authorities**

Despite the fact that there were 100 fewer companies subject to regulation under the act on June 30, 1950 as compared with a year ago, activities involving cooperation with State and local regulatory authorities have continued undiminished. During the past year, there were six Holding Company Act proceedings before the Commission in which representatives of States or municipalities either participated or exchanged views on questions of mutual interest. This compares with seven such instances in the preceding year.

The cooperative efforts of the past year have encompassed a wide variety of problems. Several of the proceedings have dealt with financings, recapitalizations, and property sales or acquisitions, where the questions of mutual interest related to accounting, protective provisions of securities, and capital structures. An example may be found in a recent application made to this Commission by Milwaukee Gas Light Co. seeking approval of a \$3,500,000 bank-loan agreement. The proceeding raised four questions which required careful consideration by this Commission and by the Public Service Commission

<sup>123</sup> Holding Company Act release No. 6449.

of the State of Wisconsin. These pertained to: (a) The pending application of the company before the State commission for authority to amortize over a 10-year period the cost of converting to natural gas; (b) the question of immediate or accelerated retirement of the manufactured gas equipment; (c) adjustments in the company's present reserve for depreciation; and (d) the company's proposal for a permanent financing program. After a helpful exchange of views with the chief accountant of the Wisconsin commission, the questions raised by the application were disposed of to the satisfaction of both commissions. It was also agreed that a similar exchange of views would be sought when the company submits its permanent financing plan at a later date.

Early in 1950 Wisconsin Electric Power Co. presented an informal program for: (1) The acquisition by it of the electric properties of its subsidiary, Wisconsin Gas & Electric Co., at a purchase price of about \$13,800,000; (2) the redemption of the latter company's bonds in the principal amount of \$10,500,000; and (3) the issuance of \$15,000,000 principal amount of new bonds and 585,405 shares of new common stock by Wisconsin Electric.

After preliminary examination of the proposals, the staff concluded that the overall objectives were desirable, but that it would be necessary to work out certain accounting, indenture, and capital structure problems before recommending favorable action by this Commission. Since these problems were also of interest to the Public Service Commission of Wisconsin, they were discussed at length with the chief accountant of that commission and, as a result, the staffs of both commissions arrived at a mutually satisfactory position with respect to each point. The company amended its proposals to reflect these views, and thereafter the plans were approved by both commissions.

The Portland Gas & Coke Co. filed a voluntary plan of reorganization under section 11 (e) of the act proposing a reclassification of the outstanding preferred and common stocks into a single issue of new common stock. The Commissioner of Public Utilities for the State of Oregon was represented in the proceedings by his chief accountant who, at the request of counsel for the division of public utilities of this commission, testified with respect to matters over which the Oregon commissioner had jurisdiction and, in addition, participated in several conferences with the staff of the division. These exchanges of views have been very helpful to the Commission in its consideration of the complex issues in this proceeding.

Three other proceedings during the year involved cooperation with local authorities. In the first, it was proposed that the Interstate Light & Power Co. (Wisconsin), a subsidiary of Northern States Power Co. (Minnesota), sell its Platteville division to Wisconsin Power & Light Co., and that another subsidiary of Northern States Power Co., the Interstate Light & Power Co. (Illinois) sell all of its properties to Northwestern Illinois Gas & Electric Co. The city of Galena, Ill., in March 1950, submitted a request to this Commission that final approval of these proposals be deferred pending further investigation by the city to determine whether its interest would be adequately safeguarded. The Commission withheld action on the matter until June 1950, when it received notice from the city that it

would interpose no further objection to consummation of the transaction.

In last year's report reference was made to certain proposals by American Power & Light Co. as to the disposition of its interests in its two subsidiaries, Pacific Power & Light Co. and the Washington Water Power Co. In substance, the first plan provided that American donate its holdings in Pacific to Washington Water Power, and in the second American proposed that it be permitted to continue in existence as a holding company with respect to both of the companies. The Public Service Commission of the State of Washington and the Oregon commissioner were vitally concerned with these proposals and participated actively in the proceedings.

The plans met with considerable opposition and were withdrawn. Subsequently, American filed another plan with this Commission proposing the sale of its holdings of all the common stock of Pacific to a purchasing group which indicated an intention to sell the physical properties of Pacific on a piecemeal basis to municipalities or other interests. The Washington commission, the Oregon commissioner and the city of Portland were represented at the hearings. Representatives of the two State commissions testified in opposition to the plan on the ground that the disposition intended by the purchasing group would not be in the public interest.

This group then dissolved and a second purchase group sought authority to acquire the stock of Pacific, indicating an intention to dispose of it at a later date through public sale. This proposal was approved by the Commission and consummated. Recently, the purchase group sold the stock to a syndicate of underwriters for public distribution.

On February 15, 1950, American Power & Light Co. made effective a plan under which it distributed to its security holders all of its assets other than the common stocks of the Washington Water Power Co. and the Portland Gas & Coke Co., cash, and certain miscellaneous assets. In May 1950, the Washington Public Service Commission filed a petition requesting this Commission to enter an order requiring that American cease to be a holding company with respect to Washington Water Power Co. by causing American to either (a) distribute to its stockholders all of its holdings of Washington Water Power capital stock, or (b) offer the stock for sale at competitive bidding pursuant to rule U-50. The petition further requested that this Commission hold a hearing on the matter. At about the same time the Public Utilities Commission of Idaho filed a petition stating that it joined in, and adopted the petition of the Washington Public Service Commission. On June 9, 1950, this Commission ordered that oral argument on these petitions be heard on June 19, 1950, which date was later advanced to June 27, 1950. The two State commissions subsequently advised that it was not possible for them to enter appearance on that date, but this Commission advised them that it would be necessary to proceed with the argument as planned since the issues raised by their petitions had been presented in similar petitions by stockholders of American. The Commission indicated, however, that it would entertain any further requests by either of the State regulatory authorities subsequent to the date of the argument.

The argument was concluded and the proceeding is still pending before the Commission.

The cooperative efforts in connection with specific proceedings, however, tell only a part of the story. The entire Holding Company Act was designed to complement and strengthen local regulation. This objective is clearly set forth by the Congress in paragraph (c) of section 1 where it is expressly declared to be the policy of the act that all provisions thereof shall be interpreted to meet the problems and eliminate the abuses enumerated in paragraph (b). From the following quotation of paragraph (b), it is readily apparent that many of these evils and abuses were found to be harmful to local regulation and to stem directly from the imposition of unregulated holding companies upon operating utility companies.

The act has helped State regulation to exercise the powers necessary to meet local responsibilities. During the 15-year period in which the Holding Company Act has been in operation, 392 electric and gas utility companies, with assets aggregating some \$9,185,000,000 have been divested and, as a result, are now operating independently of holding-company control. Furthermore, this newly won independence is protected by the provisions of section 2 (a) (7) (B), 2 (a) (8) (B), 2 (a) (11) and 9 (a) which contain appropriate safeguards against the recurrence of detrimental holding company and affiliate relationships. Section 11 (b) limits the size, character of business and corporate structures of existing holding companies and sections 9 and 10 impose standards which must be met in the creation of new holding company systems or in the enlargement of existing systems. All of these last three sections are expressly geared to the preservation of the effectiveness of local management and local regulation.

Other sections of the act, principally sections 12 and 13, provide for comprehensive supervision over transactions between companies within a holding company system. Section 13 requires that all services rendered to operating utility subsidiaries by system service companies be rendered at cost, fairly and equitably allocated among the client companies and for the benefit of the client companies. Paragraph (e) of this section, limits the operation of affiliated servicing organizations and paragraph (f) provides for maintenance of competitive conditions and adequate disclosure of information by servicing organizations principally engaged in the performance of services for public utility and holding companies in interstate commerce. The statutory safeguards contained in sections 2, 9, 10, 11, 12, and 13, by their mere existence, serve as an effective barrier to any recurrence of those impediments to local regulation enumerated in section 1 (b) and, in the aggregate, they constitute what may be appropriately described as an important area of passive cooperation.

#### LITIGATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT

During the 1950 fiscal year the Commission participated in 26 judicial proceedings involving issues arising under the Holding Company Act. Fifteen of these proceedings concerned the enforcement of voluntary plans filed under section 11 (e) of the act, 1 was to enforce a plan under section 11 (d), 9 were initiated by petitions to review orders

of the Commission, and 1 involved an application for an injunction to prevent a subsidiary of a registered holding company from filing with the Commission an amendment to a pending plan. The Commission's activity in the courts is shown in the following tables:

ACTIONS TO ENFORCE VOLUNTARY PLANS UNDER SEC. 11 (e)

Applications pending in United States district courts, July 1, 1949.....	2	
Applications filed, July 1, 1949, to June 30, 1950.....	13	
Plans approved and not appealed.....	9	14
Plans approved and appeals taken to courts of appeal.....	2	2
Applications pending, June 30, 1950.....	15	15
<b>Totals</b> .....	<b>15</b>	<b>15</b>
Appeals from orders of district courts approving plans, pending in courts of appeal, July 1, 1949.....	4	
Appeals taken from orders of district courts approving plans, July 1, 1949, to June 30, 1950.....	4	
Appeals dismissed.....	2	2
Orders of district courts affirmed.....	2	2
Orders of district courts reversed or modified.....	2	2
Appeals pending, June 30, 1950.....	8	8
<b>Totals</b> .....	<b>8</b>	<b>8</b>

ACTIONS TO ENFORCE TRUSTEE'S PLAN UNDER SEC. 11 (d)

Applications filed, July 1, 1949, to June 30, 1950.....	1	
Plans approved and not appealed.....	1	1
<b>Totals</b> .....	<b>1</b>	<b>1</b>

PETITIONS TO REVIEW ORDERS OF THE COMMISSION UNDER SEC. 24 (a)

Petitions pending in courts of appeal, July 1, 1949.....	4	
Petitions filed, July 1, 1949, to June 30, 1950.....	5	
Orders of S. E. C. affirmed.....	3	3
Petitions dismissed or withdrawn.....	3	3
Petitions pending, June 30, 1950.....	9	9
<b>Totals</b> .....	<b>9</b>	<b>9</b>

PETITIONS FOR INTERVENTION

Applications filed, July 1, 1949, to June 30, 1950.....	1	
Commission permitted to intervene, and Injunction denied <sup>2</sup> .....	1	1
<b>Totals</b> .....	<b>1</b>	<b>1</b>

<sup>1</sup> In the case of 1 plan, 2 appeals were taken from separate orders of the district court, and were pending at the end of the fiscal year.

<sup>2</sup> See discussion of Market Street Railway Co. proceedings, *infra*.

**Enforcement Proceedings Under Section 11 (e) of the Act**

Two applications for enforcement of voluntary plans under section 11 (e) were pending in United States district courts on July 1, 1949. The district courts approved the two plans during the fiscal year and appeals were taken in each case, both of which were pending on June 30, 1950.

The first of these two plans provided for the liquidation of the Commonwealth & Southern Corp. The district court approved the plan as submitted to it by the Commission.<sup>124</sup> An appeal was taken, objecting

<sup>124</sup> *The Commonwealth & Southern Corp.*, 84 F. Supp. 809 (D. Del., 1949).

to that part of the plan which provided that the holders of option warrants should not participate in the liquidation of Commonwealth & Southern, and this appeal was pending at the end of the fiscal year. Thereafter, the court of appeals affirmed the district court order.<sup>125</sup> After consummation of the plan, a securities dealer petitioned the district court for leave to intervene in the proceedings on behalf of persons who had traded in the prospective rights of security holders to the residual assets of Commonwealth & Southern, which, under the plan as amended prior to consummation, were to go to the Southern company. The district court denied the petition and an appeal was taken, which was pending in the third circuit court of appeals at the end of the fiscal year.

The second plan involved the liquidation of Federal Water & Gas Corporation. The district court had approved the plan except as to that part which accorded to certain former preferred stockholders of a predecessor company the limited amounts which had been approved by the Commission in an order, affirmed on appeal,<sup>126</sup> approving an earlier plan for the reorganization of the predecessor company. On January 11, 1950, the district court approved the latter portion of the plan.<sup>127</sup> An appeal was taken from that order of the district court and was pending in the third circuit court of appeals on June 30, 1950. Appellants also petitioned the Supreme Court for direct review of the district court order. Their petition for certiorari was denied after the close of the fiscal year.<sup>128</sup>

During the fiscal year 1950, the Commission filed 13 applications with the United States district courts seeking approval of voluntary plans under section 11(e). Nine of the plans were approved by the district courts and no appeals were taken from these orders. One of the nine plans involved the recapitalization of Interstate Power Co. Following approval thereof by the district court and a memorandum of the court granting certain objectors time to apply to the Commission for a rehearing,<sup>129</sup> the Commission requested that it be permitted to reconvene hearings upon the plan in order to determine whether circumstances had so changed as to make the plan no longer fair and equitable. The court granted the petition and the plan is now under further consideration by the Commission.

A second plan involved a discharge of Philadelphia Co. from its position as a guarantor on the debt of its underliers. This plan was combined with a plan of reorganization of Pittsburgh Railways Co. under chapter X of the Bankruptcy Act. Following the conclusion of hearings on the combined plan, the Commission made its findings, entered an order approving the plan of Philadelphia Co., and rendered an advisory report on the plan of Pittsburgh Railways. The district court approved the Philadelphia Co. plan under section 11 (e) and approved the plan of Pittsburgh Railways under chapter X.<sup>130</sup>

In one of the remaining seven cases, a holder of preferred and common stock of American Power & Light Co. objected to the plan

<sup>125</sup> — F. 2d — (C. A. 3, 1950).

<sup>126</sup> *S. E. C. v. Chenery Corp.*, 332 U. S. 194 (1947), rehearing denied, 332 U. S. 783 (1947).

<sup>127</sup> *In re Federal Water & Gas Corp.*, 87 F. Supp. 289 (D. Del., 1949).

<sup>128</sup> *Chenery Corp. v. S. E. C.*, — U. S. — (1950).

<sup>129</sup> *In re Interstate Power Co.*, 89 F. Supp. 68 (D. Del., 1950).

<sup>130</sup> *In re Philadelphia Co.*, unreported (W. D. Pa., No. 8676).

of that company for distribution of its assets on the ground that the plan was not fair. The district court rejected these objections and approved the plan.<sup>131</sup> A plan for recapitalization of Eastern Gas & Fuel Associates was objected to as unfair and inequitable by certain preferred and common stockholders. The district court, however, deemed the plan to be fair and equitable and overruled the contentions of stockholders that the Commission's valuation was not supported by substantial evidence.<sup>132</sup> Court enforcement of a plan for the merger of Iowa Public Service Co. into its parent, Sioux City Gas & Electric Co., and the acquisition by Sioux City of the properties and assets of its remaining three subsidiaries, was opposed by the secretary of state of the State of Iowa on the ground that the proposed merger did not comply with the law of the State of Iowa. The district court overruled the objections and approved the plan.<sup>133</sup> The remaining four plans, which provided, respectively, for the liquidation of the Middle West Corp., National Gas & Electric Corp., and North Continent Utilities Corp., and for the the elimination of cross-holdings in the West Penn Electric Co. system, were enforced without opposition.

District court approvals of two plans submitted during the fiscal year were appealed to United States court of appeals. One of these plans involved the reorganization of the Niagara Hudson Power Corp. system by merger of three major operating companies into a single operating-holding company, Niagara Mohawk Power Corp., and the liquidation and dissolution of Niagara-Hudson. The plan provided that holders of option warrants of Niagara-Hudson should not participate in the reorganization since the warrants had no value for reorganization purposes. The court of appeals reversed the district court, which had excluded the warrants from participation, and remanded the plan to the Commission for further consideration.<sup>134</sup> After the close of the fiscal year, the United States Supreme Court granted certiorari to review the court of appeals order.<sup>135</sup>

The other of these plans involved a reorganization of the Long Island Lighting Co. system which provided for the consolidation of Long Island and two of its subsidiaries to form a new operating-holding company. Common stockholders of Long Island appealed from the order of the district court<sup>136</sup> approving the plan on the ground, among others, that the Commission in arriving at its estimate of future earnings had failed to give consideration to savings which would result from consolidated operations. The court of appeals upheld the district court in all other respects, but remanded the plan to the Commission upon this sole issue.<sup>137</sup> The Commission petitioned for modification of the decision and filed its supplemental findings and opinion, clarifying its discussion of savings which resulted from consolidated operations. After the close of the fiscal year, the court of appeals granted the Commission's petition, modified its former opinion, and affirmed the order of the district court, and the

<sup>131</sup> *In re American Power & Light Co.*, unreported (S. D. N. Y., No. 52-324).

<sup>132</sup> *In re Eastern Gas & Fuel Associates*, 90 F. Supp. 955 (D. Mass., 1950).

<sup>133</sup> *In re Sioux City Gas & Electric Co.*, unreported (N. D. Iowa, W. D., No. 571).

<sup>134</sup> *Leventritt v. S. E. Co.*, 179 F. 2d 615 (C. A. 2, 1950).

<sup>135</sup> *S. E. C. v. Leventritt*, — U. S. — (1950).

<sup>136</sup> *In re Long Island Lighting Co.*, 89 F. Supp. 513, (E. D. N. Y., 1950).

<sup>137</sup> *Common Stockholders Committee v. S. E. Co.*, 183 F. 2d 45 (C. A. 2, 1950).

Supreme Court denied certiorari.<sup>138</sup> Two applications filed during the fiscal year were pending in the United States district courts on June 30, 1950.

Four appeals were pending at the beginning of the fiscal year from orders of United States district courts approving and enforcing voluntary plans under section 11 (e) which had been approved by the Commission. The first of these appeals was taken from an order of the district court directing that dividends paid by Illinois Power Co. on the shares of its common stock allocated to public stockholders of North American Light & Power Co., between the date of the enforcement order and the date of consummation, should be distributed to such stockholders along with the Illinois Power Co. stock. On appeal the order of the district court was affirmed.<sup>139</sup> The second plan involved the liquidation of Electric Power & Light Corp. and the organization of a new holding company, Middle South Utilities, Inc. Applications for a stay of consummation had been denied during the previous fiscal year.<sup>140</sup> Three appeals were taken; one was dismissed by the court of appeals, and in the others, the court of appeals affirmed the order of the district court.<sup>141</sup> The appeals pending at the beginning of the fiscal year in the other two cases, involving plans of Electric Bond & Share Co. and the United Corp., were dismissed without opinion.

#### Petitions to Review Orders of the Commission

Four petitions to review orders of the Commission were pending in court of appeals on July 1, 1949. One of these petitions, for review of an order of the Commission allowing fees, was dismissed during the fiscal year;<sup>142</sup> in the other three cases, the Commission's orders were affirmed. One of these cases involved an order of the Commission directing that Pennsylvania Edison Co. pay from an escrow fund, to the former holders of its preferred stock, the difference between the investment value of the stock found by the Commission to equal its call price, and the \$100 per share paid upon the retirement of the stock, together with compensation for the time elapsed between date of retirement and payment of the balances found to be due, at rates measured by the yields on the preferred stock.<sup>143</sup>

The second affirmance involved an order of the Commission denying effectiveness to a declaration of a common stockholders' committee of Long Island Lighting Co., proposing to solicit funds from the common stockholders of Long Island. The court held that the Commission had acted reasonably, and within the scope of its authority.<sup>144</sup> After the close of the fiscal year, the Supreme Court denied certiorari.<sup>145</sup>

The third case in which the Commission was affirmed was an appeal from an order directing, pursuant to section 11 (b), that Philadelphia Co. dispose of certain gas and transportation interests, and liquidate and dissolve. Philadelphia Co. urged that the gas and electric prop-

<sup>138</sup> — U. S. — (1950).

<sup>139</sup> *Appeal of North American Light & Power Co.*, 180 F. 2d 975 (C. A. 3, 1950).

<sup>140</sup> *In re Electric Power & Light Corp.*, unreported (C. A. 2, No. 49-347); 337 U. S. 903 (1949).

<sup>141</sup> *In re Electric Power & Light Corp.*, 176 F. 2d 687 (C. A. 2, 1949).

<sup>142</sup> *Cf. In re National Power & Light Co.*, 80 F. Supp. 759 (S. D. N. Y., 1948).

<sup>143</sup> *In re Pennsylvania Edison Co.*, 176 F. 2d 764 (C. A. 3, 1949).

<sup>144</sup> *Halstead v. S. E. O.*, 182 F. 2d 660 (C. A. D. C., 1950).

<sup>145</sup> — U. S. — (1950).

erties constituted a single system, and that their separation would involve a loss of substantial economies. The court rejected these contentions and affirmed the order of the Commission.<sup>146</sup>

During the fiscal year 1950, five petitions to review orders of the Commission were filed pursuant to the provisions of section 24 (a) of the act. One of these petitions was dismissed for lack of jurisdiction and a second was withdrawn when the petitioner instituted a parallel proceeding in a different circuit. The other three proceedings were pending at the close of the fiscal year.

#### **Petitions for Intervention**

In the action for an injunction to prohibit Market Street Railway Co. from filing with the Commission an amendment to its pending plan, the court granted the Commission's petition to intervene, dissolved a temporary restraining order, and denied the requested injunction, issuing (with the consent of all parties) an injunction against the execution of a certain release except pursuant to a court enforcement order in the plan proceedings.<sup>147</sup> Thereafter the amendment was filed by Market Street and approved by the Commission; the Commission then filed an application for court enforcement, which was pending at the end of the fiscal year.

<sup>146</sup> *Philadelphia Co. v. S. E. C.*, 177 F. 2d 720 (C. A. D. C., 1949).

<sup>147</sup> *Jones v. Market Street Railway Co.*, unreported (N. D. Calif., No. 29, 699).