24th Annual Report
of the
Securities and Exchange Commission

Fiscal Year Ended June 30, 1958

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SECURITIES AND EXCHANGE COMMISSION

Headquarters Office
425 Second Street, N.W.
Washington 25, D. C.

COMMISSIONERS

January 5, 1959

EDWARD N. GADSBY, Chairman
ANDREW DOWNEY ORRICK
HAROLD C. PATTERSON
EARL F. HASTINGS
JAMES C. SARGENT

ORVAL L. DuBOIS, Secretary

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D. C., January 5, 1959.

SIR : On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Fourth Annual Report of the Commission covering the fiscal year July 1, 1957, to June 30, 1958, 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 June 29, 1949, amending the Bretton Woods Agreements Act.

Respectfully.

EDWARD N. GADSBY,
Chairman.

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

TABLE OF CONTENTS

PART X
ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

PART XI
OTHER ACTIVITIES OF THE COMMISSION

FOREWORD

This 24th Annual Report of the Securities and Exchange Commission to the Congress for the fiscal year July 1, 1957 to June 30, 1958 describes the Commission's activities during the year in discharging its duties under the statutes which it administers. These include supervision of the registration of securities for sale to the public by the use of the mails and in interstate commerce, enforcement of the anti-fraud provisions of the federal securities laws, surveillance of the exchange and over-the-counter markets in securities, regulation of the activities of brokers and dealers and investment advisers, and regulation of registered public utility holding company systems and investment companies.

In the fiscal year 1958 new issues of securities registered for public sale totalled $16.5 billion, the largest amount in the Commission's history. The amount of such issues has increased at least $1.5 billion in each year since 1953, when the total amount registered was $7.5 billion, less than half the present amount.

With a continued high level of financial activity in the security markets, the Commission has continued an intensified enforcement program of discovering, preventing and punishing fraudulent and other illegal activities in securities transactions. An important aspect of this enforcement program during the fiscal year was an increase of approximately 20% in the number of inspections conducted of securities brokers and dealers registered with the Commission.

During the fiscal year the Commission submitted to the Congress proposals for a comprehensive revision of various of the acts which it administers. These proposals were described in the Commission's 23rd Annual Report. Additional legislative proposals of the Commission, as well as other bills affecting the Commission, are discussed in this report.

All phases of the Commission's activities have been under study during the fiscal year by the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. The Commission has endeavored to cooperate fully with the Subcommittee in its work. At its request, the Chairman, members of the Commission and members of the staff have appeared before it and a substantial amount of information requested by the Subcommittee has been supplied.

COMMISSIONERS AND STAFF OFFICERS

(As of October 15, 1938)

Term expires

Commissioners

EDWARD N. GADSBY of Massachusetts, Chairman -- Term expires June 5, 1963

ANDREW DOWNEY ORRICK of California -- Term expires June 5, 1962

HAROLD C. PATTERSON of Virginia -- Term expires June 5, 1960

EARL F. HASTINGS of Arizona -- Term expires June 5, 1959

JAMES C. SARGENT of New York -- Term expires June 5, 1961

Secretary: ORVAL L. DuBois

Staff Officers

ALBERT K. SCHEIDENHELM, Executive Director. CHARLES T. KAPPLER, Associate Executive Director. [Footnote: Designated Associate Executive Director, July 1, 1958.]

BYRON D. WOODSIDE, Director, Division of Corporation Finance. SHARON C. RISK, Associate Director.

JOSEPH C. WOODLE, Director, Division of Corporate Regulation. JOHN E. LOOMIS, Associate Director.

PHILIP A. LOOMIS, Jr., Director, Division of Trading and Exchanges. RALPH S. SAUL, Associate Director. [Footnote: Designated August 4, 1958.]

THOMAS G. MEEKER, General Counsel. DANIEL J. MCCAULEY, Jr., Associate General Counsel.

ANDREW BARR, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing. W. VICTOR RODIN, Associate Director.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey. -- Paul Windels, Jr.; Edward Schoen, Jr., Associate Regional Administrator, 225 Broadway, New York 7, New York.

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine. -- Philip E. Kendrick, United States Post Office and Courthouse, Post Office Square, Boston 9, Massachusetts.

Region 3. Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and that part of Louisiana lying east of the Atchafalaya River. -- William Green, Suite 138, 1371 Peachtree Street, NE., Atlanta 9, Georgia.

Region 4. Illinois, Indiana, Iowa, Kansas City (Kansas), Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin. -- Thomas B. Hart, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Illinois.

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas (except Kansas City). -- Oran H. Allred, United States Courthouse (Room 301), 10th and Lamar Streets, Fort Worth 2, Texas.

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah. -- Milton J. Blake, 802 Midland Savings Building, 444 17th Street, Denver 2, Colorado.

Region 7. California, Nevada, Arizona, Hawaii. -- Arthur E. Pennekamp, Pacific Building (Room 339), Fourth and Market Streets, San Francisco 3, California.

Region 8. Washington, Oregon, Idaho, Montana, Alaska. -- James E. Newton, 905 Second Avenue Building (Room 304), Seattle 4, Washington.

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia. -- William J. Crow, Courts Building, 310 6th Street, N.W., Washington 25, D. C.

Branch Offices

Cleveland, Ohio. Standard Building (Room 1628), 1370 Ontario Street.

Detroit, Michigan. Federal Building (Room 1074).

Houston, Texas. First National Bank Building (Room 324), 201 Main Street.

Los Angeles, California. Guaranty Building (Room 309), 6331 Hollywood Boulevard.

Miami, Florida. Plaza Building (Room 440), 245 South East First Street.

St. Louis, Missouri. Arcade Building (Room 1025), 812 Olive Street.

St. Paul, Minnesota. Main Post Office and Courthouse (Room 1027), 180 East Kellogg Boulevard.

Salt Lake City, Utah. Newhouse Building (Room 1119), 10 Exchange Place.

COMMISSIONERS

Edward N. Gadsby, Chairman

Chairman Gadsby was born in North Adams, Mass., on April 11, 1900. He received an A. B. degree from Amherst College in 1923 and a J. D. degree from the New York University School of Law in 1928. From 1929 to 1937 he was associated with the law firm of Mudge, Stern, Williams & Tucker of New York City. From 1937 to 1947 he practiced law in North Adams, Mass. In 1947 he was appointed a Commissioner of the Massachusetts Department of Public Utilities' and held that position until 1952, serving as Chairman from 1947 to 1949. From 1952 to 1956 he served as General Counsel of the Massachusetts Department of Public Utilities and thereafter was a member of the law firm of Sullivan & Worcester of Boston, Mass. On August 20, 1957, he took office as a member of the Securities and Exchange Commission for a term expiring June 5, 1958 and was designated Chairman of the Commission. He was reappointed effective

June 5, 1958 for a term expiring June 5, 1963 and was again designated as Chairman.

Andrew Downey Orrick

Commissioner Orrick was born in San Francisco, Calif., on October 18, 1917. He received his B. A. degree from Yale College in 1940 and an LL. B. degree from the University of California (Hastings College of Law) in 1947. From 1942 to 1946 he was on active duty with the United States Army and was separated from the service as a captain in the Transportation Corps. After being admitted to practice in California in 1947 he was associated with the law firm of Orrick, Dahlquist, Herrington & Sutcliffe, in San Francisco, until February 1954, when he became Regional Administrator of the San Francisco Regional Office of the Securities and Exchange Commission. He served in that capacity until May 25, 1955, when he was sworn in as a member of the Commission for a term of office expiring June 5, 1957. On June 12, 1957, he was reappointed as a member of the Commission, for a term of office expiring June 5, 1962. During the periods from May 27, 1957 to June 6, 1957 and from June 12, 1957 to August 20, 1957 he was designated as Acting Chairman of the Commission.

Harold C. Patterson

Commissioner Patterson was born in Newport, R. I., on March 12, 1897, and attended public schools in Massachusetts and Maryland. He attended George Washington University after graduating from Randolph Macon Academy. In 1918 he enlisted in the United States Naval Reserve for service in World War I, was commissioned ensign, United States Naval Reserve, in 1918; in June 1919 commissioned ensign United States Navy; and resigned in 1923. Prior to 1954, he had for many years been a partner of Auchincloss, Parker & Redpath, members of the New York Stock Exchange, in Washington, D. C. He resigned from the firm June 1, 1954. He served as a Board Member of the National Association of Securities Dealers, Inc., and was active over the years in its securities industry policing work. On June 15, 1954, he was appointed Director of the Division of Trading and Exchanges of the Securities and Exchange Commission and served in that capacity until August 5, 1955, when he took office as a member of the Commission for a term of office expiring June 5, 1960.

Earl F. Hastings

Commissioner Hastings was born in Los Angeles, Calif., on April 27, 1908, and resides in Glendale, Ariz. He attended Texas Western University and the University of Denver. He is a registered professional engineer. During the years 1932 to 1941 he served as a consulting engineer with mining and industrial firms. From 1941 to 1942 he worked with Hawaiian constructors on a military installation on Oahu, T. H. From 1942 to 1947 he served in various engineering and managerial capacities. At that time he became a general partner of the firm, Darlington, Hastings & Thorne, which served as industrial consultants and managers. In 1949 he was appointed Director of Securities, Arizona Corporation Commission, Phoenix, and he served in that capacity until March 1, 1956, when he was appointed a member of the Securities and Exchange Commission for a term of office expiring June 5, 1959.

James C. Sargent

Commissioner Sargent was born in New Haven, Conn., on February 26, 1916, and holds degrees of B. A. and LL. B. from the University of Virginia. He was admitted to the New York Bar in 1940 and became associated with the firm of Clark & Baldwin, New York City. From January 1941 to July 1951, except for military service, he was employed as a trial attorney by Consolidated Edison Company of New York. He enlisted in the United States Army Air Force in 1942 and served in this country as an Air Intelligence school instructor and as a combat and special intelligence officer in the Southwest Pacific. He was separated to inactive duty in January 1946 with the rank of captain. In the fall of 1948, he served as an Assistant Attorney General of the State of New York in the Election Frauds Bureau in New York City. From July 1951 to August 1954 he was employed as law assistant to the Appellate Division, First Department, Supreme Court, State of New York. He was associated with the firm of Spence & Hotchkiss, New York City, from August 1954 until November 1955. In November 1955 he was appointed Administrator of the Commission's New York Regional Office. He served in that capacity until June 29, 1956, when he was sworn in as a member of the Commission for a term of office expiring June 5, 1961.

PART I
CURRENT ENFORCEMENT PROBLEMS AND PROGRAM

A stated purpose of Congress In enacting the Federal securities laws was to provide full and fair disclosure with respect to securities sold in interstate and foreign commerce and to prevent fraud and inequitable and unfair practices in the securities markets. Under present conditions, the enforcement program of the Commission is an essential instrument in attaining these objectives. That program has been carried out, under the day-to-day direction of the Commission, by its operating divisions in Washington and by its nine regional and eight branch offices in principal cities throughout the country.

Recent years have witnessed a continuing surge of interest and activity in the securities markets without parallel under the depressed conditions of the thirties or under the circumstances of war and reconversion. Despite recent fluctuations in business volume, the dollar amount of new securities registered with the Commission in fiscal 1958 totaled $16.5 billion -- the largest amount in the history of the Commission. This compares with $7.5 billion of new financing during fiscal 1953 and $6.4 billion in fiscal 1948. The aggregate market value of all stock on all stock exchanges, which never exceeded $100 billion between 1933 and 1945, was $250 billion at June 30, 1956, $262 billion at June 30, 1957 and $258 billion at June 30, 1958.

The increased activity in the securities markets has reflected in part the extraordinary increase in the number of holders of shares in publicly owned corporations. The number of holders of shares of publicly owned corporations was estimated by the New York Stock Exchange to have increased from 6,490,000 in early 1952 to 8,650,000 at the end of 1955 and has further increased since then.

The size of the securities markets is reflected in the fact that there were on June 30, 1958, 4,752 broker-dealers and 1,562 investment advisers registered with the Commission, 2,997 stock issues traded on stock exchanges and approximately 4,500 stock issues (excluding investment company issues) each having more than 300 stockholders which are traded over-the-counter. There are also thousands of smaller issues which trade to some extent in the over-the-counter market.

Conditions such as these have now persisted for several years and produced enforcement problems of the first magnitude for the Commission. These conditions have attracted into the securities field a fringe element of confidence men who are determined to take whatever advantage they can of the American public. The operations of these confidence men have been encouraged by the expectations of a substantial segment of the public that it is possible for the unsophisticated investor to reap large and quick profits in the securities markets. Uninformed investors are often willing to purchase unknown and speculative securities which are represented as offering unusual opportunities for gain.

Indeed, somewhat paradoxically, declines in the prices of seasoned securities may increase the public appetite for such speculative offerings. Conditions in the capital market have been favorable for mergers, acquisitions and programs of expansion, including not only the great majority which result from legitimate economic forces, but also a substantial number which appear to be designed largely to reap profits for promoters and speculators at the expense of the public. Opportunities for illicit profit by the illegal or fraudulent sale of securities have multiplied, and inevitably the number, resources and ingenuity of violators seeking to capitalize upon these opportunities have likewise multiplied.

Illustrative of the enforcement problems now confronting the Commission are the matters briefly summarized below:

THE PROBLEM OF "BOILER ROOMS"

The term "boiler room", which unfortunately has become quite familiar in the last few years, refers to an organization engaged in the sale of securities primarily over the telephone, particularly the long-distance telephone, by high pressure methods ordinarily accompanied by misrepresentation, deception and fraud. Such organizations generally concentrate on the distribution of one or a few issues of speculative securities at a time, seeking to sell these issues in quantity by whatever misrepresentations are necessary to make a sale.

The "boiler room" continues to raise difficult enforcement problems but these have recently taken a somewhat different form. Most of the larger "boiler rooms" have disappeared due to the vigorous enforcement program of the Commission and state agencies. In the place of the old-fashioned "boiler room" has appeared a group of small firms which spring up suddenly, sell one or two spurious issues quickly and then disperse, their fraudulent purpose accomplished. This method of operation has made speed and alertness on the part of the Commission and its staff essential to enforcement activities.

The operators of these small "boiler rooms" have recently shown a tendency to operate not only in the large financial centers but also in other locations around the country. There has been a noticeable increase, for example, in migratory operators moving from state to state, particularly in the Western part of the country. Not infrequently, long-distance telephone salesmen work out of hotel rooms, apartments and alleged business offices. Extensive use is made of intermediaries, often in foreign countries, to conceal the nature of transactions and the identity of individuals. Payments are often made in cash rather than by check.

The Commission has utilized all available enforcement techniques to meet the problem. It has found, however, that resort to the civil injunction and administrative proceeding, no matter how vigorously employed, is not completely effective in halting the operation of "boiler rooms". The Commission believes that imposition of the sanctions resulting from a criminal prosecution is necessary to stop effectively this "cancerous diffusion". In carrying out its statutory duties, the Commission will continue to press for criminal prosecution of violators of the Federal securities laws where the facts warrant such prosecution.

In addition to its enforcement powers the Commission has sought through the dissemination of information to alert the investing public to the risks involved in the purchase of securities from unknown high-pressure telephone salesmen. In the last resort the problem of "boiler rooms" can be eliminated only if the investing public in dealing with unknown stock salesmen evaluate their representations with an attitude of hard-headed skepticism.

SALES OF UNREGISTERED SECURITIES BASED ON CLAIMED EXEMPTIONS

It appears that a substantial but undetermined number of securities have been sold in violation of the registration, prospectus and anti-fraud provisions of the Securities Act of 1933 pursuant to claimed exemptions from registration which in fact were not available. These sales have been made, in the main, under claims to exemption based upon the intrastate exemption of section 3 (a) (11) and the so-called "private offering" exemption of section 4 (1) of the Act. The improper use of these exemptions to evade registration requirements usually occurs where an issue, or the sales procedures to be employed, would not stand the light of the full disclosure requirements of registration. The Commission ordinarily learns of these offerings only after they have been commenced and has no means of ascertaining whether or not the exemption is available except by initiating an investigation. The staff of the Commission is now studying measures for remedying this situation, some of which may involve legislative proposals to the 86th Congress.

Various devices have been employed in an effort to evade registration by abuse of the intrastate exemption under section 3 (a) (11) of the Securities Act of 1933. The issuer may attempt to use a resident of the state as a nominee for non-resident beneficial owners, or the alleged sales to residents may be merely a step in a planned distribution in interstate commerce.

One of the most frequently used devices to bring a distribution within the "private offering" exemption is the use of the so-called "investment intent" letter given by purchasers. In some cases an attempt is made to evade the basic policy of registration under the Securities Act by the technique of mechanically obtaining "investment intent" letters from successive groups of purchasers when, in fact, these purchasers buy with a view to distribution.

Further complicating the Commission's problems in this area has been the fact that an increasingly large number of securities claimed to have been issued pursuant to these exemptions have been transferred to United States citizens through Canadian, Swiss, Liechtenstein and other foreign financial institutions.

When this occurs the Commission has been handicapped in tracing transactions and determining the facts upon which the proof of availability or non-availability of the claimed exemption depends, particularly where the laws of a particular foreign country preclude disclosure of the pertinent information. There is reason to believe that in many instances these channels are utilized for the deliberate purpose of complicating or frustrating the Commission's enforcement effort although there is no evidence of complicity on the part of foreign banks which may be involved.

The Commission ordinarily receives no notice of a distribution for a foreign account unless and until the matter comes to its attention either as a result of a complaint from a public investor or in the course of its inspection or investigation work.

In order to cope with illegal distributions made through the use of such foreign devices, the Commission has recently proposed a rule requiring members of national securities exchanges and brokers and dealers to report to the Commission orders received from non-resident persons to purchase a significant amount of a security as well as purchases of a significant amount of a security from a foreign source, if the purchase is made for the account of the member, broker or dealer or is made for the account of any other person who, to the knowledge of the member, broker or dealer, proposes to sell or is selling the securities in the United States. [Footnote: Securities Exchange Act Release No. 5774.] A rule of this nature would give the Commission prompt notice of significant transactions for foreign accounts, insofar as brokers and dealers in the United States are involved in the transactions, and this in turn should facilitate the efforts of the Commission to deal more effectively with illegal distributions of securities through foreign sources.

EVASION OF REGISTRATION REQUIREMENTS THROUGH THE "NO-SALE" THEORY

Under Rule 133, which embodies an interpretation of long standing, the issue of securities in connection with certain types of corporate mergers, consolidations, reclassifications of securities and acquisitions of corporate assets is not deemed to constitute a "sale" of securities to stockholders of corporate parties to the transactions. This rule has the effect of exempting issues of securities in these transactions from the registration requirements of the Securities Act. It has been relied upon in a very large number of corporate transactions consummated without registration of the securities involved. A substantial number of transactions ostensibly entered into under the rule may, in fact, involve violations of the registration requirements.

The Commission considers that Rule 133 provides no exemption from the registration and prospectus requirements of the Securities Act with respect to any public distribution of securities received in such a transaction by a security holder who may be deemed to be a statutory underwriter. Recently the staff of the Commission proposed an amendment to Rule 133 designed to restate the purpose and effect of that rule and to clarify its application and limitations. [Footnote: Securities Act Release No. 3965.] The Commission has published the proposed amendment for comment by all persons having an interest in the matter. The staff of the Commission also is preparing a proposed form for registration of securities publicly distributed following transactions of the character referred to in the rule, in order to simplify compliance with the registration requirements in such cases. Such a form may permit the use of a prospectus in the form of a proxy statement meeting the requirements of Regulation 14 under the Securities Exchange Act of 1934 where such proxy statement has been employed in connection with the transaction under Rule 133 supplemented by certain necessary additional information.

PROMOTIONAL STOCKS

Recent economic conditions have been relatively favorable for the sale of promotional stocks of new ventures, particularly in fields in which the securities of established enterprises have shown marked gains. For example, many new insurance and finance ventures have been promoted, particularly in the South Central, Southwestern, and Southeastern parts of the country, and their securities have been distributed interstate either through registration or under Regulation A or, more commonly, in reliance upon the intrastate exemption. Many of these issues and the sales techniques employed in their distribution appear to involve abuses and possible violations of the anti-fraud and other provisions of the Securities Act or the Securities Exchange Act, which require extensive investigation. The large number of these promotions and the rapidity with which they have increased has placed most serious burdens on the Commission's field enforcement personnel charged with the conduct of such investigations.

MANIPULATION OF THE SECURITIES MARKETS

Increased activity on the Nation's securities markets has tempted some to engage in manipulation of these markets. Devious schemes may be employed to conceal both the fact of a manipulation and the identity of the persons actually responsible. These include schemes to increase the quoted over-the-counter prices for relatively obscure issues being distributed without registration in reliance upon some exemption, or the creation of fictitious markets for such issues. Such schemes are not uncommon in connection with distributions effected by "boiler rooms". These activities when conducted with ingenuity through numerous intermediaries are difficult to detect. Persons engaged in, or proposing, a distribution of a security not outstanding in the hands of the public may place orders for the purchase and sale of small amounts of a security with numerous brokers and dealers, or arrange to have others do this, with the result that such brokers and dealers will publish quotations for the security at prices specified in the orders, thus creating the appearance of an active over-the-counter market for the security, when in fact no such market exists except as generated by the distributors. When the distribution is completed the orders are withdrawn, and the "market" disappears.

Other apparent manipulations have occurred in issues in which there is a substantial public stockholder interest, particularly issues of companies engaged in expansion and diversification programs designed largely to reap profits for promoters and speculators at the expense of the public. Here the motive is to facilitate the financing of such programs, or to make the issuer's stock more attractive as a mechanism of payment for other businesses, by creating the appearance of an active and rising market in such stock. The techniques employed are various, including the dissemination of favorable information, the placing of buy orders at strategic moments and prices so as to have the stock close each day with a rise, and encouraging others to buy by giving them assurances against loss or lending money to finance the purchase. Efforts are, of course, made to conceal the identity of the persons ultimately responsible for the activity.

The investigation, and prosecution of a manipulation case requires careful and painstaking work usually over a period of many months. Investors must be identified and interviewed. Books and records of brokers, dealers and others must be examined and analyzed. The information thus obtained then has to be developed in a form which would permit its introduction in evidence in legal proceedings. That this is a difficult matter is illustrated by the fact that one of the Commission's experienced investigators has been engaged for almost a year in assisting the United States Attorney in preparing one of these cases for trial.

With the increasing tempo of activities in the securities markets, the Commission has noted a growing number of instances of unusual or unexplained market activity in particular securities. In some of these cases a preliminary investigation has revealed that no violations of law had occurred but in others the Commission has found it necessary to obtain an injunction or recommend criminal prosecution. The Commission is much concerned with the increase in manipulative activities and it is expected that it will be required to devote more of its enforcement effort to this area.

STOP ORDER AND SUSPENSION PROCEEDINGS FOR NEW ISSUES

There continue to be numerous instances where issuers filing either under the registration requirements of the Securities Act or under the Commission's exemptive Regulation A do not appear to be making an effort to comply in good faith with the disclosure and other standards required for such filings. Consequently, it is necessary that the Commission, for the protection of investors, institute stop order proceedings or suspension orders. Each of these has been preceded by an investigation and in many instances has required a formal administrative hearing. While the collection, presentation and analysis of evidence imposes a substantial burden on the Commission's enforcement staff, nevertheless it has been possible in this way to prevent the public sale of certain securities under circumstances likely to involve fraud upon the investing public.

BROKER-DEALER INSPECTIONS

Increased activity in the securities markets has also resulted in a significant increase in the number of brokers and dealers. There were 4,752 registered broker-dealers on June 30, 1958 and the Commission presently estimates that at the end of the fiscal year 1959 there will be 4,900 registered broker-dealers. It is estimated that this number will increase to 5,100 at the close of the fiscal year 1960. The Commission's concern with this increase in the number of registered brokers and dealers arises from the fact that many of them are inexperienced and unfamiliar with the ethical and legal obligations owed to their customers and that, therefore, there is a greater risk that injury may result to public investors dealing with such persons. In order to protect investors against possible abuses the Commission has intensified its broker-dealer inspection program. In the fiscal year 1958, 1,452 inspections were completed -- the greatest number since the Commission was organized.

SUMMARY

The Commission believes that an adequate and effective enforcement program is necessary not only to the discharge of its statutory responsibilities but also, and perhaps more important, to the preservation of that investor confidence in the capital formation process which is so necessary to the continued progress and prosperity of an economy based on the free enterprise system. To that end the Commission has vigorously employed,- and will continue to employ, all of its enforcement weapons to protect the investing public.

PART II
LEGISLATIVE ACTIVITIES

Statutory Amendments Proposed by the Commission

In July and August 1957 the Commission submitted to the Congress its proposals to amend an aggregate of 87 provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. These proposals, together with requests for hearings thereon, were submitted to the Committee on Banking and Currency of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, to which Committees was assigned the duty of exercising watchfulness over the execution of the securities laws by section 136 of the Legislative Reorganization Act of 1946. The proposals were introduced in the Senate by Senator Frank J. Lausche of Ohio, the then Chairman of the Subcommittee on Securities of the Committee on Banking and Currency, as S. 2544, S. 2545, S. 2546, S. 2547 and S. 2796. Subsequently, they were introduced in the House of Representatives by Representative Oren Harris of Arkansas, Chairman of the Committee on Interstate and Foreign Commerce, as H. R. 9326, H. R, 9327, H. R, 9328, H. R. 9329 and H. R. 9330. The Senate bills were referred to the Committee on Banking and Currency and the House bills to the Committee on Interstate and Foreign Commerce. No action was taken on these bills by either Committee.

The overall purpose of the Commission's proposals was to strengthen the safeguards and protections afforded the public by tightening the jurisdictional provisions, correcting certain inadequacies revealed through administrative experience and facilitating criminal prosecutions and other enforcement activities. A discussion of the more significant of these proposals is contained in the Commission's 23rd Annual Report, pp. 10-12.

On March 18, 1958, the Commission also submitted to Congress proposals to amend various sections of the Bankruptcy Act in the form of nine draft bills filed with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. These proposals are concerned with Chapters X and XI of the Bankruptcy Act. Chapter XI affords a means of effecting a composition of unsecured debts of debtors, including corporations. Chapter X, on the other hand, affords a means for the reorganization of corporations alone and has special safeguards to protect the interests of public security holders which are not provided in Chapter XI. The more significant of the proposed amendments would permit the Commission to appeal in a Chapter X proceeding if leave to appeal is granted by the appropriate Court of Appeals; make Chapter

XI of the Bankruptcy Act unavailable to corporations whose outstanding securities are beneficially owned by more than 100 persons; permit the district judge to transfer proceedings brought under Chapter XI of the Bankruptcy Act to Chapter X upon application of a party in interest or the Commission, if the judge finds that the interest of creditors and stockholders would best be served by a Chapter X proceeding ; and allow the judge in a Chapter X proceeding to approve a plan of reorganization which provides for less than full compensation to certain types of creditors, other than public investors, as is now permitted in a proceeding under Chapter XI.

These proposals were introduced in the House of Representatives by Representative Emanuel Celler of New York, Chairman of the Committee on the Judiciary as H. R. 11585, H. R. 11586, H. R. 11587, H. R. 11588, H. R. 11589, H. R. 11590, H. R. 11591, H. R. 11592, and H. R. 11593 and were referred to the Committee on the Judiciary. They were referred to the Judicial Council of the United States Courts for review and a conference was held by the Commission with the Council in August, 1958, at Denver, Colo. No further action was taken on these bills by the Congress.

The Commission expects to request further consideration of these or similar proposals during the 86th Congress.

Other Legislative Proposals

H. R. 11050, introduced by Representative Abraham Multer of New York, would remove the exemption provided by section 3 (a) (11) of the Securities Act for a security offering confined to the residents of the state within which the issuer is both incorporated and doing business. The Commission has not submitted its views on this proposal. No hearings have been held on the bill.

H. R. 7671, which was introduced by Representative John Flynt of Georgia and enacted into law, amends Section 116 (4) of Chapter X of the Bankruptcy Act by depriving the district judge of power to enjoin a lessor or conditional seller of aircraft equipment from commencing a foreclosure action against an air carrier operating pursuant to a certificate of convenience and necessity issued by the Civil Aeronautics Board. Since the assets of air lines consist principally of equipment, the practical effect of the bill is to make reorganization under Chapter X unavailable to certified corporate airline carriers which lease their equipment or purchase it under conditional sales contract. The Commission therefore filed a comment with the Congress opposing this bill, as well as a companion bill, S. 2205, introduced in the Senate by Senator John Butler of Maryland. The Commission pointed out that the primary purpose of Chapter X is to maintain the debtor as a going concern in order to protect the public security holders, and that this is accomplished in part by empowering the judge to restrain efforts to dismember the business while the reorganization is in process.

The Commission devoted a substantial amount of time to matters pertaining to other legislative proposals referred to it for comment. During the fiscal year, a total of fifty-eight legislative proposals were analyzed, as compared with thirty-three during the preceding fiscal year. In addition, numerous congressional inquiries relating to matters other than specific legislative proposals were received and answered. [Footnote: No action was taken in the second session of the 85th Congress with respect to the proposals to increase the registration fees under the Securities Exchange Act of 1934 and to increase to $500,000 the exemptive limit of Section S (b) of the Securities Act of 1933 which were passed by the Senate and are discussed at pages 12-13 and 15 of the 23rd Annual Report.]

Congressional Hearings

Small Business Subcommittee of the Senate Committee on Banking and Currency. -- On April 28, 1958, Chairman Gadsby and other members of the Commission appeared before the Small Business Subcommittee of the Senate Committee on Banking and Currency which was considering a number of bills designed to furnish financial assistance to small business. [Footnote: Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, 85th Congress, 2d Session, April 21, 22, 23, 24, 25, 28, 29, 30 ; May 1, and 2, 1958, pp. 195-233.] The Commission had previously furnished the Committee with comments on S. 2160, S. 2185, S. 2286 and S. 3191 and consequently the Chairman restricted his comments to S. 3643 and S. 3651 which were the focal point of the hearings. The latter bills provided for the establishment of small business investment companies for the purpose of providing financial assistance to small business concerns, and for the regulation of certain aspects of the organization and management of such proposed investment companies. Under both S. 3643 and S. 3651 the small business investment companies would be authorized to purchase convertible debentures of small business concerns and would obtain funds with which to make the purchase by issuing their own securities to the public and by borrowing funds from the Federal government.

S. 3643 provided an outright exemption from the Securities Act and the Investment Company Act for the proposed small business investment companies. S. 3651 granted the Commission authority to exempt, by rule or regulation, from the provisions of the Securities Act and the Trust Indenture Act, securities issued by the small business investment companies. The Commission opposed the exemptions granted by S. 3643, pointing out the need for disclosure to investors of information necessary for the formulation of an informed judgment as to the investment merit of the securities of the small business investment companies offered to the public. With respect to S. 3651, it was pointed out that the bill did not establish any definitive standards to guide the Commission in the exercise of its discretionary exemptive powers. The Commission was of the further view that the proposed small business investment companies should be subject to the provisions of the Investment Company Act, which provides needed additional protections for investors (see Part IX infra). As S. 3651 was reported out by the Committee on Banking and Currency and later passed by the Congress, it made the small business investment companies subject to the provisions of the Investment Company Act, except for section 18 of that Act, relating to asset coverage for indebtedness. Authority to grant exemptions from the provisions of the Securities Act and the Trust Indenture Act remained unchanged in the final draft.

Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. -- Since June 1957, all phases of the Commission's activities have been under study and investigation by the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. The Subcommittee was organized in 1957, after Speaker Rayburn had recommended that the Committee on Interstate and Foreign Commerce set up a Subcommittee with authority to go into the administration of the laws by agencies subject to the oversight of the House Committee on Interstate and Foreign Commerce, "to see whether or not the law as we intended it is being carried out or whether a great many of these laws are being repealed or revamped by those who administer them." [Footnote: Congressional Record, February 5, 1957, p. 1383.]

The Chairman and members of the Commission, as well as several members of the Commission's staff, appeared before the Subcommittee during January and June of 1958. In addition, the Commission has furnished the Subcommittee with answers to several detailed questionnaires. At least one attorney from the Subcommittee's staff has been working on matters involving this Commission on a full-time basis since September 1957, and the Commission has furnished working space to the Subcommittee for the convenience of its staff. The Commission has cooperated with the Subcommittee in every possible way, devoting approximately 10,000 man hours to the inquiry, which was still pending at the end of the fiscal year.

During its investigation the Subcommittee has inquired into various matters including questions whether certain inadequacies exist in the Acts administered by the Commission and budgetary limitations upon the Commission's ability to act, its conduct of particular cases, its internal administrative policies, and its relationships with other branches of government. During June and July of 1958, the Subcommittee conducted lengthy hearings on the conduct of the Commission in the case of S.E.C. v. The East Boston Company (reported at page 124 of the Twenty-Second Annual Report). The Commission appeared only once during these hearings. [Footnote: Since the end of the fiscal year the Commission made three additional appearances before the Subcommittee on September 16, 17 and 18 to complete its testimony in the East Boston Company case and to discuss other matters.]

PART III
REVISION OF RULES AND FORMS

The Commission maintains a continuous program of reviewing its rules and forms under the various statutes administered by it in order to determine whether any changes are appropriate in the light of changes in techniques and conditions in the securities field. Certain members of the staff are assigned the task of maintaining an overall review of rules and forms, and the need for changes therein are brought to the attention of the Commission. Changes are also suggested, from time to time, by other members of the staff who are engaged in the examination of material filed with the Commission, as well as by persons outside of the Commission, such as issuers and underwriters and their attorneys, accountants or other representatives. With a few exceptions provided for by the Administrative Procedure Act, proposed new rules and forms and proposed changes in existing rules and forms, are published in preliminary form for the purpose of obtaining the views and comments of interested persons, including issuers and various industry groups. During the 1958 fiscal year, the Commission published a number of proposed changes for comment and adopted certain other changes in its rules and forms. These are described below. [Footnote: The rules and regulations of the Commission are published in the Code of Federal Regulations, the rules adopted under the various Acts administered by the Commission appearing in the following parts of Title 17 of that Code :

Securities Act of 1933, part 230.
Securities Exchange Act of 1934, part 240.
Public Utility Holding Company Act of 1935, part 250.
Trust Indenture Act of 1939, part 260.
Investment Company Act of 1940, part 270.
Investment Advisers Act of 1940, part 275.]

THE SECURITIES ACT OF 1933

Proposed Revision of Rule 133

Rule 133 provides in general that for the purpose of determining the application of the registration and prospectus provisions of Section 5 of the Securities Act, no "offer" or "sale" shall be deemed to be involved so far as stockholders of a corporation are concerned, where, pursuant to provisions of a statute or the certificate of incorporation there is submitted to the vote of such stockholders a plan involving a statutory merger, consolidation, reclassification of securities or transfer of assets of the corporation in consideration of the issuance of securities of another corporation.

On October 2, 1956, the Commission invited comments on a proposal, the effect of which would have been to rescind rule 133 and to provide that transactions of the character referred to in the rule involve an "offer" and "sale" of a security subject to the registration and prospectus provisions of the Act. The Commission received numerous comments and a public hearing was held on January 17, 1957. On March 15, 1957, the Commission announced that it was deferring action on the proposal pending further study of the problem and questions raised and that any future modification of the rule would be undertaken only after opportunity for further public comment thereon.

On September 15, 1958 the Commission issued a release which recited that its staff had been engaged in a comprehensive review of all relevant legislative and other statutory materials, prior Commission and staff actions, and the views expressed by those who appeared at the Commission's public hearing on the 1956 proposal or had otherwise commented on the question, and that on the basis of this study the staff had recommended that the Commission abandon the 1956 proposal for revision of Rule 133, restate the purpose and effect of Rule 133, and adopt rules designed to clarify the applications and limitations of the rule.

The release invited comment on a proposed amendment of the rule designed to implement the recommendations of the staff. This amendment would retain the existing rule but would incorporate into it certain additional provisions which would make clear that registration is required in certain cases where a public distribution of securities initially required in transactions exempted by the rule is subsequently made by a person defined as a statutory underwriter. The release stated that there was in preparation a proposed form which could be used for registration of securities issued in distribution transactions of the character referred to in the proposed amended rule.

Amendment of Rules 134 and 433

Rule 134 specifies the information required and the information permitted to be included in an advertisement which is not deemed to be a prospectus with respect to a security when published or transmitted to any person after a registration statement has been filed. Rule 433 relates to the use of preliminary prospectuses prior to the effective date of the registration statement. Both of these rules require the inclusion of legends calling attention to the fact that a registration statement has been filed and cautioning the reader that offers or sales may not be made until there has been compliance with State and Federal requirements. These rules were amended during the fiscal year to make minor verbal changes in the required legend to avoid conflict with the wording of the legend required by State securities administrators and make possible the use in such advertisements and preliminary prospectuses of a single legend meeting both Federal and State requirements.

Proposed Rule Changes Relating to Assessable Stock

During the fiscal year the Commission invited public comments on a proposed new Rule 136 and a proposed amendment of Rule 140 with respect to assessable stock and the levying of assessments thereon. In connection with these proposals the Commission is also considering further changes in its exemption rules under the Act so that the levying of small amounts of assessments may be effected pursuant to an exemption, upon appropriate terms and conditions, from registration under the Act. Action on the proposed new Rule 136 and the proposed amendment of Rule 140 has been deferred pending the publication of proposed rule changes to provide such exemption and consideration of comments thereon.

The proposed new Rule 136 would operate to make the levying of assessments on assessable stock subject to the disclosure requirements of the Act, either by way of registration under the Act or through compliance with the terms and conditions of an appropriate exemption which is presently under study by the staff. The amendment to Rule 140 is intended to clarify its application and specifically define as an underwriter any company which is chiefly engaged in levying assessments on its assessable stock in order to purchase the securities of another issuer or of two or more affiliated issuers.

The above proposals are being considered because of continuing complaints received by the Commission from the public as to the existence of abuses in connection with the levying of assessments by various companies on their outstanding assessable stock. Certain companies having assessable stock outstanding continue to levy assessments against their stockholders without disclosing the status of the company or the purpose for which the proceeds are to be used. In some instances stockholders who seek to obtain information from their companies receive very little information or even meet with a flat refusal by company officials to furnish any information whatever. It appears that in some cases proceeds received from the assessments will not be productive of any present or potential benefit to the stockholders against whom they are levied. In fact, some such companies appear to be operated largely, if not solely, for the personal benefit of insiders. There are indications that some companies having assessable stock outstanding are being used as vehicles for raising funds for other companies which are unable or unwilling to seek funds directly from the public.

Amendment of Rule 161

Rule 161 provides that securities offered in conformity with the rules and regulations under section 3 (b) of the Act may continue to be offered in accordance with the rules and regulations in effect at the time the offering commenced, notwithstanding subsequent amendments to such rules and regulations. This rule was amended during the fiscal year to provide that it shall not apply to offers after January 1, 1959 of securities under Regulation D, which was rescinded July 23, 1956, or under Regulation A as in effect prior to its revision on July 23, 1956. The purpose of the amendment was to require any offerings under the previously existing Regulation A or D to comply with the revised Regulation A if the offering is continued after January 1, 1959.

Amendments to Regulation A

Regulation A provides an exemption from registration for issues of securities not in excess of $300,000 which are offered in accordance with the terms and conditions of the regulation. A number of amendments to this regulation were adopted during the fiscal year. One of these amendments provides that where the securities to be offered are interests in an unincorporated real estate syndicate there need not be included in computing the amount of securities which may be offered, the amount of interests in other unincorporated real estate syndicates affiliated with the issuer. Another amendment to the regulation provides procedures for the filing of amendments to notifications and for the withdrawal of such notifications. There was also added a requirement that underwriters must furnish a certification that the information given in the notification and in the offering circular with respect to underwriters, their directors, officers or partners is accurate and complete and does not omit any required information or any information necessary to make the statements made not misleading. The remaining amendments were chiefly of a technical or clarifying nature.

Revision of Forms S-2 and S-3

During the fiscal year revisions of Forms S-2 and S-3 were adopted. Form S-2 is used for registration under the Securities Act of securities of commercial and industrial companies in the promotional and development stage. Form S-3 is a similar form for mining companies in the exploratory or development stage. The revisions were for the purpose of bringing the forms up-to-date in the light of the Commission's experience and current administrative practice. Form S-1l, another form for mining companies in the exploratory stage, was merged into Form S-3 so that there is now only one form for use by this type of mining company.

Amendment of Forms S-4 and S-5

These forms are used for registration under the Securities Act of securities of investment companies registered under the Investment Company Act of 1940. A registration statement on either of these forms includes certain of the information and documents which would be required in a registration statement under the. Investment Company Act of 1940 if such a statement were currently being filed. Forms S-4 and S-5 were amended during the fiscal year to adapt the requirements of these forms to the Commission's amended Form N-8B-1, described below, which is the corresponding basic form for registration under the Investment Company Act.

THE SECURITIES EXCHANGE ACT OF 1934

Amendment of Rule 15b-8

Rule 15b-8 requires every broker-dealer who files an application for registration to file with his application duplicate original statements of financial condition disclosing, as of a date within 30 days of such filing, the nature and amount of his assets, liabilities and net worth. The amendment, effective September 15, 1957, deleted from the rule an exemption from this requirement formerly available to a partnership succeeding to and continuing the business of another partnership registered as a broker-dealer at the time of such succession.

Adoption of Rule 15d-20

During the fiscal year the Commission adopted a new rule, designated rule 15d-20, which provides for the granting of an exemption from the reporting requirements of section 15 (d) of the Act to certain issuers.

Section 15 (d) requires each issuer of securities registered under the Securities Act of 1933 to include in its registration statement an undertaking to file annual and other periodic reports corresponding to those required to be filed pursuant to section 13 by issuers having securities listed and registered on a national securities exchange, if the aggregate offering price of the issue covered by the registration statement plus all of the outstanding securities of the same class, computed on the basis of the offering price, amounts to $2,000,000 or more. The obligation to file reports is suspended under certain conditions not pertinent here.

The new rule provides that the Commission may, upon application and subject to appropriate terms and conditions, exempt an issuer from the duty to file such reports if the Commission finds that all of the outstanding securities of the issuer are held of record, that the number of such record holders does not exceed 50 persons and that the filing of such reports is not necessary in the public interest or for the protection of investors.

The exemption expires if any of the issuer's securities cease to be held of record, if the number of record holders increases to more than 50 persons, or if the issuer fails to comply with any of the terms or conditions upon which the exemption was granted. Provision is also made for termination of the exemption by the Commission, after an opportunity for a hearing, if the Commission finds the termination to be necessary or appropriate in the public interest or for the protection of investors.

Amendment of Rule 17a-3

Rule 17a-3 specifies the books and records required to be maintained and kept current by certain members, brokers and dealers. The amendment, effective July 1, 1958, requires such persons to prepare and maintain a record of the proof of money balances of all ledger accounts in the form of trial balances currently at least once a month.

Amendment of Rule 17a-5

Rule 17a-5 designates the members, brokers and dealers required to file reports of financial condition containing the information called for by Form X-17A-5, specifies the time when such reports must be filed, and provides certain other requirements with respect to such reports. Prior to the amendment, paragraph (a) required each member, broker and dealer subject to the rule to file the report within each calendar year, except that reports for any two consecutive years could not be filed within less than four months of each other. As amended, this paragraph requires the report to be filed as of a date within each calendar year, except that the first report (by others than successors) must be as of a date not less than one nor more than five months after the member, broker or dealer becomes subject to the rule. It also provides that a member, broker or dealer who succeeds to and continues the business of a predecessor need not file a report as of that year if the predecessor has filed the required report as of that year.

Paragraph (b) (1) of the rule describes the circumstances under which a report must be certified. Prior to the amendment, there was an exemption from the certification requirements for a member, broker or dealer who was not required to file a certified financial statement with any State agency or any national securities exchange and who, during the preceding calendar year, had not made a practice of extending credit to or holding funds or securities for customers except as an incident to transactions promptly consummated by payment or delivery. The amendment to this paragraph provides that every Form X-17A-5 report must be certified by an independent accountant unless one of three limited exemptions is available. The first exemption is for a member of a national securities exchange who, from the date of his previous report, has not transacted business with the public, has not carried any margin account, credit balance or security for any person other than a general partner, and has not been required to file a certified financial statement with any national securities exchange. The second exemption is available to a broker whose securities business is so limited that he has been exempt from the Commission's aggregate-indebtedness-net-capital-ratio rule 15c3-1. The third exemption is for a broker or dealer whose securities business has been limited to buying and selling evidences of indebtedness secured by liens on real estate and who has not carried margin accounts, credit balances or securities for securities customers.

Amendments to Form 8-C

Form 8-C is used for registration under the Act of a class of securities on a national securities exchange on which the registrant has no securities registered, if such class is already listed and registered on another national securities exchange. An application on Form 8-C consists chiefly of copies of applications, reports and proxy statements filed with the original exchange, together with copies of the required exhibits. This form was amended during the fiscal year to provide for a considerable reduction in the amount of material required to be filed in cases where the issuer intends to continue listing and registration of the securities on the original exchange. Certain other changes in wording were also made in the form in the interest of clarity.

Proposed Amendments to Form 8-K

During the fiscal year the Commission invited public comments on certain proposed amendments to Form 8-K which is the form prescribed for current reports filed pursuant to sections 13 and 15 (d) of the Act. The proposed amendments relate to Item 11 of the form which requires information in regard to matters submitted to a vote of security holders either at a meeting of such security holders or otherwise. The purpose of the proposed amendments is to clarify the item and the instructions thereto in certain respects. The matter was still under consideration at the end of the fiscal year. [Footnote: The amendments were adopted shortly after the end of the fiscal year. See Securities Exchange Act Release No. 5734 (July 16, 1958).]

Amendment to Form X-17A-1

Form X-17A-1 is the form required to be used under rule 17a-2 by a "manager" of a distribution of securities and by other persons subject to the rule who have a participation in an account for which stabilizing purchases are effected. The amendments to the form consist of a restatement of the instructions for use of the form, to simplify and clarify its use, and of a requirement that the totals of certain reported transactions be shown.

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Rescission of Rule 9

On March 14, 1957 the Commission issued notice of a proposal to rescind rule 9, which provides for the exemption of holding company systems having gross utility revenues not over $350,000 for the preceding calendar year or having net utility assets not over $1,000,000 currently or at December 31, 1946. After careful consideration of all the data, views and comments received in response to its notice, the Commission concluded that adequate legal basis for such exemption was lacking, and, on February 5, 1958, announced the rescission of the rule. The effective date of the rescission, initially fixed at September 30, 1958, was postponed to December 31, 1958.

Amendment of Rule 70

During the fiscal year, the Commission amended rule TO promulgated under the Public Utility Holding Company Act of 1935. Section 17 (c) of that Act prohibits any registered holding company or any subsidiary company thereof from having as an officer or director any executive officer, director, partner, appointee or representative of any bank, trust company, investment banker, or banking-association or firm except as permitted by rules and regulations of the Commission as not adversely affecting the public interest or the interest of investors or consumers. Rule 70 defines those persons or situations to which the Commission has granted exception from section 17 (c). Prior to the adoption of the amendment the rule provided in effect that no holding company or subsidiary could have as many as one-half of its directors persons with financial connections within the scope of section 17 (c). After issuing a notice of proposal to amend the rule and requesting comments thereon, the Commission adopted the amendment as circulated for comment. As amended, the rule exempts from the "less than one-half" limitation a person whose only financial connection is that of a, director, and who is not an officer or employee, of one or more commercial banks each having combined capital and surplus not in excess of $2,500,000 and who proposes to act as a director, but not as an officer or employee, of a registered holding company or subsidiary which is a public utility company. In no event, however, may the number of directors with financial connections proscribed by section 17 (c) exceed two-thirds of the total.

THE INVESTMENT COMPANY ACT OF 1940

Amendment of Rule 5

On October 25, 1957, the Commission adopted a clarifying amendment to rule 5 under the Act. This rule provides a simplified general procedure designed to expedite the disposition of proceedings, initiated by application or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder except in cases involving sections of the Act where specified rules prescribe a different procedure. Paragraph (c) of the rule prior to the amendment was subject to the interpretation that the Commission was required to order a hearing on a matter upon the request of any interested person whether or not it appeared that a hearing was necessary or appropriate. The amended rule makes it clear that the Commission will order a hearing only if it determines that such is necessary or appropriate in the public interest or for the protection of investors.

Proposal to Adopt Rule 10F-3

In a proposed rule considered during the fiscal year the Commission sought, among other things, to alleviate the problems and administrative burdens involved in processing applications for exemptions under section 10 (f), particularly in view of the tight time schedules usually present in these cases. Notice of this proposal was issued on July 15, 1958.

Section 10 (f) of the Act provides that an investment company, unless exempted by rule, regulation or order, is prohibited from purchasing a security during the existence of an underwriting syndicate, if any of the principal underwriters are affiliated persons of the investment company. As a consequence, in such cases investment companies must either first obtain an exemptive order of the Commission or purchase the securities conditioned on obtaining such exemptive order within such periods of time as a particular underwriter might be willing to grant even though extending beyond the date of the public offering. The proposed rule would permit the investment company to make such purchases under certain conditions without having to obtain an order of exemption.

The experience of the Commission in its consideration of requests for orders of exemption under its exemptive authority over the years indicates that the protection of investors in such situations may be adequately insured by the conditions and safeguards specified in the rule. These include limitations with respect to the consideration paid, as related both to the amount of the offering and the assets of the investment company, the amount of underwriters' commissions, purchases from an affiliated underwriter, and effective registration of the offering under the Securities Act of 1933. These conditions are designed to permit purchases where the circumstances are such as to make it unlikely that such purchases would not be consistent with the protection of investors.

Comments received on the proposal unanimously favored adoption of the rule although they included a number of suggestions for modification of the conditions and prerequisition contained therein.

The Commission has taken the various comments under advisement.

Proposal to Adopt Rule 22D-1

On May 28, 1958, the Commission issued notice of a proposal to adopt Rule 22D-1 relating to permissible variations in the sales charge made upon the sale of redeemable securities of registered investment companies. This action followed a comprehensive review of the legislative history of section 22 (d) of the Act, and all past administrative interpretations and exemptive orders issued under that section.

Section 22 (d) prohibits a registered investment company, its principal underwriter or a dealer in its shares from selling such shares to any person except at a current public offering price described in the prospectus. Its purpose is to prevent discrimination among purchasers and to provide for the orderly distribution of such shares by preventing their sale at a price less than that fixed in the prospectus.

One objective of the proposed rule is to lessen the burden on the Commission and the industry of preparing and processing exemption applications under section 6 (c) in cases identical to those where such relief had been previously granted. An equally important objective of the rule is to codify and make public the Commission's interpretation of section 22 (d), made on a case-by-case basis over the past years, with such changes as believed necessary, and thus ensure uniform compliance with its provisions.

The proposed rule would require some changes in current industry practices, particularly with respect to the availability of so-called "quantity discounts" for group purchases. The Commission in 1941 determined that section 22 (d) permitted the sale of an investment company's redeemable securities to be made to "any person" on the basis of a scale of reducing prices dependent upon the quantity of shares purchased at a single time. Thereafter, the term "any person" was construed to include a trustee or other fiduciary, or a custodian or agent purchasing for more than one account. It was particularly noted that the prohibitions of the statute apply only to an investment company, its underwriters, and dealers in its shares, and not to individuals who might form a group, such as members of a medical society or college faculty, to purchase through an agent in a quantity sufficient to entitle them to a discount.

A review of industry practices and complaints, showed a growing tendency on the part of investment companies, underwriters and dealers to organize, promote or solicit the formation of such groups. Such activity raises a serious question as to whether these persons were not in fact creating a favored "class" of individuals to effect sales at a price less than that generally available to other members of the public purchasing a like number of shares, contrary to the purpose and intent of section 22 (d).

In addition, such sales made to the group's agent or representative, as opposed to a fiduciary with investment discretion, involve the danger that prospectuses will not be furnished to all members of the group, contrary to the requirements of the Investment Company Act of 1940 and the Securities Act of 1933.

The proposed rule would limit the granting of a quantity discount to (i) a single individual purchasing shares with his own funds for himself or as a gift to others, or (ii) a trustee or other fiduciary purchasing for a single trust estate, although there may be more than one beneficiary.

Another change in current practices which the proposed rule would require relates to the use of so-called "letters of intent" pursuant to which a purchaser is entitled to receive the discount applicable to the total quantity of shares purchased within a stated period, usually 13 months. The proposed rule does not sanction this method of pricing, and the Commission stated that it was tentatively of the opinion that the mere intent to purchase shares in the future would not be a sufficient basis for computing a quantity discount.

The proposed rule also does not include any provision permitting sales at reduced sales loads to officers and employees of an investment company, its principal underwriter, and its investment adviser. The Commission in the past has issued orders exempting such sales where made for investment purposes, on the ground that they promoted employee incentive and good will. The Commission's release announcing the proposed rule stated that upon reconsideration of this matter it was tentatively of the opinion that the business purposes to be served by reduced sales loads to such persons are insufficient to warrant continuation of this practice in the light of the policy and intent of section 22 (d).

Over forty-five comments were received in response to the Commission's notice. Most of the comments favored adoption of the rule, although there was strenuous objection to its failure to sanction use of letters of intent and a number of suggestions were made for changes in language. Some comments also contended that the Commission should continue to sanction sales to employees of investment companies at a reduced sales load.

The Commission heard oral argument on the proposed rule on July 23, 1958, and took the matter under advisement. [Footnote: Upon reconsideration, the Commission determined to include provisions in the rule permitting sales at a reduced sales load pursuant to letters of intention and to officers and employees of an investment company, its underwriter and investment adviser subject to appropriate safeguards. The Commission adopted Rule 22D-1 on December 2, 1958. Investment Company Act Release No. 2798.]

Amendments to Form N-8B-1

Form N-8B-1 is prescribed for registration statements filed under the Act by all management investment companies except those which issue periodic payment plan certificates. This form was amended during the fiscal year to require the furnishing of a table which in effect shows on a per-share basis a ten-year comparative summary of earnings and capital changes together with certain ratios. It is the purpose of the new requirement to provide for investors a more informative presentation of the operations of the registrant than was provided by the table required previously.

OTHER MATTERS

Amendments to Statement of Policy Relating to Investment Company Sales Literature

The Commission, during the 1958 fiscal year, adopted certain amendments to its Statement of Policy relating to sales literature used by investment companies registered under the Investment Company Act of 1940. The Statement of Policy is designed to serve as a guide for issuers, underwriters and dealers in the preparation of such sales literature so as to avoid violation of the anti-fraud provisions of section 17 of the Securities Act of 1933. It was adopted in 1950 and was amended in 1955. The amendments adopted during the past fiscal year were published in preliminary form and a public hearing was held thereon. The amended Statement of Policy permits a more liberal use of charts and tables, provided they meet certain standards of disclosure and arrangement.

Proposed Amendment of Rules Regarding Incorporation by Reference

The rules of the Commission permit filings with the Commission to incorporate by reference rather freely papers and documents previously filed with the Commission under the same statute or under different statutes administered by the Commission. This practice, however, has interfered with the Commission's disposal of out-of-date records since many filings made in recent years incorporate by reference papers and documents filed in earlier years. As a necessary step to conforming the Commission's Records Program to the overall Federal Records Legislation, the Commission, during the 1958 fiscal year, published for comment certain proposed amendments to its rules regarding incorporation by reference. The effect of the proposed amendments would be to limit incorporation by reference to documents which have been in the Commission's files not more than 10 years, and to require reference to specific prior filings. This time limit would remove one of the conditions which now prevent the final disposition of many original records, and the specific filing reference would substantially reduce the research now necessary to assemble previously filed documents for consideration in connection with current filings. A number of letters of comment were received in regard to the proposed amendments which pointed out certain practical difficulties which such amendments might create. At the end of the fiscal year, the staff was preparing for the Commission's consideration a revised proposal which would accomplish the objective desired and would also obviate the mechanical problems indicated in the comments.

PART IV
ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is designed to provide disclosure to investors of material facts concerning securities publicly offered for sale by use of the mails or instrumentalities in interstate commerce, and to prevent misrepresentation, deceit, or other fraudulent practices in the sale of securities. Disclosure is obtained by requiring the issuer of such securities to file with the Commission a registration statement and related prospectus containing significant information about the issuer and the offering. These documents are available for public inspection as soon as they are filed. The registration statement must become "effective" before the securities may be sold to the public. In addition the prospectus must be furnished to the purchaser at or before the sale or delivery of the security. The registrant and the underwriter are responsible for the contents of the registration statement. The Commission has no authority to control the nature or quality of a security to be offered for public sale or to pass upon its merits or the terms of its distribution. Its action in permitting a registration statement to become effective does not constitute approval of the securities, and any representation to a prospective purchaser of securities to the contrary is made unlawful by Section 23 of the Act.

DESCRIPTION OF THE REGISTRATION PROCESS

Registration Statement and Prospectus

Registration of any security proposed to be publicly offered may be effected by filing with the Commission a registration statement on the applicable form containing prescribed disclosures. When a registration statement relates, generally speaking, to a security issued, by a corporation or other private issuer, it must contain the information, and be accompanied by the documents, specified in Schedule A of the Act; when it relates to a security issued by a foreign government, the material specified in Schedule B must be supplied. Both schedules specify in considerable detail the disclosure which should be made available to an investor in order that he may make an informed decision whether to buy the security. In addition, the Act provides flexibility in its administration by empowering the Commission to classify issues, issuers and prospectuses, to prescribe appropriate forms, and to increase or in certain instances vary or diminish the particular items of information required to be disclosed in the registration statement as the Commission deems appropriate in the public interest or for the protection of investors.

In general the registration statement of an issuer other than a foreign government must describe such matters as the names of persons who participate in the direction, management, or control of the issuer's business; their security holdings and remuneration and options or bonus and profit-sharing privileges allotted to them; the character and size of the business enterprise, its capital structure, past history and earnings, and its financial statements, certified by independent accountants; underwriters' commissions; payments to promoters made within two years or intended to be made; acquisitions of property not in the ordinary course of business, and the interest of directors, officers, and principal stockholders therein; pending or threatened legal proceedings ; and the purpose to which the proceeds of the offering are to be applied. The prospectus constitutes a part of the registration statement and presents the more important of the required disclosures.

Examination Procedure

The staff of the Division of Corporation Finance examines each registration statement for compliance with the standards of accurate and full disclosure and usually notifies the registrant by an informal letter of comment of any material respects in which the statement appears to fail to conform to those requirements.

The registrant is thus afforded an opportunity to file a curative amendment. In addition, the Commission has power, after notice and opportunity for hearing, to issue an order suspending the effectiveness of a registration statement. In certain cases, such as where a registration statement is so deficient as to indicate a willful failure to make adequate disclosure, no letter of comment is sent and the Commission either institutes an investigation to determine whether stop-order proceedings should be instituted or immediately institutes stop-order proceedings. Information about the use of this "stop-order" power during 1958 appears below under "Stop Order Proceedings."

Time Required to Complete Registration

Because prompt examination of a registration statement is important to industry, the Commission completes its analysis in the shortest possible time. Congress provided for 20 days in the ordinary case between the filing date of a registration statement or of an amendment thereto and the time it may become effective. This waiting period is designed to provide investors with an opportunity to become familiar with the proposed offering. Information disclosed in the registration statement is disseminated during the waiting period by means of the preliminary form of prospectus. The Commission is empowered to accelerate the effective date so as to shorten the 20-day waiting period where the facts justify such action. In exercising this power, the Commission is required to take into account the adequacy of the information respecting the issuer theretofore available to the public, the facility with which investors can understand the nature of and the rights conferred by the securities to be registered, and their relationship to the capital structure of the issuer, and the public interest and the protection of investors. The note to Rule 460 under the Act indicates, for the information of interested persons, some of the more common situations in which the Commission feels that the statute generally requires it to deny acceleration of the effective date of a registration statement.

The median time which elapsed between the date of filing and the effective date with respect to 685 registration statements that became effective during the 1958 fiscal year was 24 days, compared with 23 days for the 1957 and 1956 fiscal years. [Footnote: Does not include 130 registration statements of investment companies filed and effective as post-effective amendments to previously effective registration statements pursuant to section 24 (a) of the Investment Company Act of 1940. The median elapsed time for these 130 registration statements was 23 calendar days.] This time was divided among the three principal stages of the registration process, approximately as follows:

(a) From the date of filing the registration statement to the date of the letter of comment, 14 days;

(b) From the date of the letter of comment to the date of filing the first material amendment, 6 days; and

(c) From the date of filing the first amendment to the date of filing the final amendment and effective date of registration, 4 days. All of these periods include Saturdays, Sundays and holidays.

This increased average lapsed time is a matter of concern to the Commission. It is being carefully watched, and all appropriate steps are being taken to reduce the time lapse as much as possible, including steps to cure personnel shortages.

VOLUME OF SECURITIES REGISTERED

Securities effectively registered under the Securities Act during fiscal 1958 totalled $16.5 billion, the highest volume for any fiscal year in the 24-year history of the Commission. Registrations have more than doubled since 1953, when $7.5 billion of securities were registered, reflecting annual increases of at least $1.5 billion. The chart below shows the dollar amount of effective registrations from 1935 to 1958.

[chart omitted]

These figures cover all securities effectively registered, including new issues sold for cash by the issuer, secondary distributions, and securities registered for other than cash sale, such as exchange transactions and issues reserved for conversion of other securities.

Of the dollar amount of securities registered in 1958, 80.5 percent was for the account of issuers for cash sale, 18.3 percent for account of issuers for other than cash sale and 1.2 percent was for account of others, as shown below:

[table omitted]

The most important category of registrations, issues to be sold for cash for account of the issuer, amounted to $13.3 billion in 1958, an increase of about 10 percent over the previous year. Most of the difference was due to the large volume of debt securities, $6.9 billion as compared with $5.7 billion in 1957. There was little change in the amount of either common or preferred stock registered. Of the 1958 volume, 52 percent was made up of debt securities, 45 percent common stock and 3 percent preferred stock. Close to half of the total for common stock represented securities of investment companies.

The number of statements, total amounts registered, and a classification by type of security for issues to be sold for cash for account of the issuing company in each of the fiscal years 1935 through 1958 are shown in appendix table 1. More detailed information for 1958 is given in appendix table 2.

The classification by industries of securities registered for cash sale for account of issuers in each of the last 3 fiscal years is as follows:

[table omitted]

The investment company issues referred to in the table above were classified as follows:

[table omitted]

Of the net proceeds of the corporate securities registered for cash sale for the account of issuers in 1958, more than 70 percent was designated for new money purposes, including plant, equipment, and working capital, close to 3 percent for retirement of securities, and 27 percent for other purposes, principally the purchase of securities by investment companies.

REGISTRATION STATEMENTS FILED

During the 1958 fiscal year, 913 registration statements were filed for offerings of securities aggregating $16,913,744,964, compared with 943 registration statements filed during the 1957 fiscal year covering offerings amounting to $14,667,282,319.

Of the 913 registration statements filed in 1958, 254, or 28 percent, were filed by companies that had not previously filed any registration statement under the Securities Act of 1933, compared with 305, or 32 percent, of the corresponding total during the 1957 fiscal year and 415, or 42 percent, for the 1956 fiscal year.

The growth in the volume of proposed financing under the registration provisions of the Securities Act of 1933 is shown by the following tabulation, which reflects a 4-year increase in 1958 of 88 percent over 1954 in the aggregate dollar amount of offerings as stated in the registration statements filed.

[table omitted]

A cumulative total of 14,704 registration statements has been filed under the Act by 6,925 different issuers covering proposed offerings of securities aggregating almost $151 billion during the 25 years from the date of the enactment of the Securities Act of 1933 to June 30, 1958.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1958 and the aggregate dollar amounts of securities proposed to be offered which were reflected in the registration statements both as filed and as effective, are summarized in the following table.

[table omitted]

The reasons for requesting withdrawal of the 71 registration statements withdrawn during the 1958 fiscal year are shown in the following table:

[table omitted]

RESULTS OBTAINED BY THE REGISTRATION PROCESS

As the result of the staff's examination of registration statements, numerous significant changes were effected in the disclosures made to the investing public. Among these results were changes in accounting presentation, as illustrated by the following examples:

Stock Issued in Exchange for Partnership Assets. -- Several partners organized a corporation to which they transferred certain partnership assets in exchange for some 1,900,000 shares of $1 par value common stock of the new company. The number of shares issued was based principally on appraised values assigned to the assets transferred.

A registration statement was filed by the new corporation in which its assets were stated at such appraised values. In view of the absence of an arm's length relationship between the partners and the corporation the registrant was requested to amend its financial statements so that the assets would be stated on the basis of the cost to the partners.

As a result of this request the assets were restated and the equity section of the balance sheet showed as a deduction from the aggregate par value of shares outstanding about $1,400,000 representing the excess of par value of shares issued and other consideration over incorporators' cost of assets acquired at or since incorporation. This change reduced the total assets of the corporation from $2,700,000 to $1,300,000.

Subsequently the company was recapitalized, with the 1,900,000 shares of $1 par value common stock being converted into 425,000 shares of $1 par value

Class A stock, a reduction in capital more than sufficient to eliminate the excess item from the equity section of the balance sheet.

Pooling of Interests vs. Purchase Accounting. -- The principle of "pooling of interests" accounting permits the combining of the earned surplus accounts of companies involved in a merger or combination and avoids the recording of goodwill or an upward revaluation of other assets as would be required in many purchase or acquisition transactions under "acquisition" accounting.

In a recent registration statement in which an exchange offer was described, acquisition accounting was proposed for the combination of two companies, of which the proposed parent company was one-fifth the size of the company being acquired. The smaller company, which had some 400,000 shares of stock outstanding, was to issue 1,600,000 shares of its $.25 par value common stock for the entire outstanding stock of the larger company, assigning to its own shares a value of $2 per share. The prospectus also carried a public offering of 250,000 shares at a price to net the company $2.10 per share.

As originally proposed in the registration statement, $2,600,000 of the excess of the ascribed value of the new shares was to be assigned to certain undeveloped real estate owned by the larger company. After reviewing the terms of the proposed combination, our staff objected to the use of acquisition accounting and the resulting substantial write-up in the value of the land. Certain unusual features of the plan prompted this position. The registrant's previously outstanding common shares were redesignated as Class A convertible stock which was convertible into debentures until a specified date, after which it automatically became common stock. Both Class A stock and the debentures had voting rights for the election of five directors, and the new common stock to be issued under the plan of exchange was limited to the right to elect five directors, making a total of ten directors. Two members of the new group in the organization were to become president and secretary of the parent company.

After discussions, an amended registration statement was filed in which the pooling of interests concept was applied to the combination and the investment in the subsidiary was recorded on the books of the parent at the underlying book value based on cost, and hence no revaluation of the real estate emerged.

STOP ORDER PROCEEDINGS

Section 8 (d) provides that, if it appears to the Commission at any time that a registration statement contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may institute proceedings looking to the issuance of a stop order suspending the effectiveness of the registration statement. Where such an order is issued, the offering cannot lawfully be made, or continued if it has already begun, until the registration statement has been amended to cure the deficiencies and the Commission has lifted the stop order. During the 1958 fiscal year, 8 new proceedings were authorized by the Commission under section 8 (d) of the Act and 7 such proceedings were continued from the preceding year. Two of such cases were thereafter consolidated. In connection with these 14 proceedings 5 stop orders were issued during the year, one of which was subsequently vacated when the registration statement was appropriately amended. In 2 other cases the registration statement was withdrawn. The remaining 7 cases were pending as of June 30, 1958.

A proceeding in which a stop order was issued with respect to a registration statement filed by Republic Cement Corporation was described in the 23rd Annual Report. The other 4 proceedings which resulted in the issuance of stop orders during the fiscal year are described below as well as 1 proceeding in which a stop order was issued shortly after the end of the fiscal year.

Horton Aircraft Corporation. -- This registrant, a Nevada corporation, was organized for the purpose of manufacturing and selling a so-called Horton Wingless Airplane. The company filed two registration statements with the Commission. The first statement, filed in 1955, covered a proposed offering of 500,000 shares of no par value common stock of which 400,000 shares were to be offered by the registrant and 100,000 shares by the president, William E. Horton, at $1.00 per share or the market price, whichever was higher. The other registration statement, filed in 1956, covered 100,000 shares of common stock of the registrant held by Horton which was to be offered at $25.00 per share. A consolidated hearing was held as to both registration statements and the Commission issued a stop order suspending the effectiveness of both statements.

The Commission found the registration statements false and misleading in the following material respects, among others.

The representation, in the registration statements that Horton had assigned to the registrant a patent with respect to the wingless airplane was materially misleading in view of the fact that Horton had previously assigned all of his right, title and interest in his "invention" to another person. The description in the registration statements of the Horton Wingless Airplane, the aeronautical principles involved, and the coverage of the patent obtained by Horton, was also materially false and misleading. False and misleading statements were also made with respect to the performance of Horton's model of the wingless plane. The registration statements also contained false and misleading statements with respect to the use of the proceeds from the previous sale of unregistered securities, the price of the securities being registered and the proposed use of the proceeds therefrom.

In addition, the Commission found that while the second registration statement disclosed the entry of an injunction against registrant and Horton based on false and misleading claims and the return of an indictment against Horton based on fraud, registrant nevertheless omitted to disclose the nature of the false and misleading statements and the fraud involved.

Columbia General Investment Corporation. -- The registrant, a Texas corporation organized for the purpose of engaging in the investment business, filed a registration statement covering 100,000 shares of its common stock, $1 par value, to be offered to its stockholders at $4.50 per share. The Commission, finding that the registration statement contained materially misleading statements, denied a request for withdrawal of such statement and issued a stop order.

The registration statement stated, among other things, that 42,000 shares of the common stock of Columbia General Life Insurance Company, acquired from the promoters of the insurance company and registrant in exchange for 210,000 shares of registrant's common stock, and representing a substantial portion of registrant's assets, had an "estimated fair value" of $420,000. The $420,000 value was stated to be based on the fact that at and prior to such acquisition, shares of such stock had been sold at prices of $10 and more by the insurance company in the course of a public offering and by one of the promoters through a company established for the purpose of maintaining and stabilizing the market in that stock. However, the Commission held that the prices paid in such sales could not be considered a true reflection of the market or fair value of the stock at such time in view of the materially misleading statements employed in connection with the sales. The Commission found that the failure to disclose the facts surrounding the insurance company offering rendered the statements regarding the value of the 42,000 shares misleading.

The Commission further found that registrant had sold 53,059 of its own shares to stockholders of the insurance company at $9 per share, and 10,077 shares to the general public at $12 per share, without disclosing that such prices had been arbitrarily determined, that there had been recent sales of such stock at $2 per share to insiders and others, and that registrant's capital and surplus figures included the misleading $420,000 valuation attributed to the 42,000 shares of insurance company stock. As a result of such sales, the Commission ruled, a contingent liability to the purchasers was created which should have been disclosed in the registration statement. [Footnote: Securities Act Release No.

3901 (March 5, 1958). A petition for review of the Coin-mission's order has been filed in the United States Court of Appeals for the Fifth Circuit.]

Lewisohn Copper Corporation. -- This registrant, a Delaware corporation, was organized for the purpose of exploring, developing and operating mining properties in Arizona. Prior to the filing of its registration statement, the company had, commencing in October 1955, sold 200,000 shares of its common stock at a stated public offering price of $1.50 a share under claim of exemption from registration under Regulation A. The registration statement, filed in March 1956, covered a proposed offering of 100,000 shares at a price to be determined prior to the effective date of the registration statement and which had tentatively been estimated at least $10 a share. Stop order proceedings, instituted in August 1956, with respect to the registration statement were consolidated with proceedings under Regulation A, instituted in June 1956, with respect to suspension of the exemption thereunder of the earlier 200,000 share offering.

More than half of the 200,000 share offering was sold to a few broker-dealer firms, including one firm closely connected with the underwriter, for their own accounts, or for the accounts of members or their families, at the stated offering price of $1.50 a share. Such firms and persons in turn resold a large part of the stock, mostly at prices in excess of $1.50 and ranging as high as $9.50 or more. The Commission found the offering circular used in connection with the offering false in stating that the public offering price was $1.50 a share and deficient in failing to disclose that profits would be received by the various firms and individuals, upon the resale of the stock by them at higher prices. The Commission found that such resales constituted part of the public distribution of the stock. Since most of the resales were at prices in excess of $1.50, the aggregate offering price to the public exceeded the $300,000 maximum prescribed by section 3 (b) of the Act and Regulation A and accordingly no exemption under the regulation was available. On this and other grounds, including misleading publicity circulated by the issuer and underwriter in connection with the offering, the Commission permanently suspended the exemption of the offering under Regulation A.

With respect to the registration statement, the Commission issued a stop order, finding the prospectus deficient in failing to disclose the facts as to the 200,000 share offering referred to above and the contingent liability resulting from the sale of the 200,000 shares when no exemption from registration was available. The Commission further found the prospectus misleading in failing to disclose the activities of the issuer, the underwriter and others having a tendency to influence the market price of the company's stock. These activities included market activities by the underwriter and others and publicity circulated by the company and the underwriter, which gave the misleading impression that there had been an immediate public demand for and acceptance of the stock and which contained optimistic and misleading statements about the company's drilling program, results of assays, possible tonnages of ore on its properties and an application for a certificate of tax necessity on a large concentrating mill, and did not disclose that the existence of a mineable ore body had not been established. Additional deficiencies found in the prospectus included the failure to disclose the underwriter's profit in the resale of 33,000 shares of the issuer's stock purported purchased by the underwriter for investment and the contingent liability of the issuer for the sale of these shares without registration.

In view of the serious nature of the deficiencies in the registration statement the Commission denied the registrant's request to be allowed to withdraw it. The Commission indicated that the fact that the company had a substantial amount of stock outstanding in the hands of investors distinguished the situation presented in this case from that involved in Jones v. S.E.C., 298 U.S. 1 (1936) where withdrawal was required.

The Fall River Exploration and Mining Company. -- The registrant, a Colorado corporation, then named The Fall River Power Company, filed a registration statement covering a proposed public offering of 500,000 shares of its no par value common stock at $2.00 per share. After hearings instituted pursuant to section 8 (d) of the Act, the Commission ordered suspension of the effectiveness of the registration statement. The company consented to the entry of the stop order.

Among the deficiencies constituting the grounds for the issuance of the Commission's stop order were: (1) representations that the registrant's business was in part that of a public utility, notwithstanding the fact that there was no demand for power from the long-idle hydro-electric plant owned by the registrant, (2) the use of an appraisal of the hydro-electric plant, based on estimated replacement cost, where the appraisal was not prepared in accordance with accepted standards and failed, among other things, to consider the lack of demand for power, (3) the use of an appraisal of water rights not founded on a basis sufficient to sustain it, (4) the representation that a portion of the proceeds from the sale of the stock would be applied toward the purchase of milling facilities, without disclosing that there were no known ore bodies and no present need for milling facilities, and (5) the inclusion in the financial statements of an appraisal, at present day cost, of tunnels represented as development work on mining claims, which were constructed by predecessors of the registrant in large part to transport ore from mines which were no longer being worked.

Shortly after the close of the fiscal year under review the registration statement was amended. In its amended form, the statement disclosed that the registrant's name, which in its original form suggested the company was an operating public utility, had been changed to indicate that the business was exploration and mining. Since the amended statement had been revised to meet the various objections previously cited, the Commission vacated the stop order, and the registration statement was ordered effective.

Woodland Oil & Gas Co., Inc. -- The registrant, a Delaware corporation, filed a registration statement covering a proposed public offering of 700,000 shares of its common stock at $1.50 per share, of which 600,000 shares were to be offered on behalf of the registrant and 100,000 shares were to be offered on behalf of the principal promoter and general manager of the registrant. The company was organized for the purpose of exploring, developing and operating oil and gas properties. Its assets consisted of interests in certain partially developed Pennsylvania properties, and an interest in some wildcat acreage in Western Kentucky. The proceeds of the issue were intended for drilling and testing on both properties.

After examination of the registration statement and hearings, pursuant to section 8 (d) of the Securities Act, the Commission found that the registrant had failed to make adequate disclosures with respect to (1) its poor production record which had resulted in sustained operating losses, (2) its recoverable reserves and the extent to which they could be produced profitably, (3) the remote possibilities of investors realizing income from or a return of their investment, (4) unsuccessful drilling tests on the Kentucky property, and (5) certain underwriting agreements. The Commission found that misleading statements were contained in (1) the statements regarding use of the proceeds, (2) references to large quantities of oil in the Western Kentucky general area, and (3) the geologist's report. The Commission found that in order to make the speculative features of the enterprise "plainly evident" to the ordinary investor, they had to be set forth in summary fashion in one place in the early part of the prospectus under an appropriate heading.

A stop order was issued by the Commission shortly after the close of the fiscal year under review.

The Commission is authorized by section 8 (e) of the Act to make an examination in order to determine whether a stop order proceeding should be instituted under section 8 (d). For this purpose the Commission is empowered to subpoena witnesses and require the production of pertinent documents. Four such examinations were initiated during the 1958 fiscal year and one examination was pending from the previous fiscal year. In two cases the examination led to proceedings under section 8 (d) of the Act, in two others the registration statements were withdrawn and in the fifth the registration statement was amended and the examination closed. No examinations under section 8 (e) of the Act were pending at the end of the fiscal year.

The Commission is also authorized by section 20 (a) of the Act to make an investigation to determine whether any provisions of the Act or any rule or regulation prescribed thereunder have been or are about to be violated. The Commission has instituted investigations under this section as an expeditious means of determining whether a registration statement is false or misleading or omits to state any material fact. During the 1958 fiscal year 16 such investigations were instituted. Eight such investigations were pending from the previous fiscal year. Five investigations resulted in the institution of stop order proceedings under section 8 (d) of the Act, five were closed, in one the registration statement was withdrawn and in the remaining case a permanent suspension order was entered under Regulation A. Twelve investigations were pending at the end of the 1958 fiscal year.

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

Under section 3 (b) of the Securities Act, the Commission is empowered to exempt, by its rules and regulations and subject to such terms and conditions as it may prescribe therein, any class of securities from registration under the Act, if it finds that the enforcement of the registration provisions of the Act with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering. The statute imposes a maximum limitation of $300,000 upon the size of the issues which may be exempted by the Commission in the exercise of this power.

Acting under this authority the Commission has adopted the following exemptive regulations:

Regulation A:
General exemption for United States and Canadian issues up to $300,000.

Regulation A-M:
Special exemption for assessable shares of stock of mining companies up to $100,000.

Regulation A-R:
Special exemption for first lien notes up to $100,000.

Regulation B:
Exemption for fractional undivided interests in oil or gas rights up to $100,000.

Regulation B-T:

Exemption for interests in oil royalty trusts or similar types of trusts or unincorporated association up to $100,000.

Exemption from registration under section 3 (b) of the Act does not carry exemption from the civil liabilities for false and misleading statements imposed upon any person by section 12 (2) or from the criminal liabilities for fraud imposed upon any person by section 17 of the Act.

Exempt Offerings Under Regulation A

The Commission's Regulation A permits a company to obtain not exceeding $300,000 (including underwriting commissions) of needed capital in any one year from a public offering of its securities without registration if the company complies with the regulation. Regulation A requires the filing of a notification with the appropriate Regional Office of the Commission, supplying basic information about the company, certain exhibits, and except in the case of a company with an earnings history which is making an offering not in excess of $50,000, an offering circular which is required to be used in offering the securities.

During the 1958 fiscal year, 732 notifications were filed under Regulation A, covering proposed offerings of $133,889,109, compared with 919 notifications covering proposed offerings of $167,269,900 in the 1957 fiscal year. Included in the 1958 total were 71 notifications covering stock offerings of $14,433,379 with respect to companies engaged in the exploratory oil and gas business and 69 notifications covering offerings of $14,257,615 by mining companies.

The following table sets forth various features of the Regulation A offerings during the past three fiscal years:

[table omitted]

Most of the offerings which were underwritten were undertaken by commercial underwriters, who participated in 185 offerings in 1958, 252 in 1957, and 528 in 1956. The remaining cases where commissions were paid were handled by officers, directors, or other persons not regularly engaged in the securities business.

Suspension of Exemption

Regulation A provides for the suspension of an exemption thereunder where, in general, the exemption is sought for securities for which the regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the regulation or in accordance with prescribed disclosure standards. Following the issuance of a temporary suspension order by the

Commission, the respondents may request a hearing to determine whether the temporary suspension should be vacated or made permanent. In the case of filings made under Regulation A as revised in July 1956, if no hearing is requested within thirty days after the entry of the temporary suspension order, and none is ordered by the Commission on its own motion, the temporary suspension order becomes permanent.

During the 1958 fiscal year, temporary suspension orders were issued in 88 cases as compared with 132 in the 1957 fiscal year. Of the 88 orders, 3 were later vacated. Requests for hearing were made in 18 cases and in 7 of such cases the requests were later withdrawn; proceedings in the remaining 11 cases are pending. The names of the companies involved in the orders issued during the 1958 fiscal year are set forth in table (6) of the appendix. A few cases are summarized below to illustrate the misrepresentations and other noncompliance with the regulation which led to the issuance of suspension orders.

Washington Planning Corporation of Maryland. -- In its order temporarily suspending the Regulation A exemption, the Commission alleged that the offering circular contained untrue statements of material facts and failed to disclose required information concerning the net loss sustained from the issuer's business operations. There was also a failure to disclose that the offering of securities was being made on an installment payment basis, that commissions were paid for the sale of the securities despite statements in the offering circular to the contrary, and that part of the proceeds from the offering were used to pay expenses and make advances to companies other than the issuer. The Commission's order further alleged that the use of the offering circular without appropriate disclosure had been and would be in violation of section 17 of the Securities Act of 1933. In addition, the terms and conditions of Regulation A were not complied with in that the issuer failed to file a complete and accurate report of the sales of its securities. No hearing was requested and the suspension order became permanent.

Seaboard Drug Company, Inc. -- The Commission temporarily suspended the exemption because the terms and conditions of Regulation A were not complied with since the aggregate offering price of shares sold by stockholders in the market and shares sold on behalf of the issuer exceeded the $300,000 ceiling. The Commission also stated that the offering circular operated as a fraud and deceit upon the purchasers and contained untrue statements of material facts and omitted to state certain material facts with respect to the issuer's assumption of expenses of certain affiliates and predecessor companies, and the utilization of proceeds of the offering for a personal loan to an officer, director and principal security holder of the issuer. No hearing has been requested and the suspension order remains in effect.

Tejanos Mining Corporation. -- In its order temporarily suspending the exemption, the Commission alleged that the notification failed to disclose the issuance of certain shares within one year prior to the subject filing, and failed to disclose the identity of the underwriter. The Commission further alleged that the Regulation A exemption was not available since the president of the issuer had been indicted for selling unlicensed securities and selling securities without registering as a dealer in the State of Texas. The order also alleged that misleading statements were made concerning the use of proceeds and the interests of the officers, directors and promoters in the issuer. No hearing was requested and the suspension order became permanent.

Microveer, Incorporated. -- The Commission's temporary suspension order alleged that the offering circular was misleading and contained untrue statements of material facts with respect to statements made concerning the physical properties of the issuer's product, a thin wood veneer, the existence of potential purchasers of the company's product and the amount of funds needed to equip the issuer's plant adequately with machinery. No hearing was requested and the suspension order became permanent.

Central Oils, Incorporated. -- The Commission suspended the Regulation A exemption for an offering of the above company because of misleading, inaccurate and incomplete statements in the offering circular concerning, among other matters, the interests of the directors and promoters in the company's properties, the past and prospective productivity of the company's oil properties, and the misleading nature of the geological materials. A request for hearing was filed and later withdrawn, and the suspension became permanent.

Gem State Securities Corporation. -- In its order temporarily suspending the Regulation A exemption, the Commission alleged that the Regulation A exemption was unavailable because securities were sold prior to the time permitted by the regulation, at a different price from that stated in the offering circular, and without delivery of an offering circular. No hearing was requested and the suspension order became permanent.

Garner Aluminum Corporation. -- The Commission temporarily suspended the Regulation A exemption because it had reasonable cause to believe that oral misrepresentations were made in the sale of securities under the offering which operated as a fraud and deceit upon the purchasers, particularly with respect to statements made concerning the refunding of investors' money, the amount of securities already sold, and the use of proceeds received therefrom. No hearing has been requested and the suspension order remains in effect.

The Commission is given discretionary authority in rule 252 (f) of Regulation A to determine upon a showing of good cause that certain disabilities, arising in general from past conduct of the issuer, underwriter or others associated with them in the purchase or sale of securities, and which ordinarily have the effect of making the Regulation A exemption unavailable, shall not operate to bar an exemption under the regulation. During the 1958 fiscal year, M applications for relief from various disabilities were granted under rule 252 (f) by the Commission.

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1958, 109 offering sheets were filed pursuant to Regulation B and were examined by the Oil and Gas Unit of the Commission's Division of Corporation Finance. During the 1957 fiscal year, 133 offering sheets were filed and during the 1956 fiscal year, 114 were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during each of the fiscal years referred to:

[table omitted]

Reports of sales. -- The Commission requires persons who make offerings under Regulation B to file reports of the actual sales made pursuant to that regulation. The purpose of these reports is to aid the Commission in determining whether violations of law have occurred in the marketing of securities offered under the regulation. The following table shows the number of sales reports filed under Regulation B during the past three fiscal years and the aggregate dollar amount of sales during each of such fiscal years:

[table omitted]

LITIGATION UNDER THE SECURITIES ACT OF 1933

The Commission is authorized by the Securities Act to seek injunctions in cases where the continued or threatened violations of the Act may result in damage to members of the public. Many such actions were brought by the Commission during the year in cases involving violations of the registration and anti-fraud provisions of the Act.

Litigation Involving Violations of Registration and Anti-fraud Provisions

The Commission obtained injunctions against further violations of the registration provisions in actions in which it was found that the defendants were selling fractional interests in oil leases or in oil and gas properties without registration. Permanent injunctions were obtained in S.E.C. v. Gerald L. Reasor and John O. Karstrom, Jr., S.E.C. v. Horace E. Watkins, doing business as Watkins Oil Co. et al., both referred to in the 23rd Annual Report, and S.E.C. v. Edward J. Preston.

In S.E.C. v. Ben Franklin Oil and Gas Corporation, et al. a preliminary injunction was obtained prohibiting the sale of shares of Ben Franklin Oil and Gas Corporation without registration.

Sales of unregistered securities in mining companies also required Commission action within the year. In S.E.C. v. Tannen and Co., Inc., et al. a permanent injunction was obtained against 8 defendants to prevent further sales of unregistered stock. Similar injunctions were obtained in S.E.C. v. Cataract Mining Corporation, et al., S.E.C. v. Columbus-Rexall Oil Company, et at., S.E.C. v. Creswell-Keith Mining Trust, et al., S.E.C. v. Dawn Uranium and Oil Company, et al., S.E.C. v. William J. Owen and Leonard S. Fox, doing business as Uinta Basin Oil and Gas Leasing Company, et al., and S.E.C. v. Strategic Minerals Corporation of America, et al. Injunctions were entered by consent in the last four of the above cases. A preliminary injunction was obtained in S.E.C. v. Royal Drift Mining Company, et al.

Final judgments were also entered in S.E.C. v. Arkansas Securities Corp. et al. S.E.C. v. Great Fidelity Life Insurance Co., et al., S.E.C. v. Oregon Timber Products Co., Inc., et al. S.E.C. v. Farm and Home Agency, Inc., et al., S.E.C. v. Television and Radio Broadcasting Corporation and James D. Asher and S.E.C. v. Francis Distributing Co., Inc., et al., enjoining further sales of unregistered shares. The injunctions were entered by consent in the Farm and Home, Great Fidelity Life and Television and Radio cases.

In S.E.C. v. Backers Discount and Finance Company and James Sorce, Jr. the defendant, who was in the business of purchasing installment notes received by contractors, offered to investors participating certificates in these installment notes guaranteeing 12% net return on the investment and purportedly assigning a mortgage to the investor. The amount invested had in fact no relation to the face amount of the mortgage assigned, and if the mortgagor defaulted, another mortgage was substituted. In. some instances no mortgage was assigned to the investor but rather a participation in general portfolio holdings of Backers. These "guarantee saving certificates" were found not to be guaranteed by any outside independent guarantor, but merely secured by Backers. Notwithstanding assurances by Backers that it would discontinue interstate sales until such time as it had complied with the registration requirements of the Act, over $10,000 of the certificates were sold to residents of 6 states. A final injunction was entered by the Court to enjoin further sales of these securities.

In S.E.C. v. Micro-Moisture Controls, et al. 16 defendants, including 7 registered broker-dealer firms, were permanently enjoined from further violations of the registration requirements of the Act in the offer and sale of common stock of Micro-Moisture Controls, Inc. This action, which was also referred to in the 23rd Annual Report, involved an increased number of outstanding shares resulting from an exchange of assets of Converters Acceptance Corporation of Canada for stock of Micro-Moisture. A subsequent public distribution by certain controlling stockholders of Micro-Moisture was made through the defendant broker-dealer firms and 2 residents of Canada, also named as defendants.

In S.E.C. v. Land Development Company of Nevada, et al. the complaint charged, among other things, that the defendants had been offering and selling the capital stock of Land Development Company of Nevada and certain evidences of indebtedness, investment contracts and profit sharing agreements when no registration statement was in effect as to such securities. The defendants consented to the entry of a preliminary injunction.

Violations of the registration provisions of the Securities Act were also charged in S.E.C. v. Roy B. Kelly, et al., S.E.C. v. Truckee Showboat, Inc. and S.E.C. v. Doctors' Motels, Inc. In the Kelly case the complaint was dismissed by agreement of the parties, subject to a stipulation effectively preventing sale of the stock without registration. In the Truckee Showboat case the application for a preliminary injunction was denied, the court indicating that it was convinced that the defendant was not threatening to violate the law and that an injunction was therefore unnecessary. In the Doctors' Motels case the complaint was dismissed by stipulation of the parties subsequent to the filing of a registration statement.

A final injunction was obtained by consent in S.E.C. v. Edward L. Elliott, et al. to prevent distribution of unregistered securities of Crowell-Collier Publishing Company. The related administrative proceedings are discussed in this report under the Securities Exchange Act of 1934.

Sales of unregistered mining stock, which also violated the anti-fraud provisions of Section 17 of the Securities Act in that false and misleading statements were used in such sales, brought about the entry of a final injunction in S.E.C. v. Triumph Mines, Ltd., et al. and resulted in a preliminary injunction in S.E.C. v. Alan Russell Securities, Incorporated, et al. Preliminary injunctions to prevent further violations of Section 5 and 17 of the Securities Act were also entered in S.E.C. v. Franklin Atlas Corp., et al., and S.E.C. v. American Founders Life Insurance Company of Denver, Colorado, et al. In the latter case an injunction was entered against the corporate defendants, American Founders Life Insurance Company of Denver, Colorado and Colorado Management Corporation. Among other statements found to be misleading by the Court were the omission to disclose the intercorporate relationships existing between the corporate defendants; for example, that Colorado Management Corporation entered into a management contract with American Founders for a consideration equal to at least 5% of the gross income of the insurance company for a 10-year period.

A permanent injunction was entered against Judson I. Taggart in S.E.C. v. Adams Bond and Share, Inc. and Judson I. Taggart. The complaint alleged that Taggart as vice president of defendant company had, in the sale of stock in that company, made false and misleading statements by, among other things, omitting to state to purchasers that another company, whose business his company was purchasing, had been continually operating at substantial losses, amounting to over $46,000 within a specified six-month period. In S.E.C. v. Evergreen Memorial Park Association, et al., the defendants consented to the entry of an injunction restraining further violations of Section 17 of the Securities Act.

False and misleading statements in violation of Section 17 of the Securities Act as well as sales in violation of the registration provisions were alleged in the Commission's complaint in S.E.C. v. Crusader Oil and Uranium Company, et al. In that case, the Commission alleged that in connection with the offer and sale of unregistered common stock of the Wyoming Oil Company (Delaware) the defendants had represented that the selling price of 200 to 50$ per share was a special price offered to a few stockholders, whereas in fact it was far in excess of the market price, and the offering was not limited to a few stockholders. A final judgment was entered by consent permanently enjoining Crusader Oil and Uranium Company and James R. Macon, president and controlling person, from further violations of Sections 5 (a) and (c) and 17 (a) of the Act, and Robert W. Wilson, a broker-dealer, from further violating Section 17 (a) of the Act.

In S.E.C. v. Southwest Securities, Inc., et al. a permanent injunction was entered enjoining General Insurance Investment Company, Harvey E. Smith, Margaret Brand Smith, and Bennie L. Dean from further violations of the registration provisions of the Securities Act. At the same time the Court entered an order extending until further order the effectiveness of a temporary restraining order which had been previously entered against Southwest Securities, Inc., Alien Goldsmith and Faye Goldsmith, restraining them from further violations of the registration and anti-fraud provisions of the Securities Act, as well as of the broker-dealer registration requirements of the Securities Exchange Act of 1934.

S.E.C. v. Robinson Development Corporation, Skid Control Corporation, et al. also involved violations of Section 5 (a) and (c) and Section 17 (a) of the Securities Act. The Commission's complaint alleged, in addition to the fact that the securities being offered and sold were unregistered, that the defendants employed a scheme to defraud by means of displaying a false and misleading motion picture and made false and misleading statements regarding, among other things, the identity of the inventor, the guarantee against competition, acceptance of the skid-control device by trucking and taxicab companies, profits to result, success of tests and future value of dividends. The court granted a final injunction against the defendants, Robinson Development Corporation, Louis M.

Robinson, Skid-Control Purchasing, Inc., Robinson Skid-Control Associates, Inc. and Cedar-Vale Development Corporation.

Universal Service Corporation had been the subject of a Commission stop order issued February 5, 1957 following the filing of a false and misleading registration statement and prospectus. The stop order was lifted when Universal filed amendments purportedly correcting the original filings. However, the Commission found it necessary to institute action to enjoin Universal Service Corporation and its officers from proceeding to sell under the amended filing. The Commission's complaint in S.E.C. v. Universal Service Corporation, et al. alleged that the registration statement and prospectus of the defendant contained untrue statements of material facts and that they omitted to state facts required to be stated, in violation of the anti-fraud and registration provisions of the Act. As an example, Universal had asserted ownership of 253 mining claims in the State of Texas, when in fact the claims had been forfeited to the State of Texas for failure to pay rentals. A final injunction was entered against Universal and its board chairman Bert Thompson, and the temporary restraining order already in effect was continued against the remaining defendants.

In S.E.C. v. Mississippi Valley Portland Cement the defendant was permanently enjoined from further violation of Sections 17 and 23 of the Securities Act. One of the allegations of the Commission's complaint was that the defendant had falsely stated that the fact that a registration statement had become effective meant that the Commission and its "cement consultant" had determined that cement could be economically produced from materials owned by the defendant near Vicksburg, Mississippi.

The defendant was also enjoined in S.E.C. v. James C. Graye, doing business as J. C. Graye Co. from further violations of Section 17 of the Securities Act. He had been selling stock of Atlas Gypsum Corporation, Ltd. largely on the strength of an untrue and misleading statement announcing a proposed merger between Atlas Gypsum Corporation, Ltd. and Johns-Manville. Another permanent injunction was obtained at about the same time against the same defendant as a broker-dealer in an earlier action charging violation of the Commission's net capital rule.

In S.E.C. v. Los Angeles Trust Deed and Mortgage Exchange, et al. the defendants sold securities described in the complaint as evidences of indebtedness, investment contracts, and receipts for or guarantees of such securities arising out of the sale of promissory notes secured by deeds of trust covering real estate in California. The complaint alleged violations of the registration provisions of the Securities Act as well as violations of the anti-fraud provisions of that Act and of the Securities Exchange Act of 1934. Charges were made in the complaint that the advertising and selling literature contained incomplete, ambiguous, flamboyant, misleading, untrue and deceptive statements of material facts, such as a statement to the effect that the plan affords investors an opportunity to buy an income for life without reducing their principal and that the plan constitutes a safe and secure method of realizing rapid capital appreciation through the "magic of compound interest", omitting to disclose, among other things, the speculative nature of investments in second trust notes, and the differences between trading securities listed and registered on national securities exchanges and the open-market trading in deeds of trust conducted by the defendants. After the close of the fiscal year a temporary injunction was obtained against all but one of the defendants and a receiver appointed. The Court of Appeals for the Ninth Circuit subsequently granted a stay pending appeal.

The Commission has been very much concerned in recent years with the high-pressure tactics of broker-dealer firms which use long distance telephone calls to prospective investors to sell unregistered securities. The salesmen for these securities firms frequently make claims of a spectacular future for the security they are attempting to sell.

During the fiscal year, the Commission secured preliminary injunctions in S.E.C. v. Globe Securities Corporation, et al. and in S.E.C. v. Herbert Rapp, doing business as Webster Securities Corporation, et al. These broker-dealer firms were offering and selling unregistered common stock of Taylorcraft, Inc. to United States residents by means of long distance telephone calls. They made many misleading and extravagant claims as to the present and future merits of an investment in Taylorcraft, Inc. stock; among them, (1) that Taylorcraft, Inc. had received a multi-million dollar government contract for guided missiles research, (2) that Taylorcraft, Inc. had enough government contracts to keep them busy three to five years, (3) that they anticipated an annual volume for Taylorcraft, Inc. in excess of $5 million and (4) that Taylorcraft, Inc. stock, at the time selling for $1 a share would rise to $3, $4, $8 or $15 per share in short periods of time.

The defendants in S.E.C. v. J. H. Lederer Co., Inc., et al. consented to the entry of a permanent injunction restraining them from further violations of the registration provisions of the Securities Act in the offer and sale of unregistered common stock of Continental Mining Exploration, Ltd., a Canadian corporation. The Commission had alleged that practically all of the shares of Continental acquired by J. H. Lederer Co., Inc. were sold by means of long distance telephone calls to thousands of residents of the United States.

In S.E.C. v. Mono-Kearsarge Consolidated Mining Company, Jean R. Veditz Co., Inc., et al. the Commission's complaint alleged that the individual defendants, who were persons closely connected with the corporate defendants, acted as conduits to facilitate the public distribution of nearly a million unregistered shares of Mono-Kearsarge stock. It was further alleged that 380,000 of such shares had already been offered and sold to U.S. residents by means of long distance telephone calls and the United States mails. After the close of the fiscal year certain of the defendants consented to the entry of a permanent injunction, and permanent injunctions were entered against other defendants, including the companies named above.

The Commission filed a complaint near the close of the fiscal year in S.E.C. v. Lincoln Securities Corporation, et al. charging that defendants had been offering and selling by means of long distance telephone solicitations unregistered shares of Shoreland Mines, Ltd. The complaint further charged that the defendants in order to induce sales of Shoreland Mines, Ltd. used false and misleading statements, among others, (1) that the company had iron ore claims adjacent to iron mines actually in operation by one or more large steel corporations (2) that Shoreland Mines, Ltd. was engaged in the exploration and development of newly discovered resources, and (3) that the price of Shoreland Mines, Ltd. would substantially increase in the near future. The affidavits filed in support of the Commission's motion for preliminary injunction stated that there had been no exploration work on the claims allegedly owned by Shoreland Mines, Ltd.; that Shoreland Mines, Ltd. had no working capital; that no mines are in operation adjacent to Shoreland Mines property; and that the claims of Shoreland Mines, Ltd. were not owned outright but subject to a payment of $15,000 to the president of the company. A temporary restraining order was entered and the action is still pending.

The Commission's complaint and supporting affidavits in S.E.C. v. Alan Russell Securities, Inc. charged that the defendants had been offering International Ceramics Mining, Limited stock, which is listed on the Canadian Stock Exchange in Montreal, to residents of the United States by means of long-distance telephone calls. The defendants in these telephone calls had falsely represented to prospective investors that International Ceramics had large government contracts; that it was producing a product for use in the guided missile and rocket field; and that individuals associated with the Office of the President of the United States had invested in the stock. In addition to asserting the falsehood of such representations and others, the affidavits averred that International Ceramics for the past ten years had been a pilot operation and operated at a deficit. A permanent injunction was entered restraining the defendants from further anti-fraud violations.

Subpoena Enforcement

During the past fiscal year the Commission on several occasions was obliged to resort to the courts to seek enforcement of subpoenas issued in connection with investigations of violations of the Securities Act. In S.E.C. v. Linda Lord the

Commission applied for an order to require obedience to the subpoena issued in an investigation of defendant's activities in the sale, by telephone, of the stock of Shoreland Mines, Ltd. An order to show cause was issued on June 2, 1958 to which, defendant failed to respond. On July 30, 1958 a criminal information was filed against the defendant for violation of Section 19 (b) of the Securities Act and Section 21 (b) of the Exchange Act for willful failure to respond to the subpoena. She is presently a fugitive and a bench warrant has been issued for her arrest. The injunctive action initiated subsequent to the investigation is described at page 53, supra.

In S.E.C. v. Doeskin Products, Inc., et al., the Commission sought court enforcement of a subpoena duces tecum calling for the production of certain records of Doeskin Products, Inc., charging that the refusal to produce the information was impeding the Commission's investigation of whether the Securities Act had been violated in the issuance and sale of securities of Swan-Finch Oil Corporation and Doeskin Products, Inc. This action was subsequently dismissed by consent, the records having been produced after the action was commenced. For an account of related litigation, see pp. 54-55, infra. In S.E.C. v. Dudley P. South, the District Court ordered the production of certain books and records of the Surinam Corporation in obedience to the Commission's subpoena duces tecum.

Other Litigation

In S.E.C. v. Doeskin Products, Inc., the Commission's complaint was dismissed against two of the seven defendants, final judgment having been entered by consent against the other five. This litigation, which involved violations of Section 5 of the Securities Act, is discussed, together with the related proceedings in S.E.C. v. Swan-Finch Oil Corporation, et al., on pages 52-3 of the 23rd Annual Report. In addition to the subpoena enforcement proceedings discussed above on this page, there arose, in connection with the proceedings, a civil suit against the Commission and various members of the Commission's staff. In that action Doeskin Products, Inc., filed a complaint in the New York Supreme Court, claiming damages of $1,000,000 as a consequence of the alleged unwarranted interference by the Commission and its staff with the sale and transfer of plaintiff's common stock in connection with the Commission's investigation in this case and the related Swan-Finch case.

Upon petition by the Commission and individual defendants the case was removed to the Federal District Court for the Southern District of New York. Defendants subsequently filed a motion to dismiss, on the ground that the complaint failed to state a claim upon which relief could be granted as against the individual defendants, in that the acts complained of were performed in discharge of their duties as governmental officials and consequently no liability attached, and further as against the Commission, in that the Court lacked jurisdiction over the subject matter. The motion to dismiss was granted and a notice of appeal was filed but subsequently withdrawn.

The Commission has been alert to the need to use all possible means to protect investors from fraudulent promotions originating in foreign countries. To this end a Foreign Fraud Order was obtained against several companies and individuals engaged in a fraudulent distribution from Cuba into the United States of Latin American Exploration Company stock. The fraud order was based upon evidence supplied by the Commission that the United States mails were being used in the conduct of the scheme to obtain money by means of false and fraudulent representations concerning the geological nature of the area in which the companies' property was located; the likelihood of bringing in profitable oil production from wells to be drilled on such properties; anticipated increases in the value of stock; the probability of a big strike in oil on the property of the company and various other similar representations. The fraud order, which is directed to all postmasters authorized to dispatch mail to Cuba, instructs them to stamp "FRAUDULENT" on all mail directed to any of the companies or persons listed in the order, and to return the same to the sender.

In Comico Corporation v. S.E.C. a petition was filed for review of the Commission's order denying petitioner's application for withdrawal of the registration statement. The Commission moved to dismiss the petition on the ground that the court lacked jurisdiction. A per curiam order was subsequently entered dismissing the petition.

PART V
ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 provides for the registration: and regulation of securities exchanges, and the registration of securities listed on such exchanges and it establishes, for issuers of securities so registered, financial and other reporting requirements, regulation of proxy solicitations and requirements with respect to trading b directors, officers and principal security holders. The Act also pro vides for the registration and regulation of brokers and dealers doing business in the over-the-counter market, contains provisions designed to prevent fraudulent, deceptive and manipulative acts and practices on the exchanges and in the over-the-counter markets and authorizes the Federal Reserve Board to regulate the use of credit in securities transactions. The purpose of these statutory requirements is to en sure the maintenance of fair and honest markets in securities.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

At the close of 1958, 14 stock exchanges were registered under the Exchange Act as national securities exchanges:

American Stock Exchange

Boston Stock Exchange

Chicago Board of Trade

Cincinnati Stock Exchange

Detroit Stock Exchange

Midwest Stock Exchange

New Orleans Stock Exchange

New York Stock Exchange

Pacific Coast Stock Exchange

Philadelphia-Baltimore Stock Exchange

Pittsburgh Stock Exchange

Salt Lake Stock Exchange

San Francisco Mining Exchange

Spokane Stock Exchange

The following 4 exchanges have been exempted from registration: by the Commission pursuant to section 5 of the Act:

Colorado Springs Stock Exchange

Honolulu Stock Exchange

Richmond Stock Exchange

Wheeling Stock Exchange

Disciplinary Actions

Each national securities exchange reports to the Commission disciplinary actions taken against their members for violation of the Securities Exchange Act of 1934 or of exchange rules. During the year 7 exchanges reported 44 cases of such disciplinary action. The actions taken included the imposition of fines aggregating $18,430 in 10 cases; the suspension of 1 individual and 2 firms from exchange membership; cancellation of the registration of 1 individual as a specialist; and censure of a number of individuals and firms.

Commission Rate Study

Section 19 (b) of the Exchange Act imposes on the Commission certain responsibilities and duties with respect to the rules of national securities exchanges including rules in respect of such matters as the fixing of reasonable rates of commission and other charges. Under an amendment to its Constitution, effective May 1, 1958, the New York Stock Exchange provided for an increase in the minimum commission rates to be charged by members and member firms. On April 14, 1958, the Commission announced that it had directed its staff to conduct a study of such commission rates and to report to the Commission whether such commission rates and other charges are reasonable and in accord with the standards contemplated by applicable provisions of the Exchange Act. Pursuant to the directive of the Commission the staff is now making a comprehensive study of commission rates on the New York Stock Exchange.

Nine other registered national securities exchanges, including the American Stock Exchange, have recently adopted schedules of commission rates identical with that of the New York Stock Exchange.

REGISTRATION OF SECURITIES ON EXCHANGES

It is unlawful for a member of a national securities exchange or a broker or dealer to effect any transaction in a security on such exchange unless the security is registered on that exchange under the Securities Exchange Act or is exempt from such registration. In general, the Act exempts from registration obligations issued or guaranteed by a State or the Federal Government or by certain subdivisions or agencies thereof and authorizes the Commission to adopt rules and regulations exempting such other securities as the Commission may find necessary or appropriate to exempt in the public interest or for the protection of investors. Under this authority the Commission has exempted securities of certain banks, certain securities secured by property or leasehold interests, certain warrants and, on a temporary basis, certain securities issued in substitution for or in addition to listed securities.

Section 12 of the Exchange Act provides that an issuer may register a class of securities on an exchange by filing with the Commission and the exchange an application which discloses pertinent information concerning the issuer and its affairs. An application requires the furnishing of information in regard to the issuer's business, capital structure, the terms of its securities, the persons who manage or control its affairs, the remuneration paid to its officers and directors, the allotment of options, bonuses and profit-sharing plans, and financial statements certified by independent accountants.

Form 10 is the form used for registration by most commercial and industrial companies. There are specialized forms for certain types of securities, such as voting trust certificates, certificates of deposit and securities of foreign governments.

Section 13 requires issuers having securities registered on an exchange to file periodic reports keeping current the information furnished in the application for registration. These periodic reports include annual reports, semi-annual reports, and current reports. The principal annual report form is Form 10-K which is designed to keep up-to-date the information furnished in Form 10. Semi-annual reports required to be furnished on Form 9-K are devoted chiefly to furnishing mid-year financial data. Current reports on Form 8-K are required to be filed for each month in which any of certain specified events have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings and important changes in the issuer's capital securities or in the amount thereof outstanding.

Statistics Relating to Registration

As of June 30, 1958, a total of 2,236 issuers had 3,795 classes of securities listed and registered on national securities exchanges of which 2,663 were classified as stocks and 1,132 as bonds. Of the total 2,236 issuers, 1,282 had 1,526 stock issues and 1,087 bond issues listed and registered on the New York Stock Exchange. On a percentage basis, the New York Stock Exchange had listed 57% of the issuers, 57% of the stock issues and 96% of the bond issues.

During the 1958 fiscal year, a total of 54 issuers listed and registered securities for the first time on a national securities exchange and the listing and registration of all securities of 74 issuers was terminated during the year. The number of applications filed during the fiscal year for registration of classes of securities on national securities exchanges was 207.

The following table shows the number of annual, semi-annual and current reports filed during the year by issuers having securities listed and registered on national securities exchanges. The table also shows the number of such reports filed under section 15 (d) of the Securities Exchange Act of 1934 by issuers obligated to file such reports by reason of their undertaking contained in one or more registration statements filed and effective under the Securities Act of 1933 for the public offering of securities. As of June 30, 1958, there were 1,365 such issuers, including 184 also registered under the Investment Company Act of 1940.

[table omitted]

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1957, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $331,277,155,000 as reported below.

[table omitted]

The New York Stock Exchange and American Stock Exchange figures were reported by those exchanges. There is no duplication of issues between them. The figures for all other exchanges are for the net number of issues appearing only on such exchanges, excluding the many issues on them which were also traded on one or the other of the New York exchanges. The number of issues as shown excludes those suspended from trading and a few others for which quotations were not available. The number and market value as of December 31, 1957, of stock issues alone are shown below:

[table omitted]

Reported market values for all stocks on the New York Stock Exchange and estimated unduplicated market values for all stocks on the other exchanges on June 30 of each year commencing in 1949, in billions of dollars, have been as follows:

[table omitted]

No deductions have been made from the market values in the three proceeding tables for intercompany investments tending toward duplication of values. The leading example of this duplication is the Standard Oil (New Jersey) ownership of more than $10 billion market value of shares of Creole Petroleum Corp., Humble Oil & Refining Co., Imperial Oil Ltd., and International Petroleum Co., Ltd. This ownership comprises well over half of the total value of all unlisted shares admitted to trading on the American Stock Exchange. It is reflected, of course, in the market value of the Standard Oil shares on the New York Stock Exchange.

The number of shares admitted to trading on the stock exchanges on December 31, 1957, was approximately 6,773,000,000, compared with 6,334,500,000 on December 31, 1956. Some 6,246,900,000 shares, or 92.2% of the total, were listed on registered exchanges, and included 170,500,000 preferred and 6,076,400,000 common shares.

Assets of Companies With Listed Common Stocks

As shown above, there were 2,053 common stock issues with an aggregate market value of about $197 billion listed on registered exchanges as of December 31, 1957. The assets of the issuers involved were about $273 billion, based on a showing of $255.2 billion by the New York Stock Exchange and an estimate as to issuers represented on other exchanges. The figures represent a conglomerate of individual and consolidated company reports and various treatments of such matters as reserves for depreciation.

Foreign Stock

The market value on December 31, 1957, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about $9.7 billion, of which $8.9 billion represented Canadian and $0.8 billion represented other foreign stocks. The market values of the entire Canadian stock issues were included in these aggregates. Most of the other foreign stocks were represented by American Depositary Receipts or American Shares, only the outstanding amounts of which were used in determining market values.

Comparative Over-the-Counter Statistics

Section 15 (d) of the Securities Exchange Act of 1934 requires that registration statements filed pursuant to the Securities Act of 1933 contain undertakings by the issuers to file the reports required by section 13 of the Securities Exchange Act when the class of securities offered and outstanding exceeds $2,000,000. The number of issuers required to file these reports increased from 1,086 to 1,151 during the fiscal year, excluding issuers also filing under the Investment Company Act of 1940. These issuers had securities outstanding with a market value in excess of $20 billion on June 30, 1958.

The number of issuers registered under the Investment Company Act of 1940 increased from 432 to 453, and their aggregate assets increased roughly from $15 billion to $17 billion during the fiscal year. Of the 453 issuers, 37, having assets totalling about $1.8 billion, had their stocks listed on an exchange and the stocks of 3 whose assets totalled about $56 million, were traded on an exchange on an unlisted basis. The securities of the remaining 413 issuers were traded exclusively in the over-the-counter market.

The number of active domestic issuers of over-the-counter stocks (exclusive of registered investment companies) reporting 300 or more holders appears not to have changed materially in recent years from the estimated total of 3,500 mentioned in previous annual reports. The numerous annual additions have been substantially offset by removals due to listing, merger or other causes. The growth in issuers of over-the-counter stocks appears more with respect to assets, market values and number of shares outstanding and shareholders, than in number of companies. In this respect they resemble issuers having securities listed and registered on exchanges, whose number was 2,210 on June 30, 1953 and 2,236 on June 30, 1958, but whose aggregate assets, market values, shares outstanding and shareholders have greatly increased. The aggregate market value on December 31, 1957 of the over-the-counter domestic stocks with 300 or more reported holders, was about $44 billion or about 20% of the $224.2 billion market value for all stocks on the exchanges on that date. The approximate number of issuers and the aggregate market values of their over-the-counter stocks were: for 700 bank issuers, $12 billion; for 275 insurance issuers, $8 billion; for 300 utility issuers, $6 billion; and for 2,225 industrial and miscellaneous issuers, $18 billion. The principal estimate in the above amounts is the inclusion of about $1 billion in stock values for 500 issuers not found in the standard securities manuals nor reporting to the Commission. The data are exclusive of issuers registered under the Investment Company Act of 1940 and of foreign issuers.

The principal dollar volume in bonds of the United States and its political subdivisions, in high-grade corporate bonds and preferred stocks, and in bank, insurance, and investment trust shares is consummated in the over-the-counter market. The principal dollar volume in stocks, other than those noted above, is consummated on the exchanges.

DELISTING OF SECURITIES FROM EXCHANGES

Pursuant to Section 12 (d) of the Securities Exchange Act a security registered on a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission.

During the fiscal year 1958, the Commission granted applications by exchanges and issuers to remove 42 securities from listing and registration pursuant to section 12 (d) and rule 12d2-1(b) thereunder, as follows:

[table omitted]

The New York Stock Exchange has adopted a revised policy with respect to delisting. It has stated that it will consider initiation of a delisting application where the size of a company has been reduced to $2,000,000 or less in aggregate market value of the common stock outstanding or net tangible assets applicable to common stock and the average net earnings after taxes for the last three years is below $200,000; or where distribution of the listed issue is limited to such an extent that, in the case of common stock, there are 250 or fewer stockholders of record discounting holders of odd lots, or the stock outstanding exclusive of concentrated holdings amounts to 30,000 shares or less or has a market value of $500,000 or less, or, in the case of other listed securities, the issue outstanding exclusive of concentrated holdings has a market value of $200,000 or less or totals 2,000 shares or less in the case of stock or $200,000 or less of principal amount in the case of bonds. The exchange has also stated that it will consider initiation of a delisting application in instances, among others, where stockholders have authorized liquidation or where sale of assets has been made without authorizing liquidation. All of the delisting applications filed by the New York Stock Exchange were initiated in accordance with this policy. The revised policy with respect to delisting of securities on the New York Stock Exchange was at issue in two cases described on p. 96 of last year's Annual Report.

The 8 delistings by the American Stock Exchange included 4 closely-held stocks, 3 stocks suspended for failure to meet reporting requirements among other reasons, and 1 stock following upon distribution of the company's principal assets. The 13 delistings by the regional exchanges included 6 stocks with small volumes on the exchanges, and 7 stocks of issuers (including 5 mining companies) failing to meet reporting requirements among other things.

Of the 10 delistings upon applications by issuers, 5 were for the purpose of reducing multiple listings, 3 were by mining companies of uncertain financial condition, 1 was for long absence of exchange transactions, and 1 followed a stockholder vote heavily in favor of delisting.

During the fiscal year 1958 the Salt Lake Stock Exchange and the San Francisco Mining Exchange adopted rules providing for suspension of trading in issues of companies which have not filed the annual reports required under section 13 of the Securities Exchange Act within 60 days after such reports are required to be filed, and for the filing of delisting applications with the Commission if the failure is not cured within 90 days after suspension. There were 8 delistings upon application of these exchanges and issuers of securities listed thereon during fiscal 1958, based principally on failure or inability to comply with the new rule. The Spokane Stock Exchange also adopted a similar rule during the fiscal year.

The Philadelphia-Baltimore Stock Exchange on April 9, 1958, established a rule similar to that of the New York Stock Exchange and several other exchanges, providing that, in the absence of special circumstances, there must be a vote of security holders on delisting proposals by issuers. In such cases, proxy statements must be cleared through the Commission in accordance with its proxy rules. The Salt Lake Stock Exchange adopted a substantially similar rule on August 2, 1957.

Delisting Proceedings Under Section 19 (a)

Section 19 (a) (2) authorizes the Commission to suspend- for a period not exceeding twelve months, or to withdraw, the registration of a security on a national securities exchange if, in its opinion, such action is necessary or appropriate for the protection of investors and, after notice and opportunity for hearing, the Commission finds that the issuer of the security has failed to comply with any provision of the Act or the rules and regulations thereunder. Section 19 (a) (4) authorizes the Commission summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days if in its opinion such action is necessary or appropriate for the protection of investors and the public interest so requires.

Seven cases were pending under section 19 (a) (2) at the beginning of the fiscal year and two cases were initiated during the fiscal year. One case was closed during the fiscal year and eight cases were pending at the end of the year. The case which was closed during the year and six cases which were closed shortly after the end of the year are described below.

In the past the Commission has used the power under section 19 (a) (4) infrequently. However, during the year it found it necessary and appropriate in connection with proceedings under section 19 (a) (2) involving Bellanca Corporation to use its authority summarily to suspend trading in that corporation's securities registered on the American Stock Exchange.

Bellanca Corporation. -- Bellanca Corporation, a Delaware corporation, was a small manufacturer of aircraft parts until February 1955 when Sydney L. Albert, a buyer and liquidator of failing businesses, acquired over 80% of its stock. Soon after Albert's acquisition the market price of Bellanca stock rose to a peak of [illegible] but in early June, 1956, the market price of the stock broke sharply and continued to decline through 1956 to about $2.00 per share. The Commission instituted proceedings under section 19 (a) (2) of the Act to determine whether the common stock of Bellanca should be suspended or withdrawn from registration on the American Stock Exchange.

In ordering the withdrawal of the registration of the common stock of Bellanca on the American Stock Exchange, the Commission found that the company violated sections 13 and 14 of the Act which require, respectively, the filing of reports with the Commission and the exchange, and the filing of preliminary proxy soliciting material with the Commission. The Commission ruled that Bellanca's failure to file certain required information as well as its filing of false information with respect to a number of securities transactions reflected a "flagrant disregard for its responsibilities to public investors."

The Commission found that beginning in March, 1955, and continuing until June, 1956, Bellanca through Albert, who had become its president, and others engaged in a program of acquiring interests in other companies by means of a series of complex transactions many of which resulted in benefits to the insiders rather than to Bellanca. It was held that the reports that were filed through June, 1956, served only to mislead the public and obscure the facts by failing to disclose unfavorable aspects of Bellanca's transactions and related financing arrangements.

Among the reporting deficiencies discussed by the Commission were those relating to N. O. Nelson Company and Automatic Washer Company. According to the decision, Bellanca failed to report that its purchase of N. O. Nelson Company in 1955 was accomplished by means of a $4,000,000 loan for which a premium of $500,000 was paid in addition to interest of 6%, nor was the subsequent refinancing of the Nelson purchase disclosed. Bellanca exchanged its Nelson stock for a controlling block of stock of Automatic Washer Company, at a time when Bellanca's president was in a controlling position with respect to Automatic. The Commission found that Bellanca should have filed a current report to disclose the agreement with Automatic, and that a subsequently filed current report was misleading and inadequate in failing to disclose the interest of Bellanca's president and others in the transactions. In addition, the Commission found that the financial statements in the annual report for 1956 and in preliminary proxy soliciting material filed with the Commission in 1957 were misleading and inadequate with respect to the value placed on Bellanca's shares of Automatic stock.

The Commission further found that securities owned or held by Bellanca or a subsidiary were used by the president for his own personal benefit and that such information should have been disclosed in the company's annual report for 1956 and in the preliminary proxy soliciting material, as required under the Commission's rules. Although all such shares were eventually returned or replaced, it was noted that in some instances the market value of the shares when they were returned was considerably lower than at the time they were taken.

The Commission held that the evidence showed a "course of conduct over an extended period involving flagrant violations of the reporting and proxy provisions of the Act. The purpose of the reporting provision is to inform existing and potential investors of material corporate activities as they occur and the purpose of the proxy provisions is to enable stockholders to exercise their voting rights upon the basis of an informed judgment." The Commission concluded that the record established that the protection of investors required the withdrawal of the registration of Bellanca's securities on the Exchange and pointed out that such withdrawal would conform with the Congressional intent reflected in section 19 (a) (2) as well as the Commission's previous decision in the Great Sweet Grass Oils case.

Eureka Company. -- In the Eureka Company case, the Commission found that reports filed by the company with the San Francisco Mining Exchange and the Commission during 1956 and 1957 pursuant to section 13 of the Securities Exchange Act were false and misleading. In addition, the company failed to file an annual report for 1955 and semi-annual reports for the periods ending June 30, 1955 and June 30, 1956, and filed a false and misleading proxy statement with respect to its annual meeting of stockholders for November 14, 1955.

The reports filed, some of which were filed late, were found to contain false and misleading statements concerning the acquisition of significant amounts of oil, gas and mining properties and other physical assets. Moreover, the reports misrepresented that certain securities sold and issued by the company in exchange for various assets were exempt from the registration requirements of the Securities Act of 1933 pursuant to the provision of section 4 (1) of the Act which exempts "transactions by an issuer not involving any public offering."

The Commission found that in a series of transactions from January to February, 1957, the company issued a substantial amount of its common stock in exchange for various interests in oil, gas and mining properties and related machinery and equipment. Current reports required to be filed to reflect these transactions were filed late, and no reports were filed with respect to certain acquisitions of assets. Furthermore, the reports which were filed did not furnish required information regarding the date and manner of acquisition, a description of the assets involved, the nature and amount of consideration given therefor, the identity of the persons from whom the assets were acquired and the nature of the material relationships which existed between such persons and the company, its directors and officers, and associates thereof.

Each of the current reports filed concerning the issuance of common stock in exchange for assets stated that such securities were not registered under the Securities Act and that such "securities were taken for investment by the purchaser." In this connection, the Commission held that representations by a purchaser that he is acquiring securities for investment or that he will not transfer them for a certain period are not of themselves sufficient to establish a private offering exemption pursuant to section 4 (1) of the Securities Act. In this case the Commission found that the number and nature of the purchasers and the manner of distribution were such as to clearly involve a public offering. The stock issued by the company in 1956 for properties and services were distributed to about 35 original purchasers. By February 1957, a large number of shares issued to the original recipients were transferred to 70 other persons or firms, including more than 15 broker-dealer firms. A substantial number of such shares eventually were widely distributed to the public.

The Commission found that the transfers and distributions were known or should have been known to Eureka, and held that the current reports were false and misleading in representing that the shares listed in such reports were exempt from registration under the Securities Act and were taken for investment by the purchasers. Such reports should have disclosed that the shares were sold in violation of section 5 of the Act.

The Commission stated that use of the facilities of a national securities exchange by an issuer is a privilege involving important responsibilities under the Securities Exchange Act, including compliance with the reporting and proxy solicitation requirements. It pointed out that Congress has specified that when violations occur, such privilege may be withdrawn if necessary or appropriate for the protection of investors, and decided that under the circumstances of the case, the protection of investors required that the registration of the common stock of Eureka on the San Francisco Mining Exchange be withdrawn.

Nev-Tah Oil and Mining Company. -- In the case of Nev-Tah Oil and Mining Company the Commission found that the company had failed to file current reports giving information as to acquisition of certain interests and the subsequent loss thereof and also as to a judgment for $100,000 in connection with one of the transactions. Moreover certain current reports represented that large issues of stocks were registered under the Securities Act of 1933 whereas, in fact, such shares were not registered and were offered to the public in violation of the Act. Neither the sales of such shares nor an injunction obtained by the Commission by consent in the United States District Court for the District of Nevada enjoining the registrant and certain officers from further sales, were disclosed in current reports. A vigorously contested issue in this case was whether control was exercised by the principal promoter who was the manager and generally the largest single stockholder, who selected the president, two directors and the general counsel, who controlled the-finances and operations, negotiated most of the acquisitions and dispositions and determined the prices and participated in a substantial way at board meetings although not a director. The Commission found that such person in fact controlled and was the parent of the registrant and that the required reports not only failed to disclose such control but also falsely denied it existed. The registrant asked for a 90-day delay of the Commission's determination so as to permit it to submit a plan of rehabilitation, but the Commission found that the record did not indicate any basis on which such a plan could be achieved and ordered that the registration of the common stock on the Salt Lake Stock Exchange be withdrawn.

Nevada Monarch Consolidated Mines Corporation. -- In the Nevada Monarch case, the company had not filed annual reports for the years 1951 through 1956. Its report for 1956 was ultimately filed some five months after it was due. In addition, the company failed to file until March, 1958, (after institution of delisting proceedings by the Commission) a current report due in July, 1957, reporting that in June, 1957, it had executed a three-year lease on all its properties coupled with an option to the lessee to purchase the properties. Moreover, the annual report finally filed for 1956 contained a balance sheet which stated that proceeds of $50,000 from a government loan had been expended by the lessee for the development of a tungsten ore body, when as a matter of fact the lessee received only $4,875 from such a loan and in addition expended a maximum of $18,000 "in connection with" such loan.

In reaching the conclusion that the protection of investors required the withdrawal of registration from the Salt Lake Stock Exchange, the Commission pointed out that the purpose of the reporting provisions of the Act is to inform existing and potential investors of material corporate activities and the corporation's financial condition, and found that the registrant had ignored its obligations under these provisions. The Commission also pointed out that the company's asserted belief that the loan had been granted in its full amount could not absolve the company of responsibility for the substantial overstatement of assets in its financial statement.

Intermountain Petroleum, Inc. -- In the Intermountain Petroleum, Inc. case the Commission found that reports filed by the company with the Salt Lake Stock Exchange and the Commission pursuant to section 13 of the Securities Exchange Act were not filed within the prescribed time and, when filed, were false and misleading. These reports were found to contain false and misleading statements regarding the availability of exemptions from registration under the

Securities Act, the recipients of stock issues and the value of mining and oil claims.

The Commission in its opinion held that the record did not establish that the claimed exemption under section 4 (1) of the Securities Act was available for the issuance of about 1,400,000 shares to approximately 90 persons in one transaction and the issuance of 274,500 shares to about 58 persons in another transaction. The opinion points out that in the proceedings, and in amended reports for the months in question, the company abandoned its contention that private offering exemptions under section 4 (1) of the Securities Act were available and instead urged that registration was not required because no sale of the securities occurred within the meaning of Rule 133 under the Securities Act. The Commission, in holding that this position was without substance, stated that the theory of Rule 133 is that no sale of securities to stockholders is involved where the distribution of securities to them results from the authorization by them, voting as a group, of a corporate act such as a transfer of assets for stock of another corporation, a merger or a consolidation, because in such situations there "is not present the element of individual consent ordinarily required for a "sale" of securities in the contractual sense. However, it was found in this case that the conditions of Rule 133, including the requirement of a vote of stockholders, were not met. It was further stated that, even if the terms and conditions of that rule had been literally met, no exemption would have been available under that rule if a vote by the shareholders of the acquired company would have been merely a formal act due to its affairs being controlled by a single individual who negotiated the exchange.

The Commission also found that the reports in question were misleading with respect to mining and oil claims which had not been the subject of geological appraisals or exploratory drillings. The Commission stated that the use of the terms "appraised value" and "valued" in connection with unexplored and undeveloped mining and oil prospects was misleading since such terms carried with them an implication that value had been determined by a scientific method. Moreover, it was especially important that there be no misleading implications as to the "value" of the claims covered by one of the reports, since those claims were sold to the company by an officer and controlling person of the company.

The company asserted that there was no intent to mislead or withhold information and that the deficiencies were the result of a lack of understanding of the requirements and the failure to consult counsel. The Commission concluded that while the company's asserted lack of understanding of applicable law and regulations and its lack of legal counsel did not condone the violations which it had found, it appeared that such violations did not stem from any plan or intent to defraud investors and that the company now fully appreciates its obligations and exhibited a willingness to file accurate information. Under all the circumstances, the Commission concluded, the protection of investors would be satisfied without withdrawal of the registration of the company's stock on the exchange if complete and accurate reports were filed. Accordingly, the registration of the company's stock on the exchange was suspended shortly after the end of the fiscal year for a period of 60 days, with the provision that if within such time the company filed corrected current reports, an order terminating the suspension and discontinuing the proceedings would be entered. If no such reports were filed within the stated period, an order withdrawing the registration on the exchange of the company's stock would be entered.

Verdi Development Company. -- The Commission found that the company had failed to file current reports required to be filed pursuant to section 13 of the Act and the rules and regulations thereunder and to report material dispositions of the company's assets, defaults on its debt securities, the institution and termination of material litigation and the granting by the company of stock options. In addition, the Commission found that annual reports filed by the company after the institution of proceedings against the company failed to include required financial statements, and concluded that the company's stock should be withdrawn from registration on the San Francisco Mining Exchange.

North American Resources Corp. -- The North American Resources Corp. case involved the question of misrepresentations in a proxy statement. The company filed a proxy statement with the Commission, which was mailed to stockholders, indicating that one of the matters to be acted on at the meeting was a proposal to increase the amount of authorized common stock from 2,000,000 shares to 10,000,000 shares and that a portion of the new shares would be traded or exchanged for oil and gas leases, royalties and mining properties. In this connection it stated: "However no negotiations in this respect have been undertaken and the Board of Directors does not presently have in mind any specific properties for acquisition. In addition, there have been no plans, agreements or discussions concerning the present program of expansion or acquisitions in which the company or its officers and directors or any prospective officer or director have been or are now engaged."

The Commission found, however, that the evidence adduced at the hearing established that at the time the proxy statement was issued, the company's controlling person did in fact have in mind specific properties for acquisition, and that there had been plans and negotiations with respect thereto. The Commission concluded that the proxy statement was materially false and misleading and that the company in its use of such proxy material violated section 14 (a) of the Act and rule X-14a-9 thereunder. This fact, plus the failure to file a current report on Form 8-K in connection with the issuance of 6,750,000 shares of the company's stock for assets acquired, led the Commission to find that it was necessary and appropriate for the protection of investors to withdraw the registration of the company's common stock on the Salt Lake Stock Exchange.

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Unlisted Trading Categories

Under the provisions of section 12 (f) of the Securities Exchange Act of 1934, the Commission may approve applications by national securities exchanges to admit securities to unlisted trading privileges without action on the part of the issuers, if it finds such admissions are necessary or appropriate in the public interest or for the protection of investors. Such admissions impose no duties on issuers beyond any they may already have under the Act. Section 12 (f) provides for three categories of unlisted trading privileges.

Clause (1) of section 12 (f) provides for continuation of unlisted trading privileges existing on the exchanges prior to March 1, 1934. The number of unlisted trading privileges under Clause (1) in issues listed on other exchanges has declined from 75 bond and 991 stock admissions on December 31, 1935, to 2 bond and 536 stock admissions on June 30, 1958. The number of unlisted trading privileges in issues not listed on other exchanges has declined from 496 bond and 817 stock admissions to 20 bond and 246 stock admissions during the same period.

Clause (2) of section 12 (f) provides for granting by the Commission of applications by exchanges for unlisted trading privileges in securities listed on other exchanges. There were 926 unlisted trading privileges in effect under Clause (2) on June 30, 1958, of which 925 involved stocks and 1 a bond issue.

Clause (3) of section 12 (f) provides for granting by the Commission of applications for unlisted trading privileges conditioned, among other things, upon the availability of information substantially equivalent to that required to be filed by listed issuers. On June 30, 1958, unlisted trading privileges existed pursuant to clause (3) in only 12 bond and 4 stock issues, and 2 of the stock issues have also become listed on other exchanges. There have been no applications under clause (3) since 1949.

Volume of Unlisted Trading in Stocks on Exchanges

The reported volume of shares traded on an unlisted basis on the stock exchanges during the calendar year 1957 included approximately 28.8 million shares in stocks admitted to unlisted trading only and 29.2 million shares in stocks listed on exchanges other than where unlisted trading occurred. These amounts were respectively about 2.69 and 2.73 percent of the total share volume reported on all exchanges. Appendix table 9 shows the distribution of share volume among the various categories of unlisted trading privileges on exchanges.

Applications for Unlisted Trading Privileges

Pursuant to applications filed by exchanges with respect to stock listed on other exchanges, unlisted trading privileges were extended during the year ended June 30, 1958, as follows:

[table omitted]

The Commission's rule 12f-2 provides that when a security admitted to unlisted trading privileges is changed in certain minor respects it shall be deemed to be the security previously admitted to unlisted trading privileges, and, if it is changed in other respects, the exchange may file an application requesting the Commission to determine that, notwithstanding such change, the security is substantially equivalent to the security theretofore admitted to unlisted trading privileges. During the fiscal year, the Commission granted an application by the Pacific Coast Stock Exchange for continuance of unlisted trading in a stock under this rule.

BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

Rule 10b-2 under the Securities Exchange Act of 1934 in substance prohibits any person participating or otherwise financially interested in the primary or secondary distribution of a security from paying any other person for soliciting a third person to buy any security of the same issuer on a national securities exchange. This rule is an anti-manipulative rule adopted under section 10 (b) of the Act which makes it unlawful for any person to use any manipulative or deceptive device or contrivance in contravention of Commission rules prescribed in the public interest or for the protection of investors. Paragraph (d) of rule 10b-2 exempts transactions where compensation is paid pursuant to the terms of a plan, filed by a national securities exchange and declared effective by the Commission, authorizing the payment of such compensation in connection with the distribution. The Commission in its declaration may impose such terms and conditions upon such plan as it deems necessary or appropriate in the public interest or for the protection of investors.

At the present time two types of plans are in effect to permit a block of securities to be distributed through the facilities of a national securities exchange when it has been determined by the exchange that the regular market on the floor of the exchange cannot absorb the particular block within a reasonable time and at a reasonable price or prices. These plans have been designated the "Special Offering Plan," essentially a fixed-price offering based on the market price, and the "Exchange Distribution Plan," which is a distribution "at the market". Both plans contemplate that orders will be solicited off the floor but executed on the floor. Each of such plans contains certain anti-manipulative controls and requires specified disclosures concerning the distribution to be made to prospective purchasers.

In addition to these two methods of distributing large blocks of securities on national securities exchanges, a third method is commonly employed whereby blocks of listed securities may be distributed to the public on the over-the-counter market. This method is commonly referred to as a "Secondary Distribution" and such a distribution usually takes place after the close of exchange trading. It is generally the practice of exchanges to require members to obtain the approval of the exchange before participating in such secondary distributions.

The following table shows the number and volume of special offerings and exchange distributions reported by the exchanges having such plans in effect, as well as similar figures for secondary distributions which exchanges have approved for member participation and reported to the Commission.

[table omitted]

MANIPULATION AND STABILIZATION

Manipulation

The Exchange Act describes and prohibits certain forms of manipulative activity in any security registered on a national securities exchange. The prohibited activities include wash sales and matched orders effected for the purpose of creating a false or misleading appearance of trading activity in, or with respect to the market for, any such security; a series of transactions in which the price of such security is raised or depressed, or in which actual or apparent active trading is created for the purpose of inducing purchases or sales of such security by others; circulation by a broker 5 dealer, seller, or buyer, or by a person who receives consideration from a broker, dealer, seller or buyer, of information concerning market operations conducted for a rise or a decline in the price of such security; and the making of any false and misleading statement of material information by a broker, dealer, seller, or buyer regarding such security for the purpose of inducing purchases or sales. The Act also empowers the Commission to adopt rules and regulations to define and prohibit the use of these and other forms of manipulative activity in any security registered on an exchange or traded over the counter.

The Commission's market surveillance staff in its Division of Trading and Exchanges in Washington and in its New York Regional Office and other field offices observes the tickertape quotations of securities listed on the New York Stock Exchange and on the American Stock Exchange, the sales and quotation sheets of the various regional exchanges, and the bid and asked prices published by the National Daily Quotation Service for about 6,000 unlisted securities to observe any unusual or unexplained price variations or market activity. The financial news ticker, leading newspapers, and various financial publications and statistical services are also closely followed.

When unusual or unexplained market activity in a security is observed, all known information regarding the security is examined and a decision made as to the necessity for an investigation. Most investigations are not made public so that no unfair reflection will be cast on any persons or securities and the trading markets will not be upset. These investigations, which are conducted by the Commission's regional offices, take two forms. A preliminary investigation or "quiz" is designed to discover rapidly evidence of unlawful activity. If no violations are found, the preliminary investigation is closed. If it appears that more intensive investigation is necessary, a formal order of investigation, which carries with it the right to issue subpenas and to take testimony under oath, is issued by the Commission. If violations by a broker-dealer are discovered, the Commission may institute administrative proceedings to determine whether or not to revoke his registration or to suspend or expel him from membership in the National Association of Securities Dealers, Inc., or from a national securities exchange. The Commission may also seek an injunction against any person violating the Act and it may refer information obtained in its investigation to the Department of Justice recommending that persons violating the Act be criminally prosecuted. In some cases, where State action seems likely to bring quick results in preventing fraud or where Federal jurisdiction may be doubtful, the information obtained may be referred to State agencies for State injunction or criminal prosecution.

The following table shows the number of quizzes and formal investigations pending at the beginning of fiscal 1958, the number initiated in fiscal 1958, the number closed or completed during the same period, and the number pending at the end of the fiscal year:

[table omitted]

When securities are to be offered to the public, their markets are watched very closely to make sure that the price is not unlawfully raised prior to or during the distribution. Eight hundred and nine registered offerings having a value of $16,489,700,000 and 732 offerings exempt under section 3 (b) of the Securities Act, having a value of about $134 million were so observed during the fiscal year.

One hundred and ninety seven other offerings, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of $446 million, were also kept under surveillance.

Stabilization

Stabilization involves open-market purchases of securities to prevent or retard a decline in the market price in order to facilitate a distribution. It is permitted by the Exchange Act subject to the restrictions provided by the Commission's rules 10b-6, 7 and 8. These rules are designed to confine stabilizing activity to that necessary for the above purpose, to require proper disclosure and to prevent unlawful manipulation.

During 1958 stabilizing was effected in connection with stock offerings aggregating 18,221,647 shares having an aggregate public offering price of $453,580,132 and bond offerings having a total offering price of $201,138,350. In these offerings, stabilizing transactions resulted in the purchase of 316,945 shares of stock at a cost of $8,335,724 and bonds at a cost of $3,755,794. In connection with these stabilizing transactions, 4,445 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY TRANSACTIONS AND HOLDINGS

A corporate "insider," by virtue of his position, may have knowledge of the company's condition and prospects which is not available to the general public and may be able to use such information to advantage in transactions in the company's securities. Section 16 of the Securities Exchange Act of 1934 and similar provisions contained in section 17 of the Public Utility Holding Company Act of 1935 and section 30 of the Investment Company Act of 1940 were designed to provide other stockholders and investors with information as to the transactions and holdings of insiders and to prevent the unfair use of confidential information by insiders to profit from in-and-out trading in a company's securities.

Section 16 (a) of the Securities Exchange Act requires every person who is a direct or indirect beneficial owner of more than 10 percent of any class of equity securities (other than exempted securities) which is registered on a national securities exchange, or who is a director or officer of the issuer of such securities, to file reports with the Commission and the exchange disclosing his ownership of the issuer's equity securities. This information must be kept current by filing subsequent reports for any month in which a change in his ownership occurs. Similar reports are required by section 17 (a) of the Public Utility Holding Company Act of officers and directors of public utility holding companies and by section 30 (f) of the Investment Company Act of officers, directors, principal security holders, members of advisory boards and investment advisers or affiliated persons of investment advisers of registered closed-end investment companies.

All ownership reports are available for public inspection as soon as they are filed at the Commission's office in Washington and reports filed pursuant to section 16 (a) of the Securities Exchange Act may also be inspected at the exchanges where copies of such reports are filed. In addition, for the purpose of making the reported information available to interested persons who may not be able to inspect the reports in person, the Commission summarizes and publishes such information in a monthly "Official Summary of Security Transactions and Holdings," which is distributed by the Government Printing Office on a subscription basis. The increasing interest in this publication is evidenced by the increase of more than 1,000 in subscriptions during the past year. The total circulation is now nearly 6,000.

The number of ownership reports filed continued at a high level -- 33,126 for the fiscal year. This is a decline from the record high of 34,443 reports filed during the 1957 fiscal year. The following table shows the number of such reports filed during each of the last five fiscal years.

[table omitted]

The following table shows details concerning reports filed during the fiscal year ended June 30, 1958.

[table omitted]

Recovery of Short-Swing Trading Profits by Issuer

In order to prevent insiders from making unfair use of information which may have been obtained by reason of their relationship with a company, section 16 (b) of the Securities Exchange Act, section 17 (b) of the Public Utility Holding Company Act, and section 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than six months. The Commission has certain ex-emptive powers with respect to transactions not comprehended within the purpose of these provisions, but is not charged with the enforcement of the civil remedies created thereby. The Commission has, however, filed briefs as amicus curiae in several suits instituted by private parties where the construction of applicable statutory provisions or rules was involved.

Scope of Proxy Regulation

Under sections 14 (a) of the Securities Exchange Act, 12 (e) of the Public Utility Holding Company Act of 1935, and 20 (a) of the Investment Company Act of 1940 the Commission has adopted Regulation 14 requiring the disclosure in a proxy statement of pertinent information in connection with the solicitation of proxies, consents and authorizations in respect of securities of companies subject to those statutes. The regulation also provides means whereby any security holders so desiring may communicate with other security holders when management is soliciting proxies, either by distributing their own proxy statements or by including their proposals in the proxy statements sent out by management.

Copies of proposed proxy material must be filed with the Commission in preliminary form prior to the date of the proposed solicitation. Where preliminary material fails to meet the prescribed disclosure standards, the management or other group responsible for its preparation is notified informally and given an opportunity to avoid such defects in the preparation of the proxy material in the definitive form in which it is furnished to stockholders.

Statistics Relating to Proxy Statements

During the 1958 fiscal year a total of 1,929 proxy statements in definitive form were filed under the Commission's Regulation 14 for the solicitation of the proxies of security holders; 1,897 of these were filed by management and 32 by non-management groups or individual stockholders. These 1,929 solicitations related to 1,769 companies, some 110 of which had more than one solicitation during the year, generally for a special meeting not involving the election of directors.

Of the 1,929 proxy statements filed during the 1958 fiscal year, 1,780 involved the solicitation of proxies for the election of directors, 134 were for special meetings not involving the election of directors and 15 solicited assents and authorizations for actions not involving a meeting of security holders or the election of directors.

In addition to the election of directors, stockholders' decisions were sought in the 1958 fiscal year with respect to the following types of matters:

Mergers, consolidations, acquisitions of businesses, purchases and sales of property and dissolutions of companies: 107

Authorizations of new or additional securities, modifications of existing securities and recapitalization plans (other than mergers, consolidations, etc) : 208

Employee pension and retirement plans (including amendments to existing plans): 79

Bonus, profit-sharing plans and deferred compensation arrangements (including amendments to existing plans and arrangements): 30

Stock option plans (including amendments to existing plans): 183

Stockholder approval of the selection by management of independent auditors: 574

Miscellaneous amendments to charters and by-laws and other matters (excluding those involved in the preceding matters): 402

Stockholder Proposals

During the 1958 fiscal year, 39 stockholders submitted a total of 165 proposals which were included in the 95 proxy statements of 95 companies under rule 14a-8 of Regulation 14.

Typical of such stockholder proposals submitted to a vote of security holders were resolutions relating to amendments to charters or by-laws to provide for cumulative voting for the election of directors, limitations on the granting of options to and their exercise by key employees and the management group and limitations on salaries and pensions. Other resolutions related to such matters as the sending of a post-meeting report to all stockholders and the approval by stockholders of the selection by management of the independent accountants.

The management of 24 companies omitted from their proxy statements, under the conditions specified in rule 14a-8, a total of 51 additional proposals submitted by 32 individual stockholders. The principal reasons for such omission and the number of times each such reason was involved were as follows: (a) eight proposals were not a proper subject matter under state law; (b) twelve proposals related to the ordinary conduct of the company's business; (c) twelve proposals involved a personal grievance; (d) six proposals were not timely submitted to the company; (e) three proposals did not receive sufficient votes at the previous stockholders' meeting; (f) two proposals involved the nomination of particular candidates for election as directors; (g) two proposals were based on reasons considered to be misleading; (h) the company determined not to solicit proxies after receipt of one proposal; and (i) five proposals were withdrawn by the stockholder.

Ratio of Soliciting to Non-soliciting Companies

Of the 2,236 issuers which had securities listed as of June 30, 1958, 2,001 had voting securities so listed. Of these 2,001 issuers, 1,551 or 78 per cent solicited proxies under the Commission's proxy rules for the election of directors during the 1958 fiscal year.

Proxy Contests

During the 1958 fiscal year, 34 companies were involved in proxy contests for the election of directors, 22 of which contests were for control of the company and 12 for representation on the board of directors. In these contests a total of 968 persons filed detailed statements as participants, or proposed participants, under the requirements of rule 14a-11.

Of the 22 contests where control was involved, the management won control in 14, the opposition in 3, 3 were settled prior to the, meeting of stockholders, and 2 were pending at June 30, 1958. Of the 12 contests where representation on the board of directors was involved, the management won control in 8, the opposition in 1, 1 was settled, and 2 were pending at June, 30, 1958.

REGULATION OF BROKER-DEALERS AND OVER-THE-COUNTER MARKETS

Registration

Section 15 (a) of the Securities Exchange Act of 1934 requires registration of brokers and dealers using the mails or instrumentalities of interstate commerce to effect transactions in securities on the over-the-counter market, except those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. Set forth below are certain data with respect to registration of brokers and dealers and applications for such registration during the fiscal year 1958:

[table omitted]

Under section 15 (b) of the Securities Exchange Act of 1934, the Commission shall deny broker-dealer registration to an applicant or revoke such registration if, after appropriate notice and opportunity for hearing, it finds that such action is in the public interest and that the applicant or registrant or any partner, officer, director or other person directly or indirectly controlling or controlled by such applicant or broker-dealer is subject to one or more of the disqualifications set forth in the Act. These disqualifications, in general, are (1) willful false or misleading statements in the application or documents supplemental thereto, (2) conviction within ten years of a felony or misdemeanor involving the purchase or sale of securities or any conduct arising out of the business as a broker-dealer, (3) injunction by a court of competent jurisdiction from engaging in any practices in connection with the purchase or sale of securities and (4) willful violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 or any of the Commission's rules or regulations thereunder. In addition, brokers and dealers may be suspended or expelled by the Commission from membership in the National Association of Securities Dealers, Inc. and national securities exchanges for participating in violations of the various federal securities laws or the regulations thereunder. The Commission may not deny registration to any person who applies therefor absent evidence of misconduct of the specified types enumerated in the Act. Bad reputation or character, lack of experience in the securities business or even conviction of the registrant of a felony not involving the sale of securities do not constitute statutory bars to registration as a broker-dealer.

Below are set forth statistics respecting administrative proceedings to deny and revoke registration and to suspend and expel from membership in a national securities association or an exchange.

[table omitted]

Proceedings in which action was taken during the year included the following:

The distribution to the public of unregistered securities of Crowell-Collier Publishing Company led to proceedings by the Commission in which the broker-dealer firm of Elliott & Company was suspended from the National Association of Securities Dealers, Inc. for a period of twenty days, and the firms of Gilligan Will & Co. and Dempsey & Company were similarly suspended for periods of five days each. Elliott & Company had sold convertible debentures on behalf of Crowell-Collier to a small group, including Gilligan, Will & Co. and Dempsey & Company, and had obtained from these purchasers statements of intention to hold the securities for investment. However, a number of the original purchasers, including those two firms, shortly thereafter resold portions of their purchases to additional persons, who also furnished statements of investment intent. Elliott & Company claimed the exemption from registration provided by the Securities Act of 1933 for private offerings, and the other two firms in addition claimed that they were not underwriters and were therefore exempt. The Commission ruled that these exemptions were not available. Although Elliott & Company denied that it had had knowledge of the resales, the Commission stated that actual knowledge of resale was not essential to a finding of violation of section 5 of the Securities Act, there being many factors sufficient to put persons experienced in securities matters on notice of the probability of further sales, including the speculative nature of the securities, the fact that the debentures were issued in bearer form and in small denominations, the establishment of a conversion price below the market price of the common stock and the listing of the common stock on the American Stock Exchange. The Commission also held that the basic policy of registration under the Securities Act could not be frustrated by the technique of mechanically obtaining so-called "investment intent" letters from successive groups of purchasers.

The firm of Batkin & Co. was found by the Commission to have practiced fraud in the purchase and sale of securities, failed to comply with bookkeeping and net capital requirements, and sold unregistered securities. The registration of Batkin & Co. as a broker-dealer was revoked and it was expelled from the National Association of Securities Dealers, Inc.

The application of Gregory & Company, Inc. a Canadian broker-dealer, for registration as a broker-dealer was denied by the Commission and Kenneth H. Gregory, president, director and controlling stockholder, was found to be the cause of the denial. The Commission found that Gregory & Company, Inc. had made false and misleading statements in its application for registration and had been effecting transactions in interstate commerce in unregistered securities while it was not registered as a broker-dealer. The Commission also found a violation of the anti-fraud provisions of section 17 of the Securities Act of 1933 in that the applicant and Gregory offered securities to customers at prices substantially higher than, and bearing no reasonable relationship to, the market price.

The application for broker-dealer registration of P. J. Gruber & Co., Inc. was denied where it was found that the applicant used the mails and interstate facilities in the sale of 49,500 shares of Acoustica Associates, Inc. stock when no registration statement was in effect. In addition, false and misleading entries were found in the blotters and ledgers maintained by the Gruber office. The Commission found Peter J. Gruber, controlling stockholder, and Phil Sacks, president, to be the cause of such denial.

The registrations of four broker-dealer firms were revoked by the Commission on the basis of injunctions issued against each of these firms for selling unregistered securities. The broker-dealers so revoked were Harold L. Nielsen, doing business as Nielsen Investment Co., Battery Securities Corporation, W. & M. Oil Company, and Percy Dale Lanphere, doing business as Dale Lanphere. Battery Securities Corporation was also expelled from the National Association of Securities Dealers, Inc.

In a number of cases the Commission revoked broker-dealer registrations on the basis of injunctions against further violations of the Commission's net capital rule which requires that a broker-dealer maintain for the protection of customers a prescribed ratio between aggregate indebtedness and net capital. Revocations were based on such injunctions in the following cases: Milton J. Shuck, doing business as M. J. Shuck Company, Quintin Securities, Inc., A. J. Gould & Co., Inc. Foster-Mann, Inc. and W. L. Mast & Co. The last named broker-dealer firm was also expelled from the National Association of Securities Dealers, Inc. The broker-dealer registration of Stein, Botwinick & Company, Inc. was revoked by the Commission on a finding that the broker-dealer firm was enjoined from engaging in the securities business for effecting securities transactions while insolvent and making false statements in the purchase and sale of securities.

The broker-dealer registration of Wendell Elmer Kindley, doing business as W end-ell E. Kindley Co. was revoked for failure to keep books and records and to comply with the net capital requirements, as well as for doing business while insolvent. It was found by the Commission that in eight transactions in one month the registrant had purchased securities from broker-dealers through the use of the mails and other means of interstate commerce when he was not in a position to pay for such securities, that he was unable to pay for them upon delivery, and that some sellers suffered losses because of his failure to consummate the purchases.

The broker-dealer registration of Roberts Securities Corporation was revoked on the grounds that its president and controlling stockholder had been enjoined by the Supreme Court of the State of New York from engaging in the securities business in that state, and that the firm had failed to disclose the issuance of the injunction by amendment to its application.

The Commission revoked the registration of Branch Garden & Co., Inc. and found Branch J. Garden, Jr., its president, to be the cause of such revocation. The firm and its president had been permanently enjoined by the U.S. District Court for the Western District of Virginia from engaging in and continuing certain conduct in connection with the purchase and sale of securities. The decree entered with the consent of both defendants enjoined violations of the anti-fraud, net capital, and bookkeeping provisions of the Act. Following pleas of guilty, both defendants had been convicted by the same court of violations of these provisions of the Act.

C. J. Montague, Inc. was enjoined by the Supreme Court of the State of New York from engaging in the securities business in that state, on the basis of a complaint alleging the firm's insolvency, fraudulent concealment of such insolvency, and misappropriation of customer's funds and securities. The

Commission revoked the firm's registration as a broker-dealer on the basis of the injunction, false and misleading statements in the application for registration, fraud in the purchase and sale of securities, and failure to comply with the net capital and bookkeeping rules under the Securities Exchange Act.

Revocations of the broker-dealer registrations of Harry B. Simon, doing business as H. B. Simon Co., William T. Bowler, doing business as William T. Bowler & Company, a sole proprietorship, William T. Bowler and Company a partnership, and Christopulos & Nichols Brokerage Company, Inc. were based on convictions in connection with securities transactions. Simon had been convicted on April 30, 1957 in the Federal District Court for the Southern District of New York on his plea of guilty of violating section 17 (a) of the Securities Act of 1933 and the mail fraud and conspiracy provisions of the United States Criminal Code by making fraudulent representations in connection with the sale of common stock of Bostona Mines Company between January 1, 1952 and October 1, 1956.

On September 4, 1957 William T. Bowler had pleaded guilty and was convicted in the Court of Quarter Sessions of McKean County, Pennsylvania, of (1) embezzlement of a customer's securities; (2) larceny in failing to return securities held by him as bailee; (3) fraudulent failure to disclose to the Pennsylvania Securities Commission that he sold certain securities without informing purchasers that neither he nor the issuer had any authorization from that Commission to sell them; (4) sale of certain securities without filing a notice of intention to sell such securities with that Commission; and (5) participation and assistance in the sale of certain securities by salesmen who were not registered with, that Commission. It was also found that both the sole proprietorship and the partnership had violated the record-keeping requirements of the Securities Exchange Act of 1934 and the rules thereunder.

Christopulos & Nichols Brokerage Company, Inc., had been enjoined from improperly extending credit, failing to send confirmations of transactions to customers and failing properly to record transactions, in violation of sections 7, 15, and 17 of the Securities Exchange Act of 1934, and had also been convicted of criminal contempt of that injunction.

The revocations of the broker-dealer registrations of Horace Linson Michener and Cobb and Company, Inc., were based on findings of misappropriation of customers' funds and the Commission found that Michener had bought and sold securities without delivering the securities sold or paying for the securities purchased, in violation of sections 10 (b) and 15 (c) (1) of the Securities Exchange Act and the rules thereunder. Cobb and Company, Inc., induced certain persons in 68 transactions to order securities and to make payment therefor, but, instead of purchasing the securities ordered, appropriated such payments to its own use. In connection with six of these transactions Cobb and

Company falsely represented that it had purchased the securities ordered. 21 of the 68 transactions took place when the firm was insolvent. In these transactions, registrant accepted monies and securities upon the false representation that it was able to execute the orders and appropriated such monies and securities to its own use.

McInnes & Co., Inc., a registered broker-dealer, was also found to have accepted customers' funds and securities without disclosing its insolvency. The Commission also found, among other things, that in the sale of securities of Alabama General Insurance Co., the firm made false and misleading statements, with respect to the return on the investment in such securities and the government contracts of a subsidiary of that company, and that it sold unregistered securities of that company. The Commission revoked the broker-dealer registration of McInnes & Co., Inc. expelled it from the National Association of Securities Dealers, Inc. and further found Raymond McInnes to be a cause of such revocation and expulsion.

The Commission denied the application of F. W. Home & Co., Inc., for registration as a broker-dealer because of the methods it utilized to effect purchases and sales of securities of First New Hampshire Corporation. The Commission found that violations of the anti-fraud provisions had been committed and that the firm had effected securities transactions while not registered.

Looper and Company was found to have induced customer transactions which were excessive in volume and frequency in view of the character of the accounts, and took secret profits and improperly extended and arranged for credit in cash accounts, in willful violation of the Securities Act and Securities Exchange Act and the rules thereunder. Its broker-dealer registration was revoked.

The application of Indiana State Securities Corporation for registration as a broker-dealer was denied by the Commission upon a finding that applicant had willfully violated the anti-fraud provisions of the Securities Exchange Act and the Securities Act in sales of stock of Insurance Corporation of America. Applicant's sales were made with the use of a prospectus which indicated that the stock was offered by the issuer at a public offering price of $6.00 per share, but applicant failed to disclose that there was an over-the-counter market for the stock at a substantially lower price and that some of the stock so offered was owned by the applicant and the proceeds of its sale would not be received by the issuer. The Commission further found Charles E. Johnson, Marvin H. Weisman, and Rudy Klapper, officers and directors of subject corporation, to be the causes of the denial.

The application of The Whitehall Corporation for registration as a broker-dealer was also denied by the Commission upon a finding that the applicant had been selling unregistered securities, had used false and misleading statements in connection with such sales, had submitted as part of its application a misleading financial statement and had engaged in interstate transactions in securities without being registered. A petition for rehearing filed by The Whitehall Corporation was denied.

False and misleading statements on the part of a broker-dealer representing the prices charged for certain securities to be the market price and failure to disclose that the market for the securities was maintained and dominated by it was the basis for the revocation of the broker-dealer registration of Daniel & Co., Ltd. and its expulsion from the National Association of Securities Dealers, Inc.

The registration of Allen E. Beers Company was revoked and Allen E. Beers, the controlling partner, was found to be a cause of the revocation. The Commission found in part that the company's salesmen sold stock of Minerals Processing Company to customers by means of false and misleading representations that, among other things, the company's profits would be substantial because of the discovery of rich mica and beryl, there would be increases in the company's production, profits and earnings, and the value of its stock and that the company and its stock would be the object of favorable magazine and television publicity. Registrant was also found to have unlawfully extended credit in violation of section 7 (c) (1) of the Securities Exchange Act and Regulation T adopted thereunder.

The broker-dealer registrations of Alfred D. Laurence & Co., Kenneth E. Goodman & Co., Cornelis de Vroedt, doing business as Cornelis de Vroedt Company and Cornelis de Vroedt, Inc. were revoked and the broker-dealers were expelled from the National Association of Securities Dealers, Inc. for failure to comply with the Commission's net capital rule and because of false entries or omissions of material facts in records or in papers filed with the Commission.

The broker-dealer registration of Charles R. Morgan was revoked for failure to file financial reports with the Commission as required under section 17 (a) of the Securities Exchange Act.

The broker-dealer registrations of Utah Uranium Brokers, Inc. and Joseph Ernest Murray, doing business as Murray & Company were revoked and they were expelled from the National Association of Securities Dealers, Inc. for failure to make and keep current books and records.

The broker-dealer registration of Bryan Halbert Kyger, Jr., doing business as Kyger & Co., was revoked upon findings that it had filed a false financial report and had failed to deliver securities for which customers had paid, to comply with net capital requirements and to maintain required books and records.

The Commission also found it to be in the public interest to revoke the broker-dealer registration of Harold L. Nielsen, doing business as Nielsen Investment Co. on the basis of an injunction entered against the registrant prohibiting him from further net capital and bookkeeping violations as well as from selling unregistered securities and engaging in business while insolvent. The broker-dealer registration of Michael Raymond Co., Inc. was revoked following a New York State injunction restraining it from further engaging in security transactions while insolvent, making fraudulent representations and defrauding customers.

During the year, the broker-dealer registrations of William Malcolm Ellsworth, Elmer Alien Holey, doing business as Elmer A. Haley, Maxwell M. Sacks, doing business as Maxwell Brokerage Co., and Tasch & Co., Inc. were revoked for failure to file the annual reports of financial condition required by rule 17a-5.

Net Capital Rule

Rule 15c3-1 adopted under section 15 (c) (3) of the Securities Exchange Act, commonly known as the net capital rule, provides safeguards for funds and securities of customers dealing with broker-dealers. This rule restricts the amount of indebtedness which may be incurred by a broker-dealer in relation to his capital. Under the rule, no broker-dealer subject thereto may permit his "aggregate indebtedness" to exceed 20 times his "net capital" as those terms are defined in the rule.

Prompt action is taken by the Commission whenever it appears that any broker-dealer fails to meet the capital requirements prescribed by the rule. Unless the broker-dealer takes necessary steps forthwith to correct any capital deficiency found to exist either by inspection or by reports filed with the Commission, injunctive action may be taken and proceedings instituted to determine whether or not the broker-dealer registration should be revoked. During the fiscal year, violations of the net capital rule were alleged in injunctive actions filed against 15 broker-dealers and in revocation proceedings instituted against 12.

Where a broker-dealer participates in "firm commitment" under-writings, a careful check, based upon latest available information, is made to determine whether he has adequate net capital to be in compliance with the rule. Acceleration of effectiveness of registration statements under the Securities Act is not permitted if it appears that any underwriter would as a result of his commitment be in violation of the net capital rule. In a number of instances during the past year, broker-dealers who were named as underwriters appeared to be inadequately capitalized to take down their commitments in conformity with the rule. The broker-dealers were informed of the situation and the effect it would have on a pending registration statement, and they thereupon obtained sufficient capital so that full compliance with the rule could be had, reduced their commitments to the extent to which they could be undertaken without violating the rule or withdrew entirely as underwriters.

Financial Statements

During the year the Commission adopted an amendment to rule 17a-5 under the Securities Exchange Act requiring brokers and dealers to file reports of financial condition. The amendment became effective on November 15, 1957 and was deemed necessary (1) to eliminate administrative difficulties which arose from the requirement that a report be filled within each calendar year, but that reports for two consecutive years could not be filed within less than 4 months of each other and (2) to provide more protection to customers by requiring that more reports be certified. As amended, the rule now requires a report to be filed as follows: (A) as of a date within each calendar year, except that the first report (other than in the case of successors) must be as of a date not less than, one, nor more than five months after the broker or dealer becomes subject to the rule, and a broker or dealer who succeeds to and continues the business of a predecessor is not required to file a report if the predecessor has filed one as of that year; (B) reports may not be as of dates within four months of each other; and (C) a report must be filed not more than 45 days after the date of the report.

Under the amended rule, every report must be certified by a certified public accountant or a public accountant who is in fact independent except a report filed by (1) a member of a national securities exchange who, from the date of his previous report, has not transacted business in securities directly with or for others than members, has not carried any margin account, credit balance or security for any person other than a general partner and has not been required to file a certified financial statement with any national securities exchange; (2) a broker who, from the date of his previous report, has limited his securities business to soliciting subscriptions as an agent for issuers, has transmitted funds and securities promptly and has not otherwise held funds or securities for or owed monies or securities to customers; and (3) a broker or dealer who, from the date of his last report, has limited his securities business to buying and selling evidences of indebtedness secured by liens on real estate and has not carried margin accounts, credit balances or securities for securities customers.

The reports of financial condition filed under rule 17a-5 serve to inform the Commission and the public as to the financial responsibility of broker-dealers and they are analyzed by the staff to determine whether the registrant is in compliance with the Commission's net capital rule. Revocation proceedings are brought against registrants who fail to make the necessary filing. During the year

4,473 reports of financial condition were filed, representing an increase of 145 over fiscal 1957.

Broker-Dealer Inspections

During 1958, the Commission continued to place increased emphasis upon its inspection program. Regular and periodic inspections of registered broker-dealers as provided for in section 17 (a) of the Securities Exchange Act are a vital part of the Commission's activities for the protection of investors. The purpose of these inspections is to assure compliance by broker-dealers with the Federal securities acts and the rules and regulations promulgated by the Commission and to detect and prevent violations.

An inspection ordinarily includes, among other things, (1) a determination of the financial condition of the broker-dealer; (2) review of pricing practices; (3) review of the, treatment of customers' funds and securities; and (4) a determination whether adequate disclosures are made to customers. The inspectors also determine whether the required books and records of the broker-dealers are adequate and currently maintained, and whether broker-dealers are conforming with the margin and other requirements of Regulation T, as prescribed by the Federal Reserve Board. They also check for excessive trading in customers' accounts involving "churning" and "switching," sale of unregistered securities, use of improper sales literature or sales methods and other fraudulent practices. Inspections frequently discover situations which, if not corrected, might result in losses to customers.

The policy inaugurated in fiscal year 1956 of increasing the number of inspections was continued in fiscal year 1958. Inspections completed during the year numbered 1,452, an increase of more than 19% over the previous year.

While an inspection may disclose violations of the Commission's statutes or rules, formal action is not taken against every broker-dealer found to be in violation. In determining whether to institute action against a broker-dealer found as a result of an inspection to be in violation, consideration is given to the nature of the violation and to the effect it has upon members of the public. Inspections usually reveal a number of inadvertent violations which are discovered before they become serious and before they jeopardize the rights of customers. In such situations, where no harm has come to the public, the matter is usually called to the attention of the registrant and arrangements made to correct the improper practices. Where, however, the violation appears to be willful and the public interest or the protection of investors is best served by instituting proceedings against the broker-dealer, such action is promptly taken.

The following table shows the various types of violations disclosed as a result of the inspection program during the fiscal year 1958:

[table omitted]

In addition to the Commission's inspection program, the National Association of Securities Dealers, Inc. and the principal stock exchanges also conduct inspections of their members and some of the States also have inspection programs. Each inspecting agency conducts inspections in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Consequently, inspections by other agencies are not an adequate substitute for Commission inspections since the inspector will not be primarily concerned with the detection and prevention of violations of the Federal securities laws and the Commission's regulations thereunder. The Commission and certain other inspecting agencies, however, maintain a program of coordinating inspection activities for the purpose of avoiding unnecessary duplication of inspections and to obtain the widest possible coverage of brokers and dealers. This seems appropriate in view of the limited number of inspections which it is possible for the Commission to make. The program does not prevent the Commission from inspecting any person recently inspected by another agency, and such an inspection by the Commission is made whenever reason therefor exists, but it has been necessary because of budget limitations for the Commission to rely to a considerable extent upon the inspection programs of the major exchanges, such as the New York Stock Exchange.

Inspecting agencies now participating in the coordination program include the New York Stock Exchange, the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia-Baltimore Stock Exchange, the Pittsburgh Stock Exchange and the National Association of Securities Dealers, Inc.

SUPERVISION OF ACTIVITIES OF NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Section 15A of the Securities Exchange Act of 1934 ("the Maloney Act") provides for registration with the Commission of national securities associations. The statute requires that the rules of such associations must be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market. Such associations serve as a medium for the cooperative self-regulation of over-the-counter brokers and dealers. They operate under the general supervision of this Commission, which is authorized to review disciplinary actions and decisions which affect the membership of members or applicants for membership and to consider all changes in the rules of associations. The National Association of Securities Dealers, Inc. (NASD) is the only association registered with the Commission under the Act.

In adopting legislation to authorize the formation and registration of such associations, Congress provided an incentive to membership by permitting such associations to adopt, and the NASD has adopted, rules which preclude a member from dealing with a non-member, except on the same terms and conditions as the member affords the general public. As a consequence, membership is necessary to the profitable participation in underwritings and over-the-counter trading in general and for price concessions. Discounts and similar allowances may properly be granted by members only to other members.

On June 30, 1958, there were 3,820 NASD members, a decrease of 36 during the year as a result of 419 admissions to and 455 terminations of membership. There were also registered with the NASD as registered representatives on that same date, 65,314 individuals, including all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in a capacity which involve their doing business directly with the public. The number of registered representatives increased by 8,211 during the year as a result of 15,278 initial registrations, 7,246 re-registrations and 14,313 terminations of registrations.

Disciplinary Actions

The Commission receives from the NASD summaries of decisions on all disciplinary actions against members and registered representatives of members". Each such decision is reviewed by the Commission's staff to determine whether the underlying facts indicate conduct violative of the statutes administered by the Commission or the rules adopted thereunder. This consideration often includes an examination of the Association's files on particular cases. Where the facts appear to indicate actionable violations of the Commission's rules or statutes, independent Commission enforcement inquiry or action is initiated through the appropriate Regional Office.

During the fiscal year the Association reported to the Commission final action on 116 formal complaint cases. Each such action involved charges that a member firm had violated specified rules of fair practice. In addition, however, 48 of these complaints included charges that 75 different registered representatives had also violated one or more such rules.

Of the 116 complaints on which final Association action was taken, 10 were withdrawn or dismissed on findings that the allegations in the complaints had not been sustained. In the remaining cases, one or more violations were found as alleged in the complaint and the members and registered representatives found to have committed the violations were subjected to penalty. The penalties imposed covered a wide range of available sanctions and in many cases more than a single penalty was imposed on a firm or registered representative. Thus, 32 firms were expelled and six were suspended for periods ranging from 30 days to 3 years; 48 firms were fined amounts ranging from $50 to $8,240 and aggregating $28,765; and 13 were censured. Moreover, the registrations of 37 registered representatives were revoked; one representative was suspended for six months; nine representatives were fined sums ranging from $50 to $5,000 and aggregating $9,400; and 16 representatives were censured. In 56 of the complaints, costs were assessed in amounts aggregating $16,349.61 during the year.

In addition to disciplinary action by formal complaint procedure as described above, action was also taken against members pursuant to a minor violation procedure as specified in the NASD Code of Procedure and as described in the last annual report. Under this procedure, in a disciplinary action where the facts are not disputed and the matter involves only minor or technical violations of the rules and no significant damage to customers, other parties or the public interest, the member may waive a hearing and accept a penalty not to exceed censure and a fine of $100. The respondent is not required to accept this procedure and may elect to have a hearing as in the case of a complaint involving more serious violations.

In all, reports were received from the Association descriptive of 47 cases handled by the minor violation procedure. One case was subsequently remanded by the Board of Governors to the District Business Conduct Committee of initial jurisdiction for consideration pursuant to the ordinary complaint procedure. The remaining 46 cases resulted in censure in 29 instances, fines in 2 instances, and censure and fines in 15 instances. The fines ranged from $25 to $100 and aggregated $1,175.

Commission Review of NASD Disciplinary Action

Section 15A (g) of the Act provides that disciplinary actions of the NASD are subject to review by the Commission on its own motion or on the timely application of any aggrieved party. The effectiveness of any penalty imposed by the Association is automatically stayed pending determination of any matter before the Commission on review. At the beginning of the fiscal year, three such review cases were pending before the Commission, and during the year three other applications for review were filed. One such application, filed by G. Wayne Gibbs, doing business as Gibbs & Company, was withdrawn prior to determination. Another application, filed by Daniel M. Sheehan, Jr., doing business as Sheehan & Company, was considered unacceptable by the

Commission as it had not been filed within sixty days of the date the action was taken and because there were then pending against the firm administrative proceedings under section 15 (b) of the Act to determine whether the Commission should find it in the public interest to revoke the firm's registration as a broker-dealer. In rejecting this application the Commission advised the firm that it would reconsider accepting the case for review after completion of the section 15 (b) proceedings should the firm then decide to file a new petition. Two review cases were decided by the Commission during the year and two were pending at the end of the fiscal year.

The Commission set aside disciplinary action taken by the Board of Governors of the Association against Samuel B. Franklin & Co. for alleged violation of the NASD rule of fair practice that requires a member to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The case was an outgrowth of a dispute between Franklin & Co. and Pledger & Co., Inc., the complainant, and involved a transaction in stock of Western Oil Fields sold by Franklin & Co. to Pledger & Co., Inc. at $2.70 per share. After delivery and payment, Pledger returned the shares on the grounds that the shares delivered were certificates which had been the subject of a 1 for 4 reverse stock split. Pledger refused to cancel the original transaction since the price of the stock had advanced to 3 1/8 per share. Franklin suggested the purchase of new shares and agreed to pay the attendant loss of about $225, but Pledger advised against such a purchase at that time since it believed the price would go down. However, the price of the stock continued to advance. Pledger subsequently bought the stock in at 4% and requested that Franklin make good an asserted loss to Pledger of $1,282.50. Pledger first accepted the suggestion of Franklin that the matter be arbitrated, but then withdrew its consent and filed a complaint before the NASD. The Board of Governors affirmed a decision of the District Business Conduct Committee that Franklin had violated the NASD rule by failing to make a good delivery of the stock and failing to reimburse the buyer for damages. The Board of Governors censured Franklin, assessed costs in the amount of $441.22 and directed the firm to make good the loss sustained by Pledger.

In its opinion the Commission observed that it was not its function, nor that of the NASD, in applying the rule, to decide private contract rights between the parties, and that "not every failure to perform a contract violates the NASD rule; it must appear that such failure was unethical or dishonorable." The Commission concluded that the facts here present did not justify a finding that Franklin had violated the NASD rule. In support of this conclusion, it pointed out that there was no evidence of an intention to mislead Pledger or that the delivery of the old certificates was anything but an unintentional error. Nor could the Commission find that Franklin sought to evade responsibility arising from the delivery of the old certificates, as evidenced by its immediate acceptance of the return of the old certificates and its refund to Pledger of the purchase price, its prompt offer to buy in shares of the new stock and accept the $225 loss resulting from the increase in the market price thereof, its reliance on Pledger's advice in not making delivery of new stock at that time, and its offer to submit to arbitration after Pledger had bought in new stock at a much higher price some six months after the return of the old certificates. The Commission noted that its action reversing the NASD action was in no way a determination regarding the validity or the amount of Pledger's claim against Franklin.

In the other decided case, the Commission affirmed a six-month suspension, $3,000 fine and censure imposed by the National Association of Securities Dealers, Inc., upon Graham & Co., of Pittsburgh, Pennsylvania, and the censure of E. W. Sterling Graham, its only active partner, for violation of NASD rules requiring the maintenance of high standards of commercial honor and just and equitable principles of trade.

The NASD's disciplinary action was based largely upon sales of securities of Texas Adams Oil Co. by Graham & Co. to its customers at a price which was "unfair and not reasonably related to the current market price." The Commission also sustained the additional rulings of the NASD that Graham & Co. have violated its rules (1) by failure to register salesmen employed at its Birmingham, Alabama branch office in 1955, (2) by failure to disclose, in the sale of Bassett Press & Mailing Co. stock, that that company and Graham & Co. were under common control and (3) by failure to endorse the records of salesmen's transactions to show approval of such transactions.

Commission Review of NASD Action on Membership

Section 15A (b) of the Act provides that, except where the Commission finds it appropriate in the public interest to approve or direct to the contrary, no broker or dealer may be admitted to or continued in Association membership if he, or any controlling or controlled person, is under any of the several disabilities specified in the statute. The disqualifications included in the statute are repeated in the Association's by-laws which, however, also include other disqualifications permitted by, but not explicitly set out in, the statute. Among other things, the statutory disabilities include an outstanding order of revocation by the Commission of a broker-dealer registration and the Association's by-laws include conviction within the preceding 10 years of a felony found by the Association to have involved abuse or misuse of a fiduciary relationship.

A Commission order approving or directing admission to or continuance in Association membership, notwithstanding a disqualification under section 15A (b) (4) of the Act or under an effective Association rule adopted under that section or section 15A (b) (3), is generally entered only after the matter has been submitted by the member of, or applicant for membership to, the Association. Where, after consideration, the Association is favorably inclined, it ordinarily files with the Commission an application on behalf of the petitioner. A broker-dealer refused Association sponsorship, however, may file an application directly with the Commission. The Commission carefully reviews the record and documents filed in support of the application and, if considered necessary, obtains additional evidence bearing on the matter. At the beginning of the fiscal year, three such petitions were pending before the Commission; during the year one was filed and three were disposed of; and one was pending at the year end.

The Commission approved an application filed by the NASD permitting the continuance of Clayton Securities Corporation in Association membership with Harold S. Goldberg as an employee and registered representative. Goldberg had been convicted on May 3, 1955, following a plea of guilty, of violations of the anti-fraud provisions of the Securities Act of 1933 and the mail fraud statute based on failure adequately to supervise the activities of salesmen who had induced excessive trading in the accounts of customers to obtain excessive commissions. In granting the approval requested by the Association, the Commission recognized that none of the charges concerned Goldberg's own dealings with customers, that he would not be employed in a supervisory capacity and that he would be subject to close supervision by officers of the employing firm.

The Commission also approved applications sponsored by the NASD for the continuation in the Association membership of two firms each with a revoked person employed as a registered representative. In approving the employment of Leonard H. Whitaker by an NASD member firm, the Commission stated: "While the misconduct which led to revocation of Whitaker's registration was serious in nature, we do not think it should constitute a permanent bar from the securities business. Upon the basis of our review of the entire record and giving due consideration to the lapse of time since the revocation, the close supervision to be exercised over him, and the favorable recommendation of the NASD, we conclude that we may approve the application of the NASD in the public interest provided that Whitaker is bonded so as to afford additional investor protection against possible loss as a result of any misconduct by him."

In granting similar approval for the employment of David Gordon, the Commission observed that Gordon's conduct resulting in the revocation and expulsion of Gordon & Company did not involve his conduct as a salesman but his activities in directing the affairs of his firm, and that in his employment as a salesman of the member firm he will be under close supervision, including supervision of the type of security he sells, that he will not have custody of funds or securities of customers and that he will be bonded.

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

As a protective measure for the public, the Commission is authorized to institute actions to enjoin broker-dealers and other persons from engaging in conduct which violates the provisions of the Securities Exchange Act of 1934. Some of the actions brought as a result of such violations also alleged violations of other statutes administered by the Commission.

Anti-Fraud Litigation

In discharging its responsibility to protect the investing public by preventing frauds by broker-dealers, the Commission, during the fiscal year, obtained injunctions in S.E.C. v. T. G. Anderson, Inc., S.E.C. v. J. Arthur Warner & Co., Inc., et al. and S.E.C. v. Louis E. Wolfson. In the Anderson case the complaint alleged, among other things, that the defendants induced customers, by false representations and omissions of material facts, to sell securities of one mining company and buy securities of another, and at the same time induced other customers to effect contra transactions in the same securities. In the Warner case, an injunction was obtained against violations of the anti-fraud provisions of the Securities Exchange Act, as well as violations of numerous other sections of that Act and various provisions of the Securities Act of 1933. Its dominant aspect was the overtrading or "churning" of customers' accounts. The criminal prosecution arising out of the transactions is described in detail at page 109 of the 21st Annual Report.

In the Wolf son case, a temporary restraining order was obtained to enjoin further violation of the anti-fraud and anti-manipulative provisions of the Securities Exchange Act in the purchase and sale of common capital stock of American Motors Corporation, listed on the New York Stock Exchange. The Commission's complaint alleged that Louis E. Wolf son and other persons whose identities are unknown to the Commission, engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon the public. The complaint and underlying affidavits allege and state, among other things, that Wolfson had sold over 200,000 shares of American Motors stock at a time when an article in a widely circulated financial newspaper quoted him to the effect that he and his associates owned about 460,000 shares of that stock and were "perfectly satisfied" with the company's progress. Wolfson and his agents were also alleged to have later caused a statement to be published, in a widely circulated newspaper, to the effect that the stock of American Motors looked fully priced on the basis of the immediate outlook and that he (Wolfson) was "about one-quarter of the way home" in disposing of the 400,000 shares of American Motors stock that he and his immediate family owned, and that the remaining shares would be disposed of probably in the open market and "should be cleaned up completely well before the end of the summer." The complaint further charged that in connection with the last mentioned statement Wolfson omitted to disclose that he had sold or otherwise disposed of all of his holdings in American Motors, and that he, together with his associates, had a very substantial short position in the stock and was, at the time of the publication of the newspaper article, engaged in purchasing stock of American Motors to cover the short position. The complaint also charged that the anti-manipulative provision of the Act was violated in that the statements made were false and misleading and Wolfson knew or had reasonable grounds to believe that such statements were false and misleading.

Cases Involving the Net Capital Rule

As indicated earlier, section 15 (c) (3) of the Securities Exchange Act and rule 15c3-1 thereunder are designed to provide protection against loss of customers' securities and monies by reason of financial difficulties broker-dealers may encounter by requiring registered broker-dealers to maintain a prescribed ratio between net capital and aggregate indebtedness.

In numerous cases the Commission resorts to injunctive relief when broker-dealers are conducting their business in violation of this financial requirement. During the fiscal year injunctions were sought by the Commission to enjoin broker-dealers from further violations of this net capital rule in S.E.C. v. J. D. Oreger and Co.; S.E.C. v. Tadao I. Watanabe, doing business as Honolulu Securities & Investment Co.; S.E.C. v. Sanders Investment Company; S.E.C. v. Owens and Company; S.E.C. v. Joseph J. Wilensky & Co.; S.E.C. v. William H. Keller, Jr., doing business as W. H. Keller, Stockbroker; S.E.C. v. A. J. Gould & Co., Inc., et al.; S.E.C. v. Lynne B. Fenner and The Fenner Corporation; S.E.C. v. First Jersey Securities Corp. and Mortimer L. Schultz; S.E.C. v. William Whitehead; S.E.C. v. Tony a Kaye, doing business as The Kaye Investing Co.; S.E.C. v. Peerless-New York, Inc.; S.E.C. y. Securities Distributors, Inc. and Rolf Wurtz; S.E.C. v. Alfred D. Laurence & Co., and S.E.C. v. Jean R. Veditz Co., Inc. In the first eleven named cases the appropriate district court in each instance granted a permanent injunction. The remaining cases were pending at the close of the fiscal year with preliminary injunctions granted against Peerless-New York, Inc. and Securities Distributors, Inc.

Operations of broker-dealers while in violation of the net capital rule, and while insolvent without disclosing such insolvency to customers, thus representing that they were ready and able to execute customers' orders and to meet their liabilities in connection therewith, were the basis for the actions in SEC v. Laurence W. L. Barrington, doing business as Barrington Investments, SEC v. F. R. Chatfield Company, Inc., S.E.C. v. Thompson and Sloan, Inc., et al. and SEC v. George T. Argeros, et al. The complaints in the latter two cases also included allegations that the defendants had failed to make and keep the books and records required under section 17 (a) of the Act and rule 17a-3 thereunder. Permanent injunctions were granted in all of these cases.

Delisting Cases

In Great Sweet Grass Oils, Ltd. v. S.E.C. the Court of Appeals for the District of Columbia Circuit, in a per curiam opinion, affirmed an order of the Commission withdrawing the registration on the American Stock Exchange of the capital stock of the petitioner, Great Sweet Grass Oils, Ltd. The Commission "delisted" the securities under section 19 (a) (2) of the Securities Exchange Act of 1934 because it found that petitioner had made false and misleading statements in reports required to be filed pursuant to section 13 of that Act. The Commission found the reports to be deficient inter alia in that they overstated oil and gas reserves, falsely claimed exemption from the registration requirements of the Securities Act of 1933 in purported reliance upon rule 133 and failed to indicate contingent liabilities resulting from the sales of unregistered securities. Petitioner contended unsuccessfully that the Commission had abused its discretion in delisting the securities without setting forth conditions upon which listing could be regained, and had erred in holding that petitioner's transactions were not entitled to the exemption provided by rule 133. The Court of Appeals found no error in the Commission's opinion.

The Commission delisted the securities of Kroy Oils Limited in the same proceeding in which it delisted those of Great Sweet Grass. Kroy brought a separate petition for review of the Commission's order and withdrew its petition on December 10, 1958, just before oral argument. The issues involved in both cases were substantially identical.

Litigation Involving Broker-Dealer Registration and Reporting Requirements

In Peoples Securities Company v. Gadsby, et al., the plaintiff sought a preliminary and permanent injunction restraining the members of the Commission from conducting a hearing to determine whether Peoples' application for registration as a broker-dealer should be denied or permitted to become effective, and a permanent injunction requiring the defendants to enter an order canceling Peoples' application for registration on the ground that it has ceased to do business. Upon denial of the preliminary injunction, plaintiff applied to the Court of Appeals for the District of Columbia Circuit for an injunction pending appeal, which application was denied. The complaint was ultimately dismissed on defendant's motion, the District Court finding that it had no jurisdiction.

A petition for review of the Commission's order revoking petitioner's registration as a broker-dealer was filed in M. J. Shuck Co. v. S.E.C., claiming that the Commission erred in finding that petitioner's violations of the net capital rule were willful and that the Commission failed to comply with the requirements of section 9 (b) of the Administrative Procedure Act. The case was argued before the Court of Appeals and that Court affirmed the Commission's decision on December 4, 1958.

Section 17 (a), and Rule 17a-3 adopted thereunder, require the keeping of books and records by registered broker-dealers and others. Failure to comply with these requirements led to permanent injunctions being entered, upon the Commission's application, in S.E.C. v. Perkins & Company, Inc., S.E.C. v. Sherwood & Company, et al., and S.E.C. v. William Rex Cromwell, doing business as Cromwell & Company. In a similar action, S.E.C. v. William Douglas Bradford, a preliminary injunction was entered during the year.

Proxy Litigation

The Commission intervened as a plaintiff in Barker v. McPhail and filed a complaint against the defendants McPhail and certain other officers and directors of Transue & Williams Steel Forging Corporation. The Commission's complaint alleged in essence that defendants in violation of the proxy rules engaged in the solicitation of proxies without having previously or concurrently furnished the stockholders with a proxy statement, without having filed prior thereto certain information with respect to the identity, background and interest of the participants in the solicitation and without identifying on the forms of proxies the persons on whose behalf they were to be used. Further, the complaint charged that McPhail in violation of the proxy rules had sent out soliciting material without having first filed preliminary copies with the Commission and that such material contained false and misleading statements and omissions. The Court granted a temporary restraining order, to which the parties consented, enjoining the defendants from voting proxies already obtained and directing that the stockholders' meeting be adjourned, to give opportunity for a proper resolicitation to be made, including material correcting misrepresentations in previous soliciting material. At the adjourned meeting McPhail and other management nominees were elected directors over the slate of Harold O. Barker, President and Chairman of the Board, and the Stockholders' Committee Against Control of Transue & Williams Steel Forging Corporation by Russell McPhail.

Subsequent to the end of the fiscal year a motion for summary judgment was filed by the Commission requesting that defendants be permanently enjoined from further violations of the proxy rules. Argument was had and the Court has not as of December 1st rendered an opinion.

In Hott et al. v. Ostergren et al. an appeal was taken from the judgment of the District Court enjoining appellants and one Josiah Kirby from soliciting and voting proxies with respect to the common stock of Lakey Foundry Corporation. The District Court had found, inter alia, that Kirby was a "participant" in the solicitation by the defendants, whose proxy statement had not included the required information with respect to Kirby, and that Kirby had not filed with the Commission the information required by Schedule 14B. The appeal from the District Court's judgment was subsequently dismissed upon stipulation of the parties, the Commission agreeing to the dismissal since the injunction issued by the District Court remained in full effect.

In S.E.C. v. Sidney Gondelman, et al. the Commission took action to enjoin Gondelman and other shareholders of the Central Foundry Company from voting proxies at the annual meeting of shareholders of the Corporation unless they furnished the shareholders an opportunity to revoke their proxies after furnishing information needed to correct misstatements which had been made in previous proxy soliciting material. The Commission's complaint alleged that the defendants had made misrepresentations about the status of efforts by Gondelman, a disbarred lawyer, to obtain reinstatement to the New York Bar. The Commission's action was joined, for purposes of trial, with a suit brought by the Management of the Central Foundry Company alleging several violations of the proxy rules and requesting the complete invalidation of all proxies obtained by Gondelman prior to the suit. Since the close of the fiscal year, the United States District Court for the Southern District of New York held that the defendant stockholders had violated the proxy rules and invalidated the proxies which they had obtained. The Court also ordered the correction of misleading statements.

For proxy litigation under the Public Utility Holding Company Act of 1935 involving Union Electric Co., see p. 119, infra.

Participation as Amicus Curiae

In Greene, et al. v. Dietz, et al. the United States Court of Appeals for the Second Circuit in June, 1957, handed down a decision in which it expressed doubt as to the Commission's power to promulgate Rule X-16B-3, which exempts certain bonus, profit sharing, retirement and similar plans from the provisions of section 16 (b) allowing recovery by the issuer of profits realized by officers, directors and controlling persons in transactions in the securities of the issuer. The Commission promptly moved for leave to file a brief amicus curiae and for a clarification of the opinion and a rehearing. In a per curiam decision, one of the three judges dissenting, the Court denied the petition for rehearing, stating that "...[the] Commission understands, without further clarification, the content of our opinion..." and that pending modification of the rule, any reliance upon it by persons entitled to exercise options under plans substantially similar to the one in issue "would be ill-advised." [Footnote: In Emerson Electric Manufacturing Company v. O'Neill, et al. (E. D. Mo. No. 58C 307 (2)), the Court held, on November 10, 1958; that officers and directors who relied on the Rule after the per curiam decision in Greene v. Dietz could do so without liability. The case involved officers who were not familiar with the decision in Greene v. Dietz, and the Court did not consider the question of the validity of the Rule or liability of persons familiar with the Greene v. Dietz opinion.]

Since the end of the fiscal year, the Commission has filed briefs amicus curiae in support of the validity of Rule X-16B-3 in Van Aalten v. Hurley, et al. and Perlman v. Timberlake, et al., both arising in the United States District Court for the Southern District of New York. Both cases are presently under consideration by the Court.

In addition, since the end of the fiscal year the Commission has obtained permission to participate amicus curiae in Ellerin v. Massachusetts Mutual Life Insurance Company, et al. (C. A. 2 No. 25352), a case arising under section 16, and its office of the General Counsel is studying the record in Ferraiolo v. Ashland Oil Company, 259 F. 2d 342 (C. A. 6, 1958) to determine whether to recommend participation in the plaintiff's petition for certiorari to the Supreme Court.

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

The Public Utility Holding Company Act of 1935 provides for the regulation by the Commission of interstate public-utility holding company systems engaged in the electric utility business or in the retail distribution of gas. The matters dealt with embrace intricate and complex questions of law and fact, and generally involve one or more of three major areas of regulation. The first embraces those provisions of the Act, contained principally in Section 11 (b) (1), which require the physical integration of public-utility companies and functionally related properties of holding company systems, and those provisions, contained principally in Section 11 (b) (2), which require the simplification of intercorporate relationships and financial structures of holding company systems. The second area of regulation covers the financing operations of registered holding companies and their subsidiaries, the acquisition and disposition of securities and properties, and certain accounting practices, servicing arrangements and intercompany transactions. The third area of regulation includes the exemptive provisions of the Act, the provisions covering the status under the Act of persons and companies, and those regulating the right of a person affiliated with a public-utility company to acquire securities resulting in a second such affiliation.

The staff functions under the Act are performed in the Branch of Public Utility Regulation of the Division of Corporate Regulation.

COMPOSITION OF REGISTERED HOLDING COMPANY SYSTEMS -- SUMMARY OF CHANGES

On June 30, 1958, there were 22 registered holding company systems subject to the regulatory provisions of the Act. Of these 22, four systems, namely, (1) Central Public Utility Corporation, (2) Cities Service Company, (3) Electric Bond and Share Co., and (4) Standard Shares, Inc., do not own as much as 10 percent of the voting securities of any public-utility company operating within the United States. The remaining 18 systems are referred to herein as "active registered systems."

Included in the 18 active registered systems there were 19 registered holding companies of which 13 function solely as holding companies and 6 function as operating companies as well as holding companies. In addition, in these systems there are 100 electric and gas utility subsidiaries, 42 non-utility subsidiaries, and 15 inactive companies, totaling 176 system companies.

The following tabulation shows the number of holding companies, electric and gas utility companies and non-utility companies in each of the 18 active registered systems as at June 30, 1958, and their aggregate assets, less valuation reserves, as of December 31, 1957:

[table omitted]

In the active systems four new corporations were organized during the fiscal year of which one was a gas utility company and three were non-utility companies. In addition, two going concerns were acquired one of which was an electric utility company and one of which was a non-utility company. One non-utility subsidiary was dissolved and two electric utility companies were merged. These changes resulted in a net increase of three in the total number of companies comprising the active systems. While there were net decreases during fiscal 1956 and 1957 of 32 and 11, respectively, in the number of companies comprising the active systems, certain systems are carrying out realignment programs and it is too early to state whether a leveling off has occurred in the total number of companies subject to regulation under the Act.

While most of the Section 11 problems existing at the time of the passage of the Act have been resolved, there still remain a number of issues which have not as yet been determined. Examples are: In its order under Section 11 (b) (1) with respect to The Columbia Gas System, Inc., the Commission reserved jurisdiction concerning the retainability in the system of the properties of ten companies (subsequently reduced to six) and in this connection there is a proceeding pending before the Commission which is discussed at page 114 of this Report. In addition, this registered holding company has an overall plan for the realignment of its properties which likewise is discussed at page 114. There is a problem under Section 11 (b) (1) of the Act with respect to Consolidated Natural Gas Co. relating principally to the retainability of non-utility pipe line properties. With respect to Delaware Power & Light Co. there exists the question of whether the gas and electric facilities are retainable under common control. The Commission, by order dated April 14, 1950, directed the disposition of the gas properties of Black-stone Valley Gas & Electric Co., a subsidiary of Eastern Utilities Associates. This system has pending before the Commission an application-declaration covering several transactions designed to accomplish the disposition of the gas properties required to be divested. That matter is discussed at page 114 of this Report. National Fuel Gas Co. system has oil, real estate, and gas transmission businesses, the retention of which has not been determined. With respect to New England Electric System there is pending before the Commission a proceeding under Section 11 (b) (1) of the Act to determine whether the gas properties of the subsidiary companies are retainable. That proceeding is discussed at page 116 of this report. In its application pursuant to Section 3 (a) (2) of the Act requesting an exemption from all of the provisions of the Act, Union Electric Co. also requested that the Commission release jurisdiction previously reserved by the Commission over the retainability of the gas properties owned by system companies. There is also a problem under Section 11 (b) (1) of the Act whether Utah Power & Light Co. may retain its subsidiary, The Western Colorado Power Co. Those problems have not as yet been resolved.

The maximum number of companies subject to the Act as components of registered holding company systems at any one point of time was 1,620 in 1938. Since that time additional systems have registered and certain systems have organized or acquired additional subsidiaries, with the result that 2,385 companies have been subject to the Act as registered holding companies or subsidiaries thereof during the period from June 15, 1938, to June 30, 1958. Included in this total were 216 holding companies (holding companies and operating-holding companies), 1,021 electric and gas utility companies and 1,148 non-utility enterprises. From June 15, 1938 to June 30, 1958, 2,046 of these companies have been released from the active regulatory jurisdiction of the Act or have ceased to exist as separate corporate entities. Of this number 922 companies with assets aggregating approximately $13 billion as at their respective dates of divestment have been divested by their respective parents and are no longer subject to the Act as components of registered systems. The balance of 1,124 companies includes 776 which were released from the regulatory jurisdiction of the Act as a result of dissolutions, mergers and consolidations and 348 companies which ceased to be subject to the Act as components of registered systems as a result of exemptions granted under Sections 2 and 3 of the Act and deregistrations pursuant to Section 5 (d) of the Act.

DEVELOPMENTS IN INDIVIDUAL REGISTERED SYSTEMS

There is discussed below each of the active registered systems and the other systems in which there occurred during the fiscal year 1958 significant developments other than financing transactions. The financing activities of registered holding companies and their subsidiaries are treated below in a separate section of this report.

A. DEVELOPMENTS IN ACTIVE REGISTERED SYSTEMS

American Electric Power Company

During the fiscal year American Gas and Electric Co. changed its corporate name to American Electric Power Co. At December 31, 1957, the system had consolidated assets, less valuation reserves, of some $1,283,000,000 and net dependable generating capacity of 4,585,000 Kw. The system had consolidated operating revenues of about $283,755,000 for the calendar year 1957.

Although no significant corporate changes took place in the system during the fiscal year, there was substantial activity with respect to its expansion program and the financing arrangements therefor, new developments in respect of a service agreement and the acquisition of additional utility assets. This system is the largest holding company system subject to the Act. Six additional generating units of 225,000 Kw each or a total of 1,350,000 Kw are expected to be completed during the calendar year 1958.

The system carries on research along many avenues of technology and, during the fiscal year, continued to concentrate on nuclear research and development with a view to providing power at a cost competitive with that of a conventional power plant. Three system companies are members of the East Central Nuclear Group which consists of 14 utility companies in the general Ohio Valley area. This group is in the process of developing a program involving research and development of a high-temperature, gas-cooled, heavy water-moderated, pressure-tube reactor of 50,000 Kw capacity. American Electric Power Co. is also a member of Nuclear Power Group, Inc. and, as such, continues to derive technological and practical experience from the research and design activities in Commonwealth Edison Company's 180,000 Kw boiling water reactor being installed at Dresden, Ill.

The system's service corporation, which during the fiscal year changed its name to American Electric Service Corp., designed and engineered the power plants of Ohio Valley Electric Corp. American Electric owns 37.8% of the voting securities of OVEC which, with its wholly-owned subsidiary, Indiana-Kentucky Electric Corp., furnishes electric power to an installation of the Atomic Energy Commission near Portsmouth, Ohio. There is pending before the Commission the issue of whether the acquisition of OVEC's stock by American Electric and other sponsoring companies meets the standards of Section 10 of the Act. This issue and the organization and financing of OVEC and Indiana-Kentucky Electric Corp. are discussed on page 126 of the Commission's 23rd Annual Report.

American Natural Gas Co.

This registered holding company and its subsidiary companies, as at December 31, 1957, had consolidated assets, less valuation reserves, of $689,780,000. The system had consolidated operating revenues of $192,036,000 for the calendar year 1957. In the latter part of 1957, American Natural Gas Production Co. was organized as a subsidiary of this registered holding company for the purpose of exploring for gas and acquiring and operating gas-producing properties.

In September 1957, American Natural filed a declaration requesting permission to acquire from time to time additional shares of its 6% non-redeemable preferred stock without regard to the limitations imposed by Rule 42 under the Act and at such prices as might be considered by the company's management to be reasonable. In November 1957, the Commission instituted a proceeding under Section 11 (b) (2) of the Act to determine whether the continued existence of such stock in this holding company system's corporate structure unduly and unnecessarily complicates such structure or unfairly and inequitably distributes voting power among the security holders of such system. The proceedings were consolidated and, in April 1958, the Commission issued its Findings and Opinion denying effectiveness to American Natural's declaration seeking to purchase its non-redeemable preferred stock and ordered the company to take appropriate steps to eliminate such preferred stock from the holding company system. Subsequent to the close of the fiscal year American Natural filed a plan to eliminate the preferred stock by a payment of $32.50 per share to the holders thereof. Before the plan can be effectuated it must be found by the Commission to be fair and equitable to all affected persons.

In June, 1958, hearings began on a declaration filed by Milwaukee Gas Light Co. This subsidiary proposed to issue and sell promissory notes to banks in an aggregate principal amount not exceeding $15 million. After hearing, the Commission issued its Findings and Opinion and Order permitting the Company's declaration to become effective.

Central and South West Corp.

This registered holding company and its subsidiaries, as at December 31, 1957, had 1,850,900 Kw of effective generating capability and its consolidated assets, less valuation reserves, amounted to $585,-000,000. The system had total consolidated electric operating revenues of $137,300,000 for the calendar year 1957.

During the fiscal year Southwestern Gas and Electric Co., a system subsidiary, was authorized, after hearing, to acquire, at a cost of $36,000, shares of the preferred stock of First Arkansas Development Finance Corporation, a non-profit company organized under the laws of Arkansas for the purpose of promoting the location of new businesses and new industries in the State of Arkansas.

Three system subsidiaries are members of Texas Atomic Energy Research Foundation which consists of a group of 11 electric utility companies in Texas. The Foundation was organized early in the year 1957 for the purpose of engaging in research in the atomic energy field as applied to the generation of electric power. These system subsidiaries are committed to contribute a total of about $1 million, of a combined total of $10 million, for the four-year research program which has for its object studying heavy hydrogen or fusion reactions at high temperature under controlled conditions. Two system subsidiaries have joined with 13 other electric utility companies in the formation of Southwest Atomic Energy Associates which, over the next four years, will contribute a total of $5,354,000, including about $800,000 by the two system subsidiaries, for research and development of an epithermal thorium power reactor undertaken by Atomics International, a subsidiary of North American Aviation, Inc.

The Columbia Gas System

This registered holding company and its subsidiaries, at December 31, 1957, had consolidated assets, less valuation reserves, of about $852% million. The consolidated gross operating revenues for the calendar year 1957 were approximately $376 million. The total sales of gas by the system during the calendar year 1957 amounted to 646,402 million cubic feet. Of this total 268,383 million cubic feet (41.5%) were sold at wholesale to 112 non-affiliated companies for resale.

Since the close of the last fiscal year there has been an increase of 3 in the number of the system's operating subsidiaries. The first additional company, Columbia Hydrocarbon Corp., was incorporated in Delaware on August 20, 1957, for the purpose of owning and operating a fractionating plant at Siloam, Ky., including a 35-mile pipeline to transport a mixed stream of hydrocarbons from which ethane, propane, butane and natural gasoline will be processed and marketed. On November 27, 1957, the Commission granted the company's application to sell its stock and promissory notes to its parent and authorized the parent to acquire such securities.

The second company, Columbia Gulf Transmission Co., was incorporated on May 28, 1958, for the purpose of acquiring substantially all of the assets of Gulf Interstate Gas Co. which until recently was a non-affiliated company owning and operating a pipeline which transports gas purchased and used by system companies. Columbia has entered into an agreement for the acquisition by Transmission Company of the assets of Gulf Interstate in exchange for shares of common stock of Columbia and the assumption by Transmission Co. of the liabilities of Gulf. In June, 1958, the Commission authorized Columbia to acquire shares of preferred and common stock of Gulf Interstate. There was pending at the close of the fiscal year an application of Transmission Company to acquire the assets of Gulf Interstate.

The third new operating subsidiary is The Ohio Valley Gas Co. which was organized on August 28, 1956. In June, 1958, the Commission approved the transfer to Valley of nearly all of the assets and properties of United Fuel Gas Co. in the State of Ohio which it uses in connection with the retail distribution of natural gas. This proposal is part of and was in furtherance of the system's realignment program discussed at page 109 in the 23rd Annual Report. During the fiscal year the Commission approved another proposal whereby United Fuel Gas Co., a subsidiary, transferred all of its retail distribution properties in Kentucky to Central Kentucky Natural Gas Co. This is also in furtherance of the system's realignment program.

As indicated at page 132 of the 22nd Annual Report there is pending before the Commission a motion filed by Columbia requesting the release of jurisdiction with respect to the retainability of certain properties controlled by the system. During this fiscal year both the Division of Corporate Regulation and Columbia filed proposed findings of fact and conclusions of law. The Division recommended that the Commission should not, on the basis of the record so far made in the proceeding, find the properties involved are retainable. Columbia submitted that the properties involved are properly a part of its integrated gas system or are reasonably incidental thereto and are retainable. The matter is pending.

Eastern Utilities Associates

This registered holding company and its subsidiary companies, as at December 31, 1957, had consolidated assets, less valuation reserves, of $89,900,000 and its consolidated operating revenues for that year were $32,230,000.

In February 1957, EUA and its subsidiary, Blackstone Valley Gas and Electric Co., filed with the Commission an application-declaration covering several transactions, including the issuance of 25 year debt securities by EUA, designed to effectuate the Commission's order of April 4, 1950, directing EUA to sever its relationship with the gas properties of Blackstone. Valley Gas Co. was incorporated as a subsidiary of Blackstone for the purpose of acquiring and operating such gas properties. Public hearings have been held and the Division of Corporate Regulation has opposed the issuance of the debt securities. Briefs and reply briefs have been filed and the Commission has heard oral argument. The matter is now under advisement for decision.

General Public Utilities Corp.

This registered holding company and its subsidiary companies, as at December 31, 1957, had consolidated assets, less valuation reserves, of $789,297,209. For the calendar year 1957 the system's total consolidated operating revenues amounted to $202,445,930.

During the fiscal year Manila Electric Co., an electric subsidiary operating in the Republic of the Philippines, increased the number of shares of its authorized common stock from 1,000,000 shares of 40 pesos par value per share to 10 million shares of 10 pesos par value per share and reclassified its outstanding common stock from 1 million shares to 4 million shares. In addition, a common stock dividend of 2 million shares was declared and paid to GPU. At December 31, 1957, all of Manila's outstanding debentures were called for redemption and a new series of first mortgage bonds was authorized. The holders of the debentures were offered new bonds in exchange for their debentures and GPU acquired 8 million pesos principal amount of the new issue and contributed cash to cover the cost of the adjustment in the interest differential.

Also during the fiscal year GPU amended its certificate of incorporation regarding the preemptive rights of its shareholders in connection with the issuance of additional shares of common stock.

The system has abandoned its contemplated project of constructing and operating an atomic power plant in the Philippines where the cost of conventional fuel is twice the average for the domestic subsidiaries. At present, the system is exploring the feasibility of adding a small water-type reactor at one of the generating stations of Pennsylvania Electric Co., one of the system's domestic subsidiaries.

Middle South Utilities, Inc.

This registered holding company and its subsidiaries, as of December 31, 1957, had 2,281,000 Kw effective generating capability and its consolidated assets, less valuation reserves, amounted to $669,301,581. The system had total consolidated operating revenues for the year 1957 of $171,573,439.

Middle South owns 10 percent of the voting securities of Electric Energy, Inc., an electric generating company which has a long-term contract for the sale of firm power to an installation of the Atomic Energy Commission. There is pending before the Commission a consolidated proceeding with respect to a contract between Middle South and Kentucky Utilities Co. for the sale of Middle South's 10 percent interest in EEI and with respect to previously reserved issues under Section 10 of the Act which prescribes standards applicable to the acquisition of securities by companies subject to the Act. This consolidated proceeding is discussed at pages 126-128 of the 23rd Annual Report and was pending at the close of the fiscal year.

In 1953 the Commission ordered Louisiana Power & Light Co., a system subsidiary, to dispose of its non-electric properties. The proposal of Middle South and this subsidiary to effectuate compliance with this order and Court actions in connection therewith are discussed at page 116 of the 22nd Annual Report. On November 22, 1957, the Commission approved a plan filed under section 11 (e) of the Act for the disposition of such property, and on January 14, 1958, the United States District Court for the Eastern District of Louisiana issued an order enforcing the provisions of the plan.

In 1955 the system's four major operating subsidiaries became members of Southwest Atomic Energy Associates, a non-profit organization which has embarked upon a four-year $5.5 million research and development program with respect to an advanced design power reactor, the construction of which has been undertaken under contract by North American Aviation, Inc.

New England Electric System

This registered holding company and its subsidiaries, as at December 31, 1957, had consolidated assets, less valuation reserves, of $576,-354,206 and, for that year the consolidated operating revenues amounted to $158,934,305.

During the fiscal year, the Commission instituted a proceeding in respect of NEES and its subsidiaries for the purpose of determining the extent to which the electric, gas, and other business operations of the NEES holding company system satisfied the integration standards of section 11 (b) (1) of the Act. The hearing was initially devoted exclusively to the issue of whether or not the electric operations of the NEES system constitute those of a single integrated public-utility system as permitted by section 11 (b) (1). On February 20, 1958, the Commission issued its findings and opinion and order in which it held that the electric properties of the NEES holding company system satisfied the standards delineating an integrated public-utility system. There is pending for further hearings and determination the question of whether the NEES system may retain all or any of its gas properties.

In July, 1958, NEES filed a plan under section 11 (e) of the Act to eliminate the minority interests in the common stocks of its subsidiaries engaged solely in the electric business. Subsequent to the close of the fiscal year, the Commission issued an order for hearing on NEES' plan and also instituted a proceeding under section 11 (b) (2) for the purpose of determining whether the existence of the public minority interests in the System's electric subsidiaries constitute an unfair and inequitable distribution of voting power. The two proceedings were consolidated for hearing and determination.

The system holds a 30% stock interest in Yankee Atomic Electric Company, which is constructing an atomic electric plant. The organization of Yankee and its initial financing transactions are discussed at pages 162-164 of the 22nd Annual Report, and discussions and transactions regarding the formulation of Yankee's overall financing program are discussed on page 131 of the 23rd Annual Report. The Atomic Energy Commission has issued a construction permit for Yankee's power plant and the plant is scheduled for completion in 1960. Yankee has secured Commission approval to issue and sell to its stockholder companies additional common stock and non-interest bearing promissory notes making its total capitalization $13 million, consisting of $8 million par value of capital stock and $5 million of such notes.

Ohio Edison Co.

Ohio Edison is a registered holding company and an operating electric utility company. The system consists of 1 holding-operating company and 3 electric utility subsidiaries. Included in the 3 electric utility subsidiaries are Ohio Valley Electric Corp. and its wholly-owned subsidiary, Indiana-Kentucky Electric Corp., which are discussed at pages 126-128 of the 23rd Annual Report. The other subsidiary is Pennsylvania Power Co., all of the common stock of which is owned by Ohio Edison.

Ohio Edison and its subsidiary, Pennsylvania Power Co., had consolidated assets, less valuation reserves, of $532,815,000 at December 31, 1957, and their consolidated operating revenues for the year 1957 amounted to $135,862,000.

Ohio Edison and Pennsylvania Power are two of the 15 electric utility companies that sponsored the organization of Ohio Valley Electric Corp. which supplies the power requirements of a gaseous diffusion plant of the Atomic Energy Commission located near Portsmouth, Ohio, and their power participation ratios are 16.2% and 2.2%, respectively. Further details with respect to OVEC are set forth at pages 126-8 of the 23rd Annual Report. In the Commission's order authorizing the acquisition of OVEC's securities, jurisdiction was expressly reserved to determine at an appropriate future time whether the companies subject to the Act could retain such securities. On November 19, 1956, the Commission reopened the proceeding and ordered a hearing in respect of the reserved issues. Hearings have been completed and the matter is in process of preparation for submission to the Commission.

Ohio Edison and Pennsylvania Power and 12 other electric utility companies are members of East Central Nuclear Group formed about a year ago to formulate plans for undertaking a program of nuclear research and development. In December 1957, this group and Florida West Coast Nuclear Group presented a proposal to the Atomic Energy Commission for research and development on a partnership basis with that agency of a 50,000 Kw prototype high temperature, gas-cooled, heavy-water-moderated reactor of the pressure-tube type. It will be designed as a prototype of a natural uranium 200,000 Kw reactor. Subject to necessary regulatory approvals, Ohio Edison and Pennsylvania Power may be obligated to expend approximately $425,000 per year over the 1958-62 period in connection with pre-operational research and development.

The Southern Company

This registered holding company and its subsidiaries had, at December 31, 1957, consolidated assets, less valuation reserves, of $1,037,407,021 and for that year the consolidated operating revenues totaled $254,535,680.

Southern and its subsidiaries have continued their participation in research and development of nuclear power through Power Reactor Development Co., a non-profit corporation in the process of constructing an experimental fast breeder atomic reactor in Michigan. The system's service company is one of the 21 member companies which formed PRDC. Further details with respect to it are set forth at pages 164-166 of the 22nd Annual Report and at pages 129-30 of the 23rd Annual Report. The four direct subsidiaries of Southern have agreed to contribute $2.4 million over a six-year period toward the construction of this atomic reactor and Southern has guaranteed the payment of 8 percent of the principal and interest of the borrowings made from various banks by PRDC under a loan agreement providing for such borrowings of $15 million by the end of 1958.

Union Electric Co.

Union Electric Co. is a registered holding company and an operating electric utility company. As at December 31, 1957, the consolidated assets, less valuations reserves, of Union and its subsidiaries amounted to $524,865,000 and their consolidated operating revenues for 1957 totaled $129,178,000.

Union owns 40 per cent of the capital stock of Electric Energy, Inc. There is pending for decision by the Commission the question of the retainability by Union and the other sponsoring companies subject to the Act of their stock interest in Electric Energy, Inc. Further details in connection with this proceeding are discussed at page 102 of the 17th Annual Report and at page 128 of the 23rd Annual Report.

During the fiscal year Union filed a declaration and amendments thereto pursuant to Section 12 (e) of the Act and Rules 62 and 65 thereunder, in which it proposed to solicit proxies from its preferred and common stockholders for use at the regular annual stockholders meeting for the year 1958. The declaration was filed pursuant to a Commission order issued on October 25, 1957, which prohibited Union and all other persons from soliciting proxies or other forms of authorization in connection with this meeting unless authorized by the Commission to do so. J. Raymond Dyer, a stockholder of Union, in response to the Commission's notice, requested a hearing thereon. A hearing was held in March, 1958, and thereafter the Commission permitted Union's declaration to become effective upon the filing of an amendment making certain changes in the company management's solicitation material. The stockholders' motion for rehearing was denied. The stockholder has filed a petition to review the action of the Commission in the Court of Appeals for the Eighth Circuit, where the matter is now pending.

Dyer had similarly sought review of a Commission order under Section 12 (e) of the Act authorizing Union Electric to solicit proxies in connection with its 1957 annual meeting of stockholders. In that case, Dyer v. S.E.C., 251 F. 2nd 512 (C. A. 8, 1958), although the Commission and the other parties had briefed and argued the case on the merits, the Court of Appeals on its own motion dismissed the case as moot, since the stockholders' meeting had been held and the proxies voted. Dyer filed a petition for a writ of certiorari in the United States Supreme Court. In its memorandum the Commission agreed that the case was not moot but recommended that the Supreme Court defer action on the petition until the Court of Appeals for the Eighth Circuit had an opportunity to rule on Dyer's petition seeking review of the Commission's March 21 and 25, 1958, orders permitting Union Electric Company to solicit proxy votes for its 1958 stockholders' meeting. By order entered on April 18, 1958, the Court of Appeals denied Dyer's request for a stay pending review of the Commission's March 1958 orders, but granted "leave to brief and argue the question of mootness" of the review as related to the Court's holding with respect to the same issue in Dyer v. S.E.C., 251 F. 2d 512.

A related lawsuit was involved in S.E.C. v. Dyer. In this case the Commission brought suit on April 9, 1957, to restrain Dyer from violating Section 12 (e) and the order of the Commission which prohibited Union Electric and all other persons from soliciting proxies for the 1957 annual meeting of stockholders except pursuant to a declaration which the Commission permitted to become effective. The basis of the Commission's complaint was the mailing of a postcard which, under the circumstances, the Commission believed constituted soliciting material. After the 1957 meeting was held, the Commission sought a voluntary dismissal of the case, but its notice of dismissal was vacated by the court on Dyer's motion.

Utah Power & Light Co.

Utah Power & Light Co., a Maine corporation, is a registered holding company and an electric utility company.

As of December 31, 1957, Utah Power and Western Colorado Power Company, then its only subsidiary, had consolidated assets, less valuation reserves, of $213,939,205. For the year ending that date their consolidated operating revenues amounted to $43,320,377.

On May 6, 1958 the Commission authorized Utah Power & Light to acquire the common stock of Telluride Power Company, a neighboring non-affiliated electric utility company, by exchange of one share of Utah common stock for eleven shares of Telluride common stock. In addition Utah was authorized to acquire for cash the second preferred stock of Telluride at its redemption price of $1 per share plus accrued dividends. Telluride's net utility assets aggregated approximately $3,595,000. Utah issued 52,940 shares of its common stock in exchange for the common stock of Telluride.

B. DEVELOPMENTS IN OTHER SYSTEMS

Central Public Utility Corp.

Central Public Utility Corp. ("Cenpuc") is solely a holding company and is registered as such under the Act. As indicated above, it no longer has any public utility subsidiaries operating in the United States. As at December 31, 1957, the consolidated assets of the system, less valuation reserves, amounted to $25,495,211 and for the year 1957 the system's consolidated operating revenues totaled $10,659,854.34

By order dated June 13, 1952, the Commission directed, among other things, that Cenpuc, under section 11 (b) (2) of the Act, take appropriate steps to terminate the existence of its subsidiary, The Islands Gas and Electric Co., which was found by the Commission to serve no useful purpose. On June 1, 1955, Cenpuc filed an application requesting modification of this order and further requesting an order of exemption pursuant to section 3 (a) (5) of the Act. Shortly thereafter a large block (about 30 percent) of Cenpuc's capital stock was acquired by certain new investors, thereby creating several additional tiers of holding companies in the system's structure. This complication delayed the Commission's determination of Cenpuc's application for an exemption.

On May 2, 1957, Cenpuc filed an amendment to its application renewing its request for an exemption and stating, upon information and belief, that N. V. Amsterdamsche Bankierskantoor V/H Mendes Gans Co., through Burnham and Co., as agent, purchased 259,492 shares of Cenpuc's capital stock and that Burnham and Co. is the holder of record of 431,924 shares all of which, except 1,000 shares, are subject to commitments of sale to approximately 33 Dutch and Belgian investors. Accordingly, a large block of Cenpuc's stock has been or is in the process of being transferred from domestic to foreign investors. On July 15, 1958 Cenpuc filed a further amendment to its application. Hearings on the amended application were commenced on September 10, 1958.

Cities Service Co.

At the beginning of the fiscal year there was a total of 79 37 companies in this system and its only remaining public-utility subsidiary, as defined by the Act, was Dominion Natural Gas Co., Ltd. During the fiscal year Dominion sold substantially all of its assets, including all of its utility assets, to a non-affiliate and thereby completed Cities' liquidation of its investments in public-utility companies in compliance with the Commission's order of May 5, 1944.

A consolidated proceeding involving an exemption application by Cities pursuant to section 3 (a) (5) of the Act and a section 11 (b) (2) proceeding instituted by the Commission pertaining to the existence of a publicly held 48.5 percent minority interest in Cities' subsidiary, Arkansas Fuel Oil Corp. ("Ark Fuel"), is described at pages 108-109 of the 23rd Annual Report. With respect to such consolidated proceeding, the United States Court of Appeals for the Second Circuit on July 15, 1957 affirmed the Commission's denial of Cities' application for exemption from the Act, 247 F. 2d 646 (C. A. 2, 1957), and the Supreme Court on January 6, 1958 denied certiorari. Thereafter the Commission, by order, directed Cities and Ark Fuel to comply with section 11 (b) (2) of the Act by eliminating the public minority interest in Ark Fuel, or by disposing of the 51.5 percent stock interest held by Cities in Ark Fuel. Both companies and a stockholder of Ark Fuel appealed the Commission's order to the United States Court of Appeals for the Third Circuit, which, on July 22, 1958, affirmed the order of the Commission. Cities on March 28, 1958 filed an application pursuant to section 5 (d) for an order declaring it not to be a holding company. A hearing on this application was held on May 13, 1958, and oral argument was heard by the Commission on June 5, 1958. However, thereafter Cities withdrew its application requesting the section 5 (d) order and the Commission, by order, discontinued the proceeding.

Electric Bond and Share Company

Electric Bond and Share Company, which no longer holds as much as 5 percent of the outstanding voting securities of any domestic public utility company, has pending before the Commission an application for exemption from all provisions of the Act except section 9 (a) (2) thereof, pursuant to section 3 (a) (5) of the Act. In the event such exemption is granted, it is the intention of the company to convert its status to that of an investment company and register under the Investment Company Act of 1940. This proceeding involves a number of very difficult and complex issues, among which are the questions whether Bond and Share, through its wholly-owned engineering and consulting service company subsidiary, Ebasco Services, Incorporated, exercises controlling influence over, or is affiliated with, certain public utility and holding company clients of Ebasco which formerly were controlled by Bond and Share. Further hearings are scheduled for the purpose of developing a more complete record with respect to these matters.

Standard Shares, Inc.

At the beginning of the fiscal year Standard Shares, Inc., formerly known as Standard Power and Light Corp., was a registered holding company and had outstanding only one class of stock, namely, common stock. It then owned and still owns 45.6 percent of the common stock of Standard Gas and Electric Co., a registered holding company, which, in turn, owns 100 percent of the common stock of Philadelphia Co., also a registered holding company. Both of these subsidiary registered companies are required by orders issued under section 11 (b) (2) of the Act to liquidate and dissolve 43 and each is in a position to effectuate dissolution except that there exist undetermined questions relating to Federal income taxes for the years 1942 through 1950.

During the fiscal year Standard Shares filed an application under section 5 (d) of the Act for an order declaring it not be a holding company and its registration as such under the Act not be in effect. After public hearings, the Commission, by order, on September 23, 1958, granted the application. The order became effective upon issuance and, thereupon, the company's registration under the Act ceased to be in effect. Immediately after the issuance of this order, the company completed its registration under the Investment Company Act of 1940 and, as an investment company, is subject to the requirements of that Act and to the Commission's jurisdiction thereunder.

Other Matters

As previously reported at pages 114-115 of the 23rd Annual Report, International Hydro-Electric System ("IHES") was reorganized pursuant to section 11 (d) of the Act and IHES is now registered as an investment company under the Investment Company Act of 1940 and subject to the Commission's jurisdiction thereunder. The only remaining matters under the Holding Company Act are fees and expenses to be awarded in connection with the reorganization. Final applications are on file for fees aggregating $1,211,000 and $28,805 for expenses. In December, 1957, the Commission approved interim payments of $241,200 for fees and $14,645 for expenses. Hearings have been concluded on the applications and the Commission has under consideration the final amounts to be awarded.

There are also pending before the Commission supplemental and final applications for the allowance of fees and expenses in connection with a plan filed and consummated by the United Corporation pursuant to section 11 (e) of the Act for its conversion into an investment company. Applications for fees aggregate $159,000 and for expenses $42,800. Hearings on this matter were held at various times and were concluded on September 10, 1958. [Footnote: Findings of the Commission and litigation resulting therefrom with respect to previous fee applications by Randolph Phillips and others are described in the Twenty-third Annual Report, page 125. On May 19, 1958, Phillips filed a petition in the United States District Court for the District of Delaware, seeking an order adjudging the Commission in civil and criminal contempt for an alleged willful violation of the order of the District Court, entered after remand by the Court of Appeals, which had reversed in part the order of the District Court affirming and enforcing the Commission's order with respect to fees. The District Court order on the remand had contained a provision directing the Commission to modify its previous findings, opinion and order as to fees in accordance with the determination of the Court of Appeals. The Commission had not done this until May 7, 1958, after the matter had been called to its attention by Phillips (who had received his full compensation as soon as the District Court's order on the remand had been entered). In the interim, certain portions of the Commission's opinion had been used in a proxy contest in which Phillips was engaged respecting another company. On motion of the Commission, Phillips' petition was dismissed by order dated September 19, 1958, the Court finding that there was "no basis for civil contempt" nor any "showing of probable cause" warranting criminal contempt proceedings.] The case is in the process of preparation for presentation to the Commission for ultimate disposition. United is now registered as an investment company under the Investment Company Act of 1940 and subject to the Commission's jurisdiction thereunder.

FINANCING OF REGISTERED PUBLIC UTILITY HOLDING COMPANY SYSTEMS -- TRENDS IN ELECTRIC AND GAS UTILITY INDUSTRIES

During the fiscal year 1958, registered holding companies and their subsidiaries issued and sold to the public and to financial institutions, pursuant to authorizations granted by the Commission under Sections 6 and 7 of the 1935 Act, 36 issues of their stock and long term debt securities with aggregate gross sales value of $583 million. Of this amount two issues totaling $36 million were issued for the purpose of refunding outstanding debt securities carrying higher rates of interest. In the fiscal year 1957, registered systems issued and sold 39 issues of such securities with total gross sales value of $637 million. All of the proceeds of these securities were used to provide new capital. Table I shows the amounts of various types of securities sold by registered systems in the fiscal years 1958 and 1957 and the percentages of increase or decrease in volume of each type of security during the period.

[table omitted]

The decline of $54 million, or 8.5 percent, in the volume of external financing completed by registered holding company systems in fiscal 1958 as compared with fiscal 1957 can be attributed to two factors. In the first place, the installment issuances of securities by subsidiaries of registered holding companies pursuant to long term construction loan commitments, which had figured significantly in the totals for earlier years, were completed in 1957. These installment borrowing arrangements were authorized by the Commission several years ago and resulted in substantial amounts of private placements of debt securities directly with institutional investors each year through 1957. [foot
In the fiscal year 1957, Ohio Valley Electric Corporation issued and sold $498,669 of notes and American Louisiana Pipe Line Company issued and sold §26 million of notes and $20.5 million of pipeline mortgage bonds pursuant to such construction loan commitments. The financing plans of Ohio Valley Electric and American Louisiana Pipe Line are described at page 86 of the 20th Annual Report and page 54 of the 21st Annual Report, respectively.]

Another development which contributed to the decline in volume of registered system financing was the sharp drop in the volume of common stock financing completed by these systems from $179 million in the fiscal year 1957 to $41 million in 1958. This represented a decline of 77.1% and marked the lowest level of common stock financing by registered holding company systems under the 1935 Act in 6 years. Declines also were recorded in debenture, note, and preferred stock financing during the year. Sales of mortgage bonds increased $113 million or 33.7% in 1958.

The decline in registered system financing in fiscal 1958 does not reflect the impact of any divestments of non-retainable subsidiaries by registered holding companies in recent years. No sales of long-term securities by companies subsequently divested out of holding company systems are included in the total volume of external financing recorded for registered holding company systems in the fiscal years 1956, 1957 or 1958.

In addition to passing upon the 36 issues of long term securities totaling $583 million which were issued and sold by registered systems in the fiscal year 1958, the Commission in that year also authorized the issuance and sale of 67 issues of securities aggregating $210 million by subsidiaries of registered holding companies to their parents. In fiscal 1957 subsidiaries sold 78 issues of securities with dollar volume of $219 million to their parents.

All other companies in the electric and gas utility industries, (exclusive of companies associated with registered holding company systems), issued and sold $3,447 million of long-term securities to the public and to financial institutions in the fiscal year 1958. This represented an increase of $524 million, or 17.9%, over the totals recorded by these companies in 1957. All but $27 million of the permanent financing completed by these companies in 1958 was for new money purposes. Table II shows the amounts of bonds, debentures, notes, preferred stocks and common stocks sold by such companies in the fiscal years 1958 and 1957.

[table omitted]

In contrast with the pattern of financing of registered holding company systems, other companies in the electric and gas utility industries sold increasing amounts of all types of securities except common stocks in 1958. Bond financing increased 35% as compared with the 33.7% increase reported by registered systems. The common stock financing completed by these companies in 1958 totaled $345 million, reflecting a decline from 1957 of 30.6%. This decline was not nearly as great proportionately, however, as the 77.1% decline in common stock financing reported by registered systems in 1958.

The volume of external financing of registered systems in fiscal 1958 accounted for 14.5% of the total volume of permanent financing by the entire electric and gas utility industries. The corresponding percentage for fiscal 1957 is 17.9%. Table III compares the amounts of various types of securities issued and sold in fiscal 1958 by registered systems with the amounts issued and sold by all companies in the electric and gas utility industries (including registered systems).

[table omitted]

The decline in the proportion of total industry permanent financing accounted for by registered holding company systems in fiscal 1958 reflects the decline in debenture, note, and preferred stock issues by registered systems in contrast with the increases in sales of such securities by all other companies in the electric and gas utility industries. The proportionately greater decline in common stock financing by registered systems in fiscal 1958 were also a factor.

All but 2 of the 36 issues of long term securities totaling $583 million which were sold externally by registered systems in 1958 were offered for sale at competitive bidding pursuant to the requirements of Rule 50. Brockton Edison Company, a public utility subsidiary of Eastern Utilities Associates, a registered holding company, issued and sold 30,000 shares of its $100 par value cumulative preferred stock by means of a negotiated underwritten public offering on December 2, 1957. Brockton had publicly invited bids for the purchase of this issue in October, 1957. Two groups of underwriters qualified but no bids were received. The negotiated public offering was made pursuant to an exemption from the competitive bidding requirements of Rule 50 granted by the Commission on November 29, 1957.

The second issue not sold through competitive bidding channels was a private sale of common stock by Yankee-Atomic Electric Company, a subsidiary of New England Power Company, which in turn is a public utility subsidiary of New England Electric System, a registered holding company. The balance of $1,965,000 was sold to the remaining 10 sponsor companies, no one of which is associated with a regulated holding company system. This sale of stock by Yankee was automatically exempt from the competitive bidding requirements of Rule 50 pursuant to paragraph (a) (1) thereof, because it was a pro rata issuance of securities to existing security holders of Yankee.

The $1,035,000 of stock sold to New England Power and to Montaup Electric is included in the 67 issues of securities totaling $210 million sold by subsidiaries to their registered holding company parents, as described more fully at page 126 above. The balance of $1,965,000 sold to the other 10 sponsoring public utility companies is included in the totals of external financing by registered systems.

The amounts of external financing completed by registered systems in 1958 as described above do not include the issuance in 1958 by Utah Power & Light Company, a registered holding company, of 52,940 shares of its common stock with an approximate market value of $1.7 million in exchange on the outstanding common stock of Telluride Power Company, as referred to at page 120, supra.

PROTECTIVE PROVISIONS OF FIRST MORTGAGE BONDS AND PREFERRED STOCKS OF PUBLIC UTILITY COMPANIES

In passing upon issuances of first mortgage bonds and preferred stocks of public utility companies, the Commission examines the mortgage indenture and charter provisions to determine whether or not there is substantial conformity with the applicable Statements of Policy which were adopted by it in 1956.51 These Statements of Policy represent substantially a codification of certain principles or policies prescribed for the protective provisions of these securities announced on a case-by-case basis over a period of years, as modified in the light of experience and comments received from interested persons who had been invited to submit their views. During fiscal year 1958, applications or declarations were filed by public utility companies under the Act with respect to 27 first mortgage bond issues aggregating $459,700,000 principal amount and two preferred stock issues with a total par value of $9,000,000.

Of the 27 first mortgage bond issues, 14 issues, with a total principal amount of $236,500,000, included provisions, as set forth in the Statement of Policy, imposing additional restrictions on the distribution of earned surplus to the common stockholders, thereby assuring the investing bondholders of a greater degree of safety of their investment through the maintenance of an appropriate common stock equity. In respect of the other 13 issues with a total principal amount of $223,200,000, no additional restrictions were required since the indentures already conformed in this regard to the Statement of Policy. The additional restrictions on earned surplus distributions were proposed by the companies themselves or were inserted as a result of informal discussions between the staff of the Commission and representatives of the issuing companies. In the interest of flexibility, the restriction on earned surplus distributions was generally coupled with a further provision to the effect that additional amounts of earned surplus could be distributed upon application of the issuer to, and approval by, the Commission.

A further provision contained in the Statement of Policy regarding first mortgage bonds relates to the renewal and replacement of depreciable utility property which is subject to the lien of the mortgage. It requires, in essence, that the issuer construct additions to its property, or else deposit cash or bonds with the indenture trustee, in an amount which on a cumulative basis will provide for the replacement in cash or property of the dollar equivalent of the cost of the depreciable mortgaged property during its estimated useful life. The Statement of Policy provides that the requirement be expressed as a percentage of the book cost of depreciable property, except that if the existing indenture provision expresses the requirement on a different basis, as, for example, in terms of operating revenues, 110 change will be required if the company can demonstrate that the existing provision provides an amount at least equal to a requirement based on the book cost of depreciable property. As in the case of earned surplus restrictions, the Commission, in the interest of flexibility, has permitted the issuer to insert a provision under which the issuer, upon application to, and approval by, the Commission may modify the percent of depreciable property requirement.

Of the 27 issues of first mortgage bonds, the indentures of 22, having an aggregate principal amount of $384,700,000, expressed the renewal and replacement fund requirement as a percent of depreciable property, while the indentures in the remaining 5 issues, having a principal amount of $75,000,000, expressed the requirement as a percent of revenues. The renewal and replacement fund requirements in the indentures of these latter 5 issues were not required to be restated in terms of a percent of depreciable property since they appeared substantially to afford no less protection to the bondholders than would be afforded by an appropriate percentage of property formula.

Another provision contained in both the bond and the preferred stock Statements of Policy requires that the securities be redeemable at the option of the issuer at any time upon reasonable notice upon the payment of a reasonable redemption premium, if any. The intent of this provision is to ensure that public utility companies subject to the Act shall not be prevented, if money rates decrease materially, from refunding their bonds or preferred stock. This is in keeping with the intent of the Act as expressed in Section 1 (b) (5) to ensure economies in the raising of capital. While no formula is set forth in the Statements of Policy as to what constitutes a reasonable redemption premium, the working policy of the Commission has been that the initial redemption price shall not exceed the initial public offering price plus the interest rate on the bonds or the dividend rate on the preferred stock. For example, in the case of bonds, if the initial public offering price is at 101% of principal amount and the bonds bear a 4 1/2% interest rate, the initial redemption price may not exceed 105 1/2% of the principal amount, and the 5 1/2 point premium must thereafter be reduced pro rata to maturity.

The Commission has continued to receive informally a number of requests from issuing companies to relax its requirements so as to permit bonds to be nonrefundable for a period after issuance, generally five years, or to permit the initial redemption price to be higher than that provided by the working formula. No showing was made that nonrefundability or a requirement to pay higher premiums on refunding would reduce the interest cost sufficiently to warrant the loss of future refunding flexibility. On the contrary, studies made by the staff of the Commission, at the direction of the Commission, indicate that there does not appear to be any especially significant, let alone a controlling, influence of restriction on refundability upon the interest cost, or the number of bids received at competitive bidding by the issuer or the retail marketability of the bonds.

Accordingly, the Commission considers its present working policy on refundability to be justified on the basis of available data.

In connection with this policy on refundability, it is to be noted that during fiscal year 1958 two public utility companies subject to the Act refunded an aggregate of $35,000,000 principal amount of first mortgage bonds, of which $20,000,000 principal amount had been issued during the same fiscal year and $15,000,000 had been issued during the immediately preceding fiscal year. The refunding of the $20,000,000 issue resulted in an annual saving in interest cost (before deducting expenses) of 0.73%, or $146,000 per annum, while the annual interest cost saving (also before deducting expenses) from the $15,000,000 refunding was 0.72%, or $108,000 per annum.

By reason of the great importance of the question of refundability to investors and consumers and the general public in periods of high interest rates, the Commission in fiscal year 1957 authorized a member of the staff of its Division of Corporate Regulation to serve as a member of a committee organized by the Wharton School of Finance and Commerce of the University of Pennsylvania, which is conducting a broad study of redemption provisions. The study is under the sponsorship of the Life Insurance Association of America and is expected to be concluded during fiscal year 1959.

In the two issues of preferred stock having an aggregate par value of $9,000,000, one, involving $3,000,000 par value, had charter provisions conforming substantially to the provisions of the Statement of Policy; in the other, involving an issue of $6,000,000 par value, the Commission, with the consent of the issuer, conditioned its order permitting the issue to provide, among other things, for limitations on dividends on junior classes of stock, on issuances of additional shares of preferred stock, on mergers or consolidations that might be effectuated without the consent of preferred stockholders, on the acquisition of its outstanding preferred stock which may fall into arrears and on the authorization or issuance of any prior preferred stock. These conditions supplanted conditions contained in a previous order of the Commission and supplemented the company's preferred stock charter provisions.

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

Chapter X of the Bankruptcy Act provides a procedure for reorganizing corporations in the United States District Courts. At the request of the judge or on the Commission's own motion, if approved by the judge, the Commission participates in the proceedings in order to provide independent, expert assistance to the court and investors on matters arising in such proceedings and, where the Commission considers it appropriate, files advisory reports on reorganization plans. The role of the Commission under Chapter X differs from that under the various statutes which it administers in that the Commission does not initiate the proceedings or hold its own hearings. It has no authority to determine any of the issues in a proceeding. The facilities of its technical staff and its disinterested recommendations are simply placed at the service of the judge and the parties, affording them the views of disinterested experts in a highly complex area of corporate law and finance, and the Commission pays especial attention to the interests of public security holders, who may not otherwise be effectively represented.

Section 172 of Chapter X provides that if the scheduled indebtedness of a debtor corporation does not exceed $3 million, the judge may, before approving any plan of reorganization, submit such plan to the Commission for its examination and report. However, if the indebtedness exceeds $3 million, the judge must submit the plan to the Commission before he may approve it. The Commission has no authority to veto or require the adoption of a plan of reorganization and is not obligated to file a formal advisory report on a plan. Where the Commission does file a report, copies of it, or a summary thereof, must be sent to all security holders and creditors when they are asked to vote on the plan.

While the Commission's advisory reports on plans of reorganizations are usually widely distributed and serve an important function, they represent only one aspect of the Commission's activities in cases in which it participates. As a party to a Chapter X proceeding, the Commission is actively interested in the solution of every major issue arising therein and has found that adequate performance of its duties requires that it undertake in most cases intensive legal and financial studies. Even in cases where the plans are not submitted to the Commission and no report is filed, it is necessary that the Commission consider and discuss various reorganization proposals of interested parties while plans are being formulated, and be prepared to comment fully upon all plans that are the subject of hearings for approval or confirmation.

In the exercise of its functions under Chapter X the Commission has endeavored to assist the courts in achieving equitable, financially sound, expeditious, and economical readjustments of the affairs of corporations in financial distress. To aid in attaining these objectives the Commission has stationed lawyers, accountants, and financial analysts in its New York, Chicago, and San Francisco regional offices who keep in close touch with all hearings and issues in the proceedings and with the parties and are readily available to the courts. Supervision and review of the regional offices' Chapter X work is the responsibility of the Division of Corporate Regulation of the Commission, which also handles the actual trial work in cases arising in the Atlanta and Washington, D. C., regional areas.

SUMMARY OF ACTIVITIES

During the past fiscal year the Commission actively participated in 39 reorganization proceedings involving 58 companies (39 principal debtor corporations and 19 subsidiaries of those debtors). The stated assets of the 58 companies involved in these proceedings totaled approximately $561,794,000 and their indebtedness totaled approximately $536,509,000. The proceedings were scattered among district courts in 19 states. During the year the Commission entered its appearance in 9 new proceedings, which involved the rehabilitation of companies engaged in such varied businesses as industrial loans, steel manufacturing, horse racing, drugs, investments, oil and gas production, and breweries. Proceedings involving 4 principal debtor corporations were closed during the year. At the end of the fiscal year the Commission was actively participating in 35 reorganization proceedings.

THE COMMISSION AS A PARTY TO PROCEEDINGS

The Commission has not considered it necessary or appropriate that it participate in every Chapter X case. Apart from the fact that the administrative burden of participating in every one of the over 80 cases instituted during the fiscal year would be unsurmountable with our present staff, many of the cases involve only trade or bank creditors and a few stockholders. As a general matter, the Commission has sought to participate principally in those proceedings in which a substantial public investor interest is involved. This is not the only criterion, however, and in some cases involving only limited public investor interest, the Commission has participated because an unfair plan had been or was about to be proposed, the public security holders were not adequately represented, the reorganization proceedings were being conducted in violation of important provisions of the Act, other facts indicated that the Commission could perform a useful service or the judge requested the Commission to participate.

PROCEDURAL MATTERS

Usually the Commission does not enter a case until the court has approved the petition for reorganization. However, developments in a particular case may impel the Commission to move to appear as soon as practicable, without awaiting approval of the petition. During 1958 there were a number of such cases.

An involuntary petition was filed by creditors in the United District Court for the Southern District of California at Los Angeles for the reorganization of the Equitable Plan Company, an industrial loan company having approximately $10,000,000 in Thrift Certificates outstanding. The affairs of the company had previously been taken over by the California Commissioner of Corporations and were being administered by a Conservator under the jurisdiction of the state court pursuant to the provisions of the California Industrial Loan Company Act. The State and the Conservator opposed the petition contending, among other things, that the pending proceedings in the state court provided adequate relief. The Commission filed its appearance and urged that the District Court approve the petition because Chapter X and the machinery available under the Bankruptcy Act provided superior facilities for the administration of the assets, a large part of which consisted of loans and receivables owed by non-residents of California, and because Chapter X provides superior facilities for the evolution of a plan of reorganization. On May 29, 1958, after extended hearings, the judge approved the petition.

Another case which required the Commission's participation prior to approval of the petition for reorganization involved Magnolia Park, Inc. Magnolia is a race track operator which leases land upon which its race track and improvements are located. The lease contained a forfeiture clause which provided that upon default by Magnolia, title to the race track and the improvements passed to the landlords. When Magnolia was in arrears on its rent payments to the extent of about $35,000, the landlords attempted to evict Magnolia in the Louisiana state court suit and thus obtain possession of Magnolia's property which had cost over $2,000,000. However, a voluntary petition for reorganization was filed under Chapter X and the District Court issued an order restraining the proceedings in the state court. The landlords objected to approval of the petition and hearings were held before a Referee in Bankruptcy acting as Special Master. The Commission participated in the hearings as the sole representative of the substantial number of public security holders and filed a memorandum supporting approval of the petition.

The Special Master in a report filed on January 17, 1958, recommended that the petition be disapproved because it was not filed in good faith in that it was unreasonable to expect that a fair and feasible plan of reorganization could be effected within the framework of the corporation itself. The Commission filed objections to the Special Master's report and on February 12, 1958, participated in oral argument before the judge at which time the Commission pointed out that good faith of a petition does not require the expectation of an internal reorganization but that a merger, consolidation or an investment of new capital from an outside source are other acceptable forms that a reorganization can take. The judge denied a motion by the landlords to adopt the report of the Special Master and instead followed the Commission's advice and approved Magnolia's petition. An appeal by the landlords was pending in the United States Court of Appeals for the Fifth Circuit at the close of the fiscal year.

The Commission has at all times sought to be of assistance to the disinterested trustee appointed by the district court in carrying out his responsibilities and to make available to him the fund of experience and information accumulated by the Commission through its participation in hundreds of cases. Throughout the proceedings the staff consults with the trustee and his counsel as to the steps to be taken in the reorganization, the timing of those steps and the appropriate method of taking them. This often results in substantial savings of time and expense to the estate. The Commission, however, has been alert to protect against attempts at encroachments by parties or even the trustee upon the orderly operation of the statute. Typical of the Commission's approach is a situation which arose in the reorganization proceedings involving General Stores Corporation.

After the reorganization trustee prepared a Section 167 report and transmitted it to the creditors and stockholders, the trustee received a plan proposal from a substantial stockholder of the debtor. The major secured creditor of the debtor, dissatisfied with the treatment which the proposal provided, moved the district court to vacate the injunctive provisions of the order approving the petition for reorganization in order to allow him to sell securities pledged by General Stores under a trust agreement as collateral to secure the debtor's obligations to him.

At about the same time questions had been raised with respect to the secured creditor's handling of the collateral under the trust agreement. [Footnote: he collateral was all the stock of the debtor's subsidiaries, two drug chains in the Chicago area the businesses of which under the trust agreement were in the control of the secured creditor.] The Commission opposed the secured creditor's motion to vacate the injunction and the judge entered an order denying the motion on the ground that plan proceedings were pending and the application was premature. In addition the district court entered an order requiring that the secured creditor give the Reorganization Trustee ten days' notice of transactions not in the ordinary course of business which involved substantial amounts of money and providing that upon objection by the Reorganization Trustee the transaction would not proceed without leave of the court.

The collateral trustee and the secured creditor appealed from both orders. The Commission supported the district court's determinations. The Court of Appeals in a per curiam opinion affirmed, holding that "... the petitioner's attempt to end the reorganization by foreclosing the lien is premature. Until the district court has had an opportunity to evaluate these assets, it can be in no position to judge the propriety of any contemplated plan of reorganization." As to the order respecting the conduct of the subsidiaries' business, the Court of Appeals held that the district court had the power to issue the order, stating that "The court simply took qualified possession of the stock pledged in order to preserve the debtor's possible equity in it."

TRUSTEE'S INVESTIGATIONS

One of the primary duties of the trustee is to make a thorough study of the debtor to assure the discovery and collection of all assets of the estate, including claims against directors, officers, or controlling persons who may have mismanaged the company's affairs, diverted its funds to their own use or benefit, or been guilty of other misconduct. A complete accounting for the stewardship of corporate affairs by the old management is a requisite under the Bankruptcy Act and Chapter X. The staff of the Commission participates in the trustee's investigation so that it may be fully informed as to all details of the financial history and business practice of the debtor. The Commission views its duty under Chapter X as requiring it to call the attention of the trustee, or the court if necessary, to any matters which should be acted upon. Thus, during the course of the trustee's investigation in the reorganization proceedings involving Automatic Washer Company, the staff of the Commission found that there had been certain insiders who appeared to have profited from the purchase and sale of the stock of the debtor which was listed on the Midwest Stock Exchange. These transactions appeared to be subject to the provisions of Section 16 (b) of the Securities Exchange Act of 1934 which provides that under certain circumstances such profits of insiders shall inure to the benefit of the corporation. This information was called to the attention of the trustee. Thereafter the trustee filed civil actions against these insiders seeking recovery of more than $1,500,000.

The trustee in the Automatic Washer proceedings in the District Court for the District of Iowa after his investigation reported that those who had been in control prior to his appointment had mismanaged the debtor. Many of those persons subject to the charge of mismanagement were also stockholders of the debtor. In view of these facts the Commission advised the trustee that it would not be equitable if the insiders were allowed to participate in the estate on a ratable basis with public stockholders, and that the stock of insiders guilty of mismanagement should therefore be subordinated or disallowed. To prevent the stock of those insiders from being sold before appropriate action could be taken by the court, the Commission filed a motion to enjoin all of these insiders from selling or transferring their stock. The court granted the motion, thus halting transfers of approximately one half of the 2,000,000 outstanding shares of the debtor's stock. Shortly thereafter the trustee filed a motion to subordinate or disallow the stock of these insiders. This motion was pending at the close of the fiscal year.

PROBLEMS REGARDING PROTECTIVE COMMITTEES

The Commission has constantly been alert to insist upon the honesty of fiduciaries in their relationship to the estate and to investors, and has always sought to disqualify security holder committees subject to a conflict of interest from acting in Chapter X proceedings. During 1958 in the Automatic Washer Company proceedings the Commission moved to disqualify a committee attempting to represent stockholders, because the committee members were almost wholly former insiders of the debtor who had been charged by the trustee with mismanagement. The court granted the motion of the Commission.

The Commission scrutinizes material mailed out to security holders by other security holders, their representatives and other persons, and, where such material appears to be misleading, undertakes to obtain curative and preventive relief. In the Stardust case the Commission obtained an order to show cause why a security holder of the debtor should not be required to distribute a communication retracting misleading statements sent out in a general communication to stockholders. The district court required that this be done and enjoined him from sending further misleading communications.

In the Selected Investments Corporation proceedings, pending in the United States District Court for the Western District of Oklahoma, the Commission brought information to the attention of the court which indicated that two committees, both of which were in the process of being formed, had mailed soliciting material containing misleading information to 10,000 security holders of the debtor. The court enjoined further solicitation of authorizations pending compliance with the provisions of Chapter X governing the formation of committees and caused the committees to retract or clarify their previous statements. In addition, one of the committees had solicited contributions from individual security holders for representing them. The Commission urged the court to order that the money collected be returned and that future collections be enjoined on the ground that the solicitation of funds violated the spirit of committee representation since the committee had a duty to represent all security holders and not only those making contributions. Moreover, since the monies had been solicited for the purpose of paying a fee to an attorney, the solicitation infringed on the reorganization court's discretion to allow reasonable compensation for services and reimbursement for costs and expenses incurred by the committee and its attorney. The judge ordered the committee to return the monies to the contributors.

ACTIVITIES WITH REGARD TO ALLOWANCES

Every reorganization case ultimately presents the difficult problem of determining the allowance of compensation to be paid out of the debtor's estate to the various parties for services rendered and expenses incurred in the proceeding. The Commission, which under Section 242 of the Bankruptcy Act may not receive any allowance from the estate for the services it renders, has sought to assist the courts in protecting reorganized companies from excessive charges and at the same time equitably allocating compensation on the basis of the claimants' contribution to the administration of the estate and the formulation of a plan.

During the fiscal year important determinations respecting the granting or withholding of allowances were made by the District Court for the Southern District of New York in the reorganization proceedings involving Third Avenue Transit Corporation. During the course of the proceedings an attorney for a committee of bondholders pledged with a bank as collateral for a loan $25,000 of bonds of the same class as represented by his committee, together with other securities. Approximately eight months later when the market value of the collateral, including the $25,000 of Third Avenue bonds, had declined, the bank communicated with the attorney and advised that some steps would be required to rectify the situation. The attorney directed his broker to sell the Third Avenue bonds. The bonds were released from the collateral to effect the transaction and substantially all of the proceeds of the sale were used to reduce the loan. When the attorney applied to the court for an allowance, the Commission urged that the transaction constituted a sale of securities by the attorney within the contemplation of Section 249 of the Bankruptcy Act, thus disqualifying him from receiving a fee. It was noted that there were other substantial securities in the collateral account which could have been sold in order to correct the situation without necessitating the sale of the Third Avenue bonds. The district court held that the attorney was disqualified from receiving a fee, notwithstanding the fact that both the Commission and the court recognized that substantial services had been rendered.

In another phase of the same proceeding it developed that the wife of co-counsel for a committee had during the course of the proceeding sold $5,000 of Third Avenue Bonds of the same class represented by the committee. It was clear that the attorney had knowledge of the transaction by his wife and had in fact participated in its mechanics, and benefited thereby through the filing of a joint tax return with his wife. The Commission advised the court that Section 249 of the Act barred compensation to an attorney where a sale of securities was made by his wife with his knowledge and to his benefit. The Commission relied upon cases in the Court of Appeals for the First and Fourth Circuits. The district court disagreed with the Commission, feeling constrained by certain decisions of the

Court of Appeals for the Second Circuit which the Commission had contended were distinguishable on their facts.

Yet another determination of significance was made in connection with the allowances in the Third Avenue proceeding. This involved the court's power to review arrangements for allocations of fees made among attorney applicants. The Commission urged that the broad powers to supervise allowances granted by the Bankruptcy Act included the power to review allocations of fees in appropriate circumstances in order to prevent an attorney from receiving excessive or inadequate compensation. The Commission relied upon Canon 34 of the Canons of Professional Ethics, which provides in substance that allocation of fees by attorneys shall be based on a division of service or responsibility, and Section 62 (c) of the Bankruptcy Act which prohibits the sharing of compensation "for . . . services with any person not contributing thereto ..." The district court agreed. It found that in the particular instance the parties had agreed that their arrangement for equal division of compensation was based upon a contemplated equal contribution of services and that it would be subject to court approval. The court held that even in the absence of such agreement "The broad supervisory powers accorded the court under those provisions [Sections 241-250 of The Bankruptcy Act] necessarily include the power to disregard the terms of attorneys' agreements which are contrary to the terms and policy of the Act." Respecting Section 62 (c) of the Bankruptcy Act the court held that "It would be a clear evasion of the intent of this section if the court were to sanction a fee-sharing arrangement whereby an attorney having performed some service, received an allowance far in excess of that to which his contribution to the estate entitled him."

As to still another request for compensation, the court followed the Commission's recommendation in denying an application by a potential underwriter of an unsuccessful plan of reorganization. The Court expressed serious doubt as to whether the allowance provisions of Chapter X were intended to cover as a possible applicant one "whose interest in the debtor was solely to obtain the profits from underwriting a plan of reorganization." Even assuming that the applicant did qualify as "a party in interest", the district court found that there was no basis for a finding that any of the services rendered contributed to a plan approved by the judge.

As for the allowances generally, the Commission had recommended an aggregate of approximately $1,818,000. The court found that the reorganized company could afford to and should pay allowances approximately $250,000 greater than the aggregate recommended by the Commission. In making the individual awards, the district court substantially increased the allowances recommended to certain applicants, reduced somewhat certain of the recommendations and left the balance unchanged. [Footnote: In commenting upon the role of the Commission in the allowance proceeding and in the proceeding generally, the court stated :

"Though I have been forced to differ from the recommendations of the SEC in many of the instances, I wish to pay tribute to the careful and helpful analysis that the Commission made of the claims. Indeed, I take this opportunity, to express my gratitude for the active and intimate participation of the Commission and its counsel in the reorganization proceedings. If any proof were needed of the wisdom of Congress in providing for representation of the public by the Securities and Exchange Commission in reorganization proceedings, it has been furnished in this case. I would have felt helpless without the aid given, unstintingly by ... counsel for the Commission. Each has cheerfully rendered, at the usual modest salary of a public servant, services equal in value to those of any to whom awards are made by this decision." In the Matter of Third Avenue Transit Corporation -- F. Supp. -- (S. D. N. Y. 1958).]

Several petitions for leave to appeal have been filed in the United States Court of Appeal for the Second Circuit and the matters were pending at the close of the fiscal year. The Commission has taken the position that certain of these petitions should be granted and that it would not oppose the granting of the other petitions.

ADVISORY REPORTS ON PLANS OF REORGANIZATION

An advisory report of the Commission provides the district court with an expert independent appraisal of a plan indicating the extent to which, in the opinion of the Commission, the plan meets or fails to meet the standards of fairness and feasibility. After the report is filed, the judge considers whether the plan should be approved or disapproved. If the judge approves the plan, it is sent to the affected security holders for acceptance or rejection accompanied by a copy of the judge's opinion and a copy or summary of the report of the Commission.

Since 1938 the Commission has issued 38 advisory reports and 36 supplemental advisory reports. They represent the principal means by which the Commission has recorded its views publicly. Generally speaking, an advisory report is prepared only in a case involving a large public investor interest and in which significant problems exist. However, there have been occasions where even though a case is of significant size and importance, because of the exigencies of time or for other reasons, no written report has been filed but instead, Commission counsel has made a detailed oral presentation of the Commission's views and the reasons therefor. Customarily, in the smaller cases the Commission's views are presented orally by counsel.

An example of a case in which the Commission participated during 1958 where the Commission's views were presented orally instead of by written report was the reorganization proceeding involving Stardust, Inc. in the United States District Court for Nevada. In that case the Commission reviewed five proposed plans of reorganization and offered comments and criticisms to the court. The Commission contended that an essential element of feasibility in a plan of reorganization which contemplates the purchase of all the debtor's assets or the investment of new capital in the debtor is the firm assurance that the money will be forthcoming when the plan is consummated. The Commission recommended that before any plan was approved by the judge the plans should be amended to make provision for a substantial deposit by proponent of the plan, forfeitable if the plan was confirmed and the new money was not paid. Only one plan with firm provisions for the new financing was forthcoming. It was approved by the judge and after acceptance by the creditors and the preferred stockholders of the debtor was confirmed.

During the fiscal year the Commission submitted formal advisory reports in two proceedings. A brief summary of these proceedings follows:

Northeastern Steel Corporation -- The debtor was a non-integrated steel producer with its plant located in Bridgeport, Connecticut. Since it commenced operations in 1955 the company had had substantial losses. At the time of filing a voluntary petition for reorganization in the United States District Court for the District of Connecticut, the company's working capital was less than the amount required by its first mortgage indenture and the company had failed to pay the interest due on its first mortgage bonds. Operations were continued by the trustees after their appointment in the belief that maximum realization would come only by continued operation and that cessation would result in a loss of the labor force and generally in greater depreciation of the assets.

The plan of reorganization proposed by the trustees was based on an offer by Carpenter Steel Company, a New Jersey corporation which manufactures specialty steel products. In general, the plan provided for the recapitalization of Northeastern so that it would still have outstanding $6,000,000 principal amount of First Mortgage Bonds with defaults cured and 1,000,000 shares of new common stock. The 1,000,000 shares of stock were to be issued to Carpenter in exchange for not less than 40,000 shares of Carpenter's own common stock, the specific number to be determined by formula. The Carpenter stock was to be distributed, also on the basis of a formula, to a bank holding a claim of $250,000, to holders of general unsecured claims, and to debenture holders, in satisfaction of their claims. To the extent cash was available after satisfaction of prior claims, it was to be used to discharge a note held by the bank. The plan did not provide for the participation by stockholders, warrant holders or option holders.

The Commission's report concluded that the plan or reorganization was unfair in that the formula for determining the allocation of the Carpenter stock was discriminatory and the stock did not represent fair compensation for the interest in the assets and facilities being-acquired by Carpenter. However, the Commission considered the exclusion of stockholders, warrant holders and option holders from participation to be fair since the indicated value of the debtor was less than the full claim of the creditors. The Commission's report further concluded the plan was feasible in view of Carpenter's debt-free capitalization and working capital position. The plan was amended to eliminate the discriminatory formula, but not to increase the amount of Carpenter stock to be issued to the trustees. As thus amended, the plan was approved by the court.

Inland Gas Corp., Kentucky Fuel Gas Corp., and American Fuel & Power Co. -- Inland Gas Corporation, which was in equity receivership from 1930 to 1935 and has been in reorganization under Section 77B and Chapter X since 1935, produces, transmits, and sells natural gas principally to industrial customers in Kentucky.

The plan of reorganization proposed by the Trustees of Inland Gas Corporation and its non-operating parents, Kentucky Fuel Gas Corporation and American Fuel & Power Company, provided for payment in cash of all priority and administrative claims and of the claims to principal and full interest of public creditors of American Fuel & Power Company. The Trustees' plan further provided for payment in cash to the public holders of Kentucky Fuel bonds and debentures of principal, but not of interest except for a single interest coupon on the debentures which was in default prior to receivership. The plan also provided for the reorganized company to borrow an estimated $4,000,000 from a bank and to use the proceeds for payment of a portion of the claims of the public creditors. All the new common stock of the reorganized company was to be issued to The Columbia Gas System, Inc., as holder of subordinated claims against Inland.

The Commission's Third Advisory Report concluded that the Trustees' Plan was fair to the public creditors of American Fuel in according them the full amount of their claims including interest. However, the Commission considered the plan to be unfair to the public holders of Kentucky Fuel bonds and debentures because the plan gave no recognition to the interest which accrued on their claims between December 1, 1930, when the equity receivership proceeding commenced, and October 15, 1935, when the bankruptcy proceeding was instituted; and because the plan would give compensation to Columbia for post-bankruptcy interest on the subordinated claims of Columbia before post-bankruptcy interest was paid on the publicly held claims against Kentucky Fuel.

The Commission concluded that the plan was feasible but pointed out that if the plan was amended to make it fair, in accordance with the principles enunciated in the Report, the proposed capital structure of the reorganized company would have to be further modified to make the plan feasible.

The district judge did not accept the Commission's conclusion and approved the plan. Several appeals from the judge's ruling were pending in the United States Court of Appeals for the Sixth Circuit at the close of the fiscal year.

PART VIII
ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

The Trust Indenture Act of 1939 requires that bonds, notes, debentures and similar securities publicly offered for sale, except as specifically exempted by the Act, be issued under an indenture which meets the requirements of the Act and has been duly qualified with the Commission. The Act requires that indentures to be qualified include specified provisions which provide means by which the rights of holders of securities issued under such indentures may be protected and enforced. These provisions relate to designated standards of eligibility and qualification of the corporate trustee to provide reasonable financial responsibility and to minimize conflicting interests. The Act outlaws exculpatory provisions formerly used to eliminate all liability of the indenture trustee and imposes on the trustee, after default, the duty to use the same degree of care and skill "in the exercise of the rights and powers invested in it by the indenture" as a prudent man would use in the conduct of his own affairs.

The provisions of the Trust Indenture Act are closely integrated with the requirements of the Securities Act. Registration pursuant to the Securities Act of securities to be issued under a trust indenture subject to the Trust Indenture Act is not permitted to become effective unless the indenture conforms to the requirements of the latter Act, and necessary information as to the trustee and the indenture must be contained in the registration statement. In the case of securities issued in exchange for other securities of the same issuer and securities issued under a plan approved by a court or other proper authority which, although exempted from the registration requirements of the Securities Act, are not exempted from the requirements of the Trust Indenture Act, the obligor must file an application for the qualification of the indenture, including a statement of the required information concerning the eligibility and qualification of the trustee.

[table omitted]

PART IX

ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 provides for the registration and regulation of companies engaged primarily in the business of investing, reinvesting, holding and trading in securities. The Act requires, among other things, disclosure of the finances and investment policies of these companies, prohibits such companies from changing the nature of their business or their investment policies without the approval of their stockholders, regulates the means of custody of the companies' assets, prohibits underwriters, investment bankers and brokers from constituting more than a minority of the directors of such companies, requires management contracts to be submitted to security holders for their approval, prohibits transactions between such companies and their officers, directors and affiliates except with the approval of the Commission and regulates the issuance of senior securities. The Act requires face-amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

The securities of investment companies which are offered to the public are also required to be registered under the Securities Act, and the companies must file periodic reports. Such companies are also subject to the Commission's "proxy" and "insider" trading rules. The Division of Corporation Finance and the Division of Corporate Regulation both assist the Commission in the administration of the statute, the former being concerned with the disclosure provisions and the latter with the regulatory provisions.

COMPANIES REGISTERED UNDER THE ACT

As of June 30, 1958, there were 453 investment companies registered under the Act, and it is estimated that on that date the aggregate market value of their assets was $17 billion. These figures represent an increase of 21 registered companies and an increase of roughly $2 billion in the market value of assets over the corresponding totals at June 30, 1957. These companies were classified as follows:

Management open-end: 238

Management closed-end: 111

Unit investment trust: 92

Face-amount certificate: 12

Total: 146

NEW COMPANIES REGISTERED AND REGISTRATIONS TERMINATED

During the fiscal year ending June 30, 1958,42 new companies registered under the Act while the registrations of 21 companies were terminated. These companies were classified as follows:

[table omitted]

Of the 42 new registrations, three were deregistered during the year. All of the unit investment trusts registered were organized to furnish periodic payment plans for the accumulation of shares of open-end funds.

GROWTH OF INVESTMENT COMPANY ASSETS

The striking growth of investment company assets during the past seventeen years, particularly in the most recent years, is shown in the following table:

[table omitted]

STUDY OF SIZE OF INVESTMENT COMPANIES

In the preceding fiscal year the Commission pursuant to section 14 (b) of the Investment Company Act instituted an inquiry into the problems created by the growth in size of investment companies and, as part of this inquiry, received a preliminary report containing a general research plan for the study of the effects of investment company growth (23rd Annual Report, p. 159). In furtherance of this study the Commission in the past fiscal year retained the Securities Research Unit of the Wharton School of Finance and Commerce, University of Pennsylvania, to make a fact-finding survey and report on certain aspects and practices of registered investment companies. This survey is under the supervision of Dean Willis J. Winn of the Wharton School. [Footnote: The Wharton School will limit the scope and manner of conducting the study to accord with the Commission's determinations with respect thereto. A preliminary questionnaire has been prepared by the staff of the Wharton School and has been transmitted to selected investment companies for test checking.]

The general problems which will be examined are: (a) The manner and extent to which investment policies may be affected by the size of investment companies; (b) the relationship between the size of investment companies on the one hand and the character of management, cost of operation, and performance of investment companies on the other; (c) the relationship between the size of the investment companies and the manner in which blocks of securities are purchased and sold and the effects of such purchase and sales on the security markets and the marketing channels for securities; and (d) the extent to which large companies control or influence the policies and decisions of portfolio companies. The immediate inquiry of the study will be primarily directed to the question of the effects of size on investment policies and comparative performance of investment companies, although other aspects of the inquiry will be developed to the extent possible.

It is expected that the report of the Wharton School will enable the Commission to determine whether the increased size of investment companies has created any problems which require specific remedial legislative recommendations by the Commission to the Congress.

INSPECTION PROGRAM

As indicated in the 23rd Annual Report, the Commission has initiated a regular program for the periodic inspection of investment companies pursuant to its statutory authority under section 31 of the Investment Company Act. In pilot operations under this program, nine companies were inspected during fiscal year 1957,2 and seven in fiscal year 1958. These inspections were undertaken by staff teams consisting of one attorney or analyst from the Division of Corporate Regulation and one securities investigator from the appropriate field office. In this way, the specialized training and knowledge of the staff concerning the regulatory requirements of the Investment Company Act has been combined with the field experience and investigative expertness of field office personnel for more expeditious and thorough review of the investment company.

These inspections, although involving only a very small fraction of the total number of registered investment companies, have revealed the need for continuous field supervision. The Commission's studies ascertained that in several cases there was non-compliance with regulatory provisions of the Investment Company Act with respect to such matters as (1) the affiliations of directors in violation of section 10 of the Act; (2) security purchases by registered investment company during an underwriting where an affiliate relationship exists between the underwriter of such security and the company in violation of section 10 (f) of the Act; (3) receipt of a commission for the sale of property by an affiliated person contrary to section 17 (e) of the Act; and (4) the failure to file an appropriate fidelity bond covering an officer having access to portfolio securities pursuant to the requirements of rules under section 17 (g) of the Act.

In addition to non-compliance with various regulations and standards under the Act, some situations where books and records were inadequate or lacking were noted by the staff. Thus, there were instances where a company failed to record the date and time of requests for redemption which resulted in an inability to determine whether the investors had received their correct net asset value. In other instances a company failed to maintain journals reflecting purchases and sales of securities, to maintain ledger accounts for broker-dealers used by the company for its portfolio security transactions and to keep proper vouchers for out-of-pocket expenses. In one case, an inspection revealed that the custodian did not adhere to the terms of the custodianship agreement and that there was a failure to comply with the Commission's regulations regarding the safekeeping of portfolio securities.

In several cases the staff observed that there was considerable delay by dealers selling investment company shares in the transmission of funds received by them to the investment companies or their custodians. It also creates a risk for the purchasers who have paid dealers for their shares but to whom shares of stock are not delivered until funds are actually received by the companies. This practice is undesirable because investment companies are deprived of the use of such funds even though the sales of securities have already been recorded on the books of the companies.

During the course of one inspection, in examining certain transactions of the investment company, the staff discovered the existence of another investment company which had not registered under the Act. As a result of further inquiry, this company was compelled to register.

In cases where deficiencies are noted, they are brought to the attention of the investment companies involved so that corrective action may be taken. The Commission's experience to date indicates that this aspect of the inspection program will prove to be particularly helpful to the newly organized or the smaller investment company, and of benefit to the investing public.

CURRENT INFORMATION

The basic information contained in notifications of registration and in registration statements of investment companies is required by rules promulgated under the Act to be kept up-to-date, except in cases of certain inactive unit trusts and face-amount companies. During the 1958 fiscal year the following current reports and documents were filed:

Annual reports: 305

Quarterly reports: 163

Periodic reports to stockholders (containing financial statements): 887

Copies of sales literature: 2, 416

While not reflected in the foregoing statistics, in the course of every fiscal year, open-end mutual funds making a continuous offering of their securities make frequent filings of revised prospectuses showing material changes which have occurred in the operations of such companies since the effective date of the prospectuses on file. In this respect the registration of the securities of such companies is essentially different from the registration of the usual corporate securities.

APPLICATIONS AND PROCEEDINGS

Processing applications for exemptions constitutes one of the principal regulatory activities of the Commission under the Act. Under Section 6 (c) the Commission is empowered, either upon its own motion or by order upon application, to exempt any person, security or transaction from any provision of the Act if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Various other sections, such as 6 (d), 9 (b), 10 (f), 11 (a), 17 (b), and 23 (c) contain specific provisions and standards pursuant to which the Commission may grant exemptions from particular sections of the Act or may approve certain types of transactions. Under certain provisions of Sections 2, 3 and 8 the Commission may also determine the status of persons and companies under the Act.

During the 1958 fiscal year 159 applications on various matters under the Act were pending before the Commission. Of these, 115 were disposed of leaving 44 pending on June 30, 1958. The various sections of the Act with which these applications were concerned and their disposition during the fiscal year are shown in the following table:

[table omitted]

Applications for exemption or exception from the various provisions of the Act and other proceedings for relief are for the most part processed without the aid of formal hearings. In the past year, however, hearings were held in 9 cases. Four of these involved exemptions from the Act pursuant to section 6 (c) ; two involved exceptions under section 3 (b) (2) ; one involved a deregistration order pursuant to section 8 (f); one involved an order under section 7 (d) permitting a foreign company to register under the Act; and one, instituted by the Commission pursuant to section 35 (d) of the Act, involved the use of a name. In two of these cases the applicants requested in the alternative general exemptions from all the provisions of the Act pursuant to sections 6 (c) or 6 (d). Six of the cases are described below.

In Dow Theory Investment Fund, Inc., the applicant was granted an order exempting it from the requirements of section 22 (d) of the Act so as to permit it to continue to sell redeemable securities to existing subscribers under an accumulation plan at a price including a sales load of 5%, which was at variance with a 7 1/2% sales load proposed to be charged to new shareholders. In a divided opinion, the Commission pointed out that its decision to grant the application was based on the specific facts in the case and that the type of exemption granted would at most have only a very limited application in other situations. It declared that the decision "is not intended as an adoption of a general policy of approving differing sales loads based on differences in selling costs, or to restrict our discretion to further define or revise our policy concerning exemptions from section 22 (d) if our continuing study should indicate that to be necessary."

In Insured Accounts Fund, the Commission denied an application for an exemption pursuant to section 6 (c) from the requirements of sections 16 (a) and 18 (i) of the Act. Section 16 (a) provides that the directors (defined by section 2 (a) (12) of the Act to include trustees) of a registered investment company be elected by the holders of the outstanding voting securities, and section 18 (i) provides that every share of stock issued by a registered management company shall be a voting stock having equal voting rights with every other outstanding voting stock.

The Company proposed to invest 80% of its funds in insured accounts of savings and loan institutions and its remaining assets in federally insured bank accounts, government securities, and cash. To have the benefit of this insurance to the extent contemplated, applicant represented that its trust form of organization was necessary and that to grant its security holders voting rights would destroy its status as a trust for this purpose. It further contended that there was no need for the control over the trustees which would flow from voting rights since their discretion was limited to investments among insured institutions.

The Commission refused to grant the exemption, stating that it would be inconsistent with the policy of the Act that the owners of investment companies have the power to elect the management to the end that such companies are operated in the investors' interests and not in the interests of other persons. The Commission found that the discretion to invest among various savings and loan companies with differing risk factors and earnings was an important area of management discretion. The Commission further found that since substantially all such investments would be made in savings and loan institutions which were members of the organization which promoted the investment company, there would be a potential conflict of interest between the management and investors.

In Ira Haupt & Co., the applicant as sponsor and depositor of a unit investment trust, requested an exemption from sections 2 (a) (3), 4 (2) and 22 (e) of the Act to the extent that those sections require the securities issued by a unit trust to be redeemable either by the trust or its agent. Upon the conclusion of the hearings on the application which were held during the fiscal year, the applicant requested that the matter be temporarily held in abeyance and the case has therefore not yet come before the Commission for disposition.

Great Northern Investments, Inc. (formerly Inter-Canadian Corporation) , a closed-end investment company, filed an application pursuant to section 6 (c) to permit it to acquire all the voting stock of Northwestern Fire and Marine Insurance Company and to finance such acquisition by the issuance of up to $3,200,000 of bank notes. The stock was to be acquired pursuant to a general offer to Northwestern's stockholders at a price of $41 per share. It was contemplated that after the acquisition Northwestern would be caused to be liquidated promptly. The exemption was required because section 12 (d) (2) makes it unlawful for a registered investment company to acquire more than 10% of the total outstanding voting stock of an insurance company and section 18 (a) (1) makes it unlawful for a registered closed-end investment company to issue debt obligations, with certain exceptions, unless the asset coverage for the debt immediately after such issuance is equal to at least 300%, and Great Northern's assets could not meet this 300% test after it borrowed $3,200,000. In addition, since the proposal also involved transactions between affiliates an exemption from the provisions of section 17 (a) pursuant to section 17 (b) was requested. The Commission granted the requested exemption, finding among other things that the purpose of the acquisition of the insurance company's stock was to obtain the assets of a corporation to be liquidated and not to control a going insurance company, and that the asset coverage requirements of the Act would be complied with through repayment of the note as a result of the liquidation of Northwestern, or the distribution by it of substantial dividends. It also found that the transactions between affiliates were fair and reasonable and involved no overreaching.

In The Great American Life Underwriters, Inc., applicant, a registered face-amount certificate company, sought an order pursuant to section 6 (c) of the Act exempting it from the Act from and after January 1, 1941. In the alternative, it requested an order pursuant to sections 8 (f) and 6 (c) of the Act declaring that applicant is not or has ceased to be an investment company and exempting from the provisions of the Act transactions since January 1941 to which it or any person controlled by it was a party. Applicant's request for an exemption is based on the contention that it discontinued the sale of face-amount certificates in the latter part of 1940, and that since its inception in 1929 it has been primarily and continuously engaged in the life insurance business through various controlled subsidiaries, including, since 1939, Franklin Life Insurance Company, presently its only life insurance subsidiary. The request for an order under section 8 (f) of the Act is based on the contention that since 1953 more than 90% of the value of its investment securities has been represented by its investment in the stock of Franklin Life Insurance Company and that, accordingly, it is entitled to the exception from the definition of an investment company contained in section 3 (c) (8) of the Act.

The transactions for which exemption has been sought under section 6 (c) involved applicant or its controlled companies and their affiliates and, although subject to the prohibitions of section 17 (a) of the Act, were carried out without prior Commission approval under section 17 (b) of the Act. The various questions involved in this case were explored during hearings which resulted in over 3,200 pages of testimony and the introduction in evidence of 300 exhibits. The parties in the case were engaged in completing the post-hearing procedures after the close of the fiscal year.

In Civil and Military Investors Mutual Fund, Inc., the Commission decided that the name of a registered investment company "Civil and Military Investors Mutual Fund, Inc.", inherently implies that such company's securities have special investment and other advantages for the civil and military government personnel to whom it was intended to offer such securities, that such advantages do not in fact exist, and that therefore the name was deceptive and misleading under section 35 (d) of the Act. The Commission found, however, that the name did not violate section 35 (a) of the Act since it was not likely to carry an implication that the company or its securities were sponsored, recommended or approved by the United States.

REGISTRATION OF FOREIGN INVESTMENT COMPANIES

An application filed during the past fiscal year by American-South Africa Investment Company, Ltd. for an order under Section 7 (d) of the Act permitting its registration under the Act and for the sale of its securities in the United States was the first such application presented to the Commission by a non-Canadian, foreign investment company. The company was organized as a closed-end investment company, chartered under the Companies Act of 1926 of the Union of South Africa.

Section 7 (d) of the Act, among other things, prohibits a foreign investment company from selling its securities to the public by use of the mails or any means or instrumentalities of interstate commerce unless the Commission, upon application, issues a conditional or unconditional order permitting such company to register under the Act and to make a public offering of its securities in the United States. To issue such an order the Commission must find that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the Act against such company and that the issuance of such order is otherwise consistent with the public interest and protection of investors.

Rule N-7D-1 under the Act sets forth the specifications, conditions and arrangements for Canadian management investment companies requesting orders for registration, but makes no provision for enabling investment companies organized in other foreign countries to register. Processing the application in this case, therefore, required extensive research into South African corporate law to determine whether it would be legally feasible to apply and enforce the standards of the Act with respect to this company.

In support of its request, applicant agreed to abide by the undertakings and agreements provided for by rule N-7D-1 applicable to Canadian investment companies as well as numerous additional undertakings and agreements to give assurance of the enforceability of the Act. A hearing on the application was held in July, 1958, shortly after the close of the fiscal year, and the Commission's Findings and Opinion and Order approving the application was issued on August 13, 1958.

UNREGISTERED INVESTMENT COMPANIES -- SECURING COMPLIANCE WITH THE INVESTMENT COMPANY ACT

In the course of administering the Investment Company Act, the Commission must frequently take steps to require the registration of companies. Such instances often arise with respect to companies which have been engaged in industrial or other activities and which over periods of time substantially reduce their regular business activities and sell large portions of their assets and invest the proceeds in securities. Thus, these companies bring themselves within the purview of section 3 (a) (3) of the Act, which defines an investment company, among others, as one which is engaged in the business of owning or holding, or proposing to own or hold, investment securities having a value exceeding 40 per centum of the value of their total assets. Companies which fall within this definition must register under section 8 (a) of the Act, or they may, before or after such registration, apply for an order under section 3 (b) (2) declaring that they are primarily engaged in a business or businesses other than the investment business.

In the usual case, companies which find themselves in or approaching an investment company status seek the advice of the Commission's staff as to the application of the Act. Others, however, through inadvertence or erroneous interpretation of the Act fail to register until notified by the Commission to do so. The discovery of such situations presents a serious administrative problem. It is obviously impossible and undesirable to attempt to scrutinize the operations of the myriad of business enterprises in this country to determine their status under the Act. The Commission and its staff are dependent for information upon newspapers and other reportorial services, complaints of stockholders or other interested persons and examination of reports or other documents required to be filed with the Commission under other Acts which it administers.

Companies which the staff and the Commission dealt with during the past fiscal year involving registration and status problems under the Act included the following: National Department Stores Corporation, McPhail Candy Corporation, New York Dock Company, Portsmouth Steel Corporation, Dempster Investment Company, Real Silk Hosiery Mills, Inc., American-Hawaiian Steamship Company and Bankers Southern, Inc. All of these companies, with the exception of Bankers Southern, Inc., which is a newly organized company, had in recent years disposed of substantial portions or all of their other business assets and purchased securities with the proceeds, with the result that they fell within the presumptive test of an investment company contained in section 3 (a) (3). Prior to, or shortly after, the close of the fiscal year all of these companies, with the exception of National Department Stores and American-Hawaiian Steamship, had registered under the Act. Hearings on National Department Stores application under section 3 (b) (2) had not been concluded at the year's end. American-Hawaiian Steamship, upon being advised by the Commission that its operations were subject to the Investment Company Act, refused to register, claiming, among other things, that it was not an investment company nor subject to the Act. Thereupon, after the close of the fiscal year, the Commission initiated proceedings in the United States District Court to enforce compliance with the Act.

The problems of administration and enforcement encountered in this type of case are illustrated by the McPhail Candy Corporation matter. In early 1955 the staff learned, through a newspaper account, that a derivative stockholder's action had been instituted against McPhail Candy Corporation in which it was alleged, among other things, that the company was an investment company and that its officers had, in effect, been guilty of a breach of trust. Reports filed by the company with the Commission pursuant to the Securities Exchange Act indicated that over a period of years the company's candy operations had been declining, that assets had been liquidated and the cash, together with borrowings, had been invested in securities and that candy operations had been conducted at a loss while security transactions and dividend receipts were providing an increasingly important source of income. Security holdings constituted a substantial portion of the company's total assets. Because of these and other facts, it appeared that the company might have already undertaken to be an investment company and that further inquiry was warranted.

Informal investigation of the affairs of McPhail Candy Corporation proceeded during the spring of 1955. Examination of the annual audited report of the company's operations, which, was filed on August 15, 1955, served to strengthen the earlier tentative conclusion of the company's status as an investment company and the company was advised of this conclusion and further factual information was sought from the company on a voluntary basis. By the end of the year it became apparent that the company would not voluntarily register under the Act and that an investigation of its affairs would have to be conducted to determine its status and if necessary, to compel registration. As a result of further investigation it appeared that the company was and had been an investment company and should register as such and that it had engaged in a series of transactions with its principal officer and stockholder and otherwise used its assets for his personal benefit under circumstances which, it appeared, might involve fraud and gross abuse of trust. Ultimately, on October 28, 1957, the company registered but concurrently filed an application under section 3(b) (2) to be declared excepted from the definition of an investment company, or in the alternative to be exempted pursuant to section 6 (c). During the hearing on this application the company requested its withdrawal and this request was granted on April 24, 1958. [Footnote: On July 7, 1958, the Commission filed a complaint in the United States District Court for the Southern District of New York against the directors of the company for gross abuse of trust under section 36 of the Investment Company Act. The complaint alleges, among other things, that the corporation was an investment company on or before April 1, 1953; that between 1953 and 1957, the corporation, under the control and direction of its officers and directors carried on its activities in violation of Section 7 of the Investment Company Act and that Russell McPhail fraudulently diverted the corporation's assets to himself at prices substantially below their market value. S.E.C. v. Russell McPhail, et al., S. D. N. Y., Civil Action No. 135-203.]

LITIGATION UNDER THE INVESTMENT COMPANY ACT OF 1940

During the fiscal year the Court of Appeals for the District of Columbia Circuit, in S.E.C. v. Variable Annuity Life Insurance Company of America et al. affirmed the dismissal by the district court of the Commission's complaint charging violations of the registration provisions of the Investment Company Act and the Securities Act of 1933. As noted on page 164 of the 23rd Annual Report, the district court had dismissed the Commission's complaint after trial on the ground that the McCarran Act placed exclusive regulatory jurisdiction over the defendants in the insurance authorities of the States and the District of Columbia. The Court of Appeals based its decision on different grounds, holding that the variable annuity contracts sold by defendants are exempt from registration pursuant to section 3 (a) (8) of the Securities Act and that the defendants are insurance companies falling within the provisions of section 3 (c) (3) of the Investment Company Act.

In S.E.C. v. Cryan, the Commission is seeking an injunction pursuant to section 36 of the Investment Company Act permanently barring Frank M. Cryan, former president and director, and John Setrian and Joseph Aversa, purported to be the new president and secretary-treasurer, respectively, from acting as directors and officers of Jefferson Custodian Fund, Inc., an open-end registered investment company, the appointment of a receiver, and other relief. The Commission's complaint alleges that Cryan sold to Setrian and his associates the stock of Jefferson Research Foundation, Inc., the Fund's investment adviser, at an aggregate price of $261,000, its net book value being about $2,300. The assets of the Fund at about that time were approximately $1,270,000.

The complaint further alleges that the price agreed upon was "for the surrender of the fiduciary and management positions with respect to the Fund in favor of the defendant, John Setrian and his associates," and that "the purchasers of the stock did not have funds to pay the price and that the intention was to use the Fund's resources to finance the purchase." A receiver was appointed, and the receiver and the Fund's custodian were directed by the Court to honor redemptions at net asset value less 5% of the redemption price which was to be credited to a contingent reserve for receivership expenses. During the course of the proceedings, upon the recommendation of the receiver and a vote of the stockholders, the Court approved a transfer of the assets of the company to another mutual fund.

In S.E.C. v. Insurance Securities, Inc. the Court of Appeals affirmed the district court's dismissal of the Commission's complaint which alleged that the defendants were guilty of gross abuse of trust within the meaning of section 36 of the Investment Company Act because they, as directors, officers and controlling stockholders, had sold stock control of an investment adviser for a registered investment company at about 25 times the net asset value of the stock. The Court of Appeals held that there was no breach of trust because no funds of the investment company were involved and Congress provided a remedy in section 15 of the Act under which an investment advisory contract is terminated when stock control of the investment adviser is sold.

PART X

ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

A person engaged for compensation in the business of advising others with respect to securities is required by the Investment Advisers Act of 1940 to register as an investment adviser. There are certain exemptions from the requirement of registration such as in the case of an investment adviser all of whose clients are residents of the state of his principal business office and whose activities do not include advice or analysis with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange. The Act makes it unlawful for investment advisers to engage in practices which constitute fraud or deceit. The Act also requires investment advisers to disclose the nature of their interest in transactions which they may effect for their clients, prohibits profit-sharing arrangements and, for all practical purposes, prevents the assignment of any investment advisory contract without the consent of the interested client.

The Commission is not empowered by the Investment Advisers Act to inspect the books and records of an investment adviser nor to deny or revoke the registration of an investment adviser unless he has been convicted of certain offenses involving securities or arising out of his conduct as an investment adviser or in certain other specified capacities, or has been enjoined by a court of competent jurisdiction on the same grounds or has falsified his application.

The number of registered investment advisers continued to increase and at the end of the fiscal year the total was 1,562, representing an increase of nearly 10% over the previous year. The following tabulation reflects certain data with respect to registration of investment advisers and applications for such registration during fiscal year 1958:

[table omitted]

ADMINISTRATIVE PROCEEDINGS

The Commission revoked the investment adviser registration of Ralph Seipel, doing business as Investors Surety Company on the ground that the registrant had been permanently enjoined by a United States District Court, in an action instituted by the Commission, from employing any device, scheme or artifice to defraud a client or prospective client or from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client in violation of Section 206 of the Act. The injunction was based on findings by the court that Seipel had violated that section by falsely representing to persons responding to his newspaper advertisements inviting requests for stock market information, that he absolutely guaranteed clients against loss in the stock market, that he maintained branch offices and a foreign exchange department, and that he had twenty-five years of trading experience and many clients, when in fact he had no office, organization, associates or customers. Seipel contended that the injunction did not constitute a basis for revocation, since he had no clients and was enjoined only from making misrepresentations in an effort to attract clients and not from engaging in any conduct connected with investment advisory activities. This contention was rejected by the Commission.

James Cordas, doing business as The Canadian Stock Letter, a registered investment adviser, filed an amendment to his registration application with the Commission which willfully misstated his business address as being in one state when in fact it was located in another state, where he was enjoined from acting as an investment adviser. The Commission held it to be in the public interest to revoke his registration as an investment adviser.

LITIGATION UNDER THE INVESTMENT ADVISERS ACT OF 1940

The Commission is authorized by the Investment Advisers Act to obtain an injunction where violations of the Act have occurred or appear to be imminent.

Pursuant to that authority the Commission secured a permanent injunction in S.E.C. v. Security Forecaster Co., Inc. and Melvin A. Johnson restraining further violations of the anti-fraud provisions of the Investment Advisers Act. The Commission charged that Security Forecaster Co., Inc., Melvin A. Johnson, its president, and James M. Barnes, a Canadian resident, in a paper called "The Financial Forecaster", which the company published and distributed, urged clients and prospective clients to buy shares of Anacon Lead Mines, Ltd., by means of the following misleading and fraudulent statements, among others: (1) the projected recovery by Anacon of an estimated $50,000 per acre from certain of its gold mining holdings would result in a recovery potential to Anacon of $50 million; (2) the value of each outstanding share of Anacon was approximately $3 per share, when in fact it was approximately 40 cents per share; (3) millions of dollars were realized within days by traders, speculators and investors in other stocks managed by Johnson; (4) large and extremely quick profits would be made as a result of a purchase of Anacon stock; and (5) dividends had been paid in the past by Anacon, without disclosing that no dividends have been paid since 1952.

The Commission filed memoranda amicus curiae and presented oral argument in Hull v. Newman, Kennedy & Co., an action to declare an investment contract void, and for damages for violations of the Investment Advisers Act. The Commission, addressing itself solely to the questions of law involved, contended that a private civil action may be brought for violation of the Act, regardless of the non-existence of any express statutory provision authorizing it. The case was subsequently settled.

PART XI
OTHER ACTIVITIES OF THE COMMISSION

COURT PROCEEDINGS

Civil Proceedings

At the beginning of the fiscal year 1958 there were pending in the courts 43 injunctive and related enforcement proceedings instituted by the Commission to prevent fraudulent and other illegal practices in the sale or purchase of securities. During the year 65 additional proceedings were instituted and 54 cases were disposed of, leaving 54 such proceedings pending at the end of the year. In addition the Commission participated in a number of corporate reorganization cases under Chapter X of the Bankruptcy Act, in 7 proceedings in the district courts under section 11 (e) of the Public Utility Holding Company Act and in 14 miscellaneous actions. The Commission also participated in 35 civil appeals in the United States Courts of Appeals. Of these, 17 came before the courts on petition for review of an administrative order, 6 arose out of corporate reorganizations in which the Commission had taken an active part, 9 were appeals in actions brought by or against the Commission, 1 was an appeal from an order entered pursuant to section 11 (e) of the Public Utility Holding Company Act and 2 were appeals in cases in which the Commission appeared as amicus curiae. The Commission also participated in 4 appeals or petitions for certiorari before the United States Supreme Court resulting from these or similar actions.

Complete lists of all cases in which the Commission appeared before a Federal or State court, either as a party or as amicus curiae, during the fiscal year, and the status of such cases at the close of the year, are contained in the appendix tables.

Certain significant aspects of the Commission's litigation during the year are discussed in the sections of this report relating to the statutes under which the litigation arose.

Criminal Proceedings

Fifteen new cases were referred to the Department of Justice for prosecution during the past fiscal year. From 1934 to June 30, 1958, 2,376 defendants have been indicted in United States district courts in 575 cases developed by the Commission. These figures include 14 indictments returned during the past fiscal year against 42 defendants. Also during the fiscal year there were 30 convictions in 14 cases, making the total 1,295 convictions in 546 cases. There were 6 appeals in criminal cases. In 3 of these cases the defendants unsuccessfully attempted to have their convictions set aside and the remaining cases were pending on appeal at the end of the year. There were 4 criminal contempt proceedings during 1958, 2 of which were instituted during the fiscal year. In 1 of these cases 3 defendants were convicted, leaving 3 cases pending at the end of the year.

As in the past, defendants in the criminal cases developed and prosecuted during the year contrived a variety of fraudulent schemes, including broker-dealer frauds and fraudulent promotions involving inventions, mining and oil and gas ventures, finance and insurance companies and various other types of businesses. The defendants in some of the cases were also charged with violations of the registration provisions of the Securities Act of 1933 and violations of other non-fraud provisions.

A seven-year prison term was imposed on Eldridge S. Price (N. D. Ga.) following his conviction on all 14 counts of an indictment charging violations of the anti-fraud and registration provisions of the Securities Act and the Mail Fraud Statute in connection with the sale of oil and gas interests and stock of the Dark Canyon Uranium Corporation and other securities. The indictment charged, among other things, that the defendant knowingly made false promises of great wealth to prospective investors, including misrepresentations that the lands covered by the oil leases had already been proven for oil and were highly productive; that there was no risk; and that the defendant Price was a highly qualified and successful oil operator who had never drilled for oil without bringing in a producing well when, in fact, wells drilled by Price were dry holes or yielded no oil in commercial quantities. It was further charged that the defendant falsely represented that the land covered by the leases was the best oil land in Texas and that the defendant owned large interests in the leases and drilling equipment having a value of hundreds of thousands of dollars. The indictment also alleged that the defendant concealed from prospective investors the fact that he was in bankruptcy; that he had never been successful as an oil operator; and that his profits had been made wholly as a result of promotional activities. Mrs. Edith Wynne Price, a co-defendant, was acquitted by the court prior to the submission of the case to the jury and Price was released on $10,000 bail pending appeal.

Mining and oil and gas ventures were also involved in the indictments pending in U.S. v. U.S. Manganese Corporation et al. (S. D. N. Y.) ; U.S. v. Stratoray Oil, Inc. et al. (S. D. Tex.) ; and U.S. v. Silas M. Newton et al. (D. Colo.). In the U.S. Manganese case the indictment charges that the corporation and defendants Commodore Dewey Brock and Maurice A. Schuster conspired together and with others to employ a scheme and artifice to defraud in the sale of the corporation stock which resulted in substantial losses to investors. The indictment alleges that the defendants caused to be printed and issued a false and misleading offering circular which included misrepresentations that the corporation had acquired certain designated mining properties and that one property contained 350,000 tons of definite blocked out ore. It is further alleged that among the material facts omitted from the offering circular were that the corporation was obliged to pay approximately $700 a month on certain properties ; that the Defense Minerals Administration had refused to loan the corporation $50,000 on the ground that its properties did not contain sufficient ore to justify such loan; that substantially all the ore which had been shipped by the corporation had been purchased from other mines; that the total revenue received from the sales of the ore was greatly exceeded by the cost of such sales and the corporation was operating at a loss.

In the Stratoray case the indictment, in addition to charging failure to comply with the registration provisions of the Securities Act, alleges that the defendants effected sales of investment contracts evidenced by oil and gas leases by means of untrue and misleading statements of material facts. Included among the misrepresentations, according to the indictment, were statements that the drilling of a certain oil well would most likely result in the discovery of one of the largest oil fields in the United States and that persons purchasing leases in the area from the defendants were being afforded an opportunity of acquiring great wealth; that the defendants were convinced they had a scientific oil hunting instrument, called a "scintillator," capable of detecting virgin oil fields with near 100% dependability; that the defendants, by means of their scintillator, had located what they believed to be a vast accumulation of oil, perhaps as large as the prolific Yates field in Pecos County, Texas; and that one of the defendants was a research scientist trained and experienced in the application of electronic nuclear scientific principles.

The indictment in the Newton case alleges, among other things, that the defendants, by means of false and misleading statements, induced investors to purchase participating certificates in the Yellow Cat Royalty Trust, the Tennessee Queen Royalty Trust, and fractional undivided interests in mining claims held by the Tennessee Queen Mining Co. The alleged statements include misrepresentations concerning the value of the properties, the experience of the mining operators, the shipping of ore, and the certainty of royalty returns on the investments.

In U.S. v. Francis E. Getchell et al. (S. D. Fla.), the defendants were sentenced to terms ranging from 1 to 5 years following their convictions after a trial extending over 11 weeks. The indictment charged that the defendants engaged in a scheme to sell stock of Florida Palms, Inc., and other securities, by falsely representing that defendants Francis E. and Harry S. Getchell had developed a secret and commercially feasible process whereby pulp could be manufactured from cabbage palms; that several large companies had offered to buy this process for millions of dollars; that all money invested would be used to build a plant and buy equipment and that all funds received from the sale of the securities would be held in trust for this purpose. It was further charged that false financial statements prepared by defendant William F. Powers, a certified public accountant, were used to deceive investors and to conceal the misappropriation of their funds. The fourth defendant, Hollis Rinehart, an attorney, was alleged to have been an officer of Florida Palms, Inc. and to have assisted in these promotions.

In U.S. v. Clinton R. Rupp et al. (D. Idaho), the defendants Clinton R. Rupp and Intermountain Development Company, Inc. were found guilty of violating and conspiring to violate the anti-fraud provisions of the Securities Act and the Mail Fraud Statute in connection with the sale of Intermountain stock. The indictment charged that the defendants misrepresented to investors that the funds received from the sale of the Intermountain stock would be deposited with the Idaho Insurance Commissioner and would be used in compliance with the Idaho Insurance law; that 75% of the funds so received would be deposited in escrow for use in purchasing controlling interests in small life insurance companies; that, as a result of the purchase of National Security Life Insurance Company, the Intermountain stock would, and did, increase in value; that none of the proceeds would be used in- carrying on any mining and exploration work; that the defendants had invested substantially in Intermountain securities; and that the son of the Commissioner of Finance of the State of Idaho had purchased $10,000 worth of Intermountain stock. The indictment further charged that the defendants concealed from investors the fact that Intermountain had purchased National Security Life Insurance Company for $270; that Intermountain had never obtained an insurance permit from the State of Idaho; that Intermountain's assets had been frozen and receivership proceedings were pending in the state courts and that the securities being offered were the personally owned stock of certain individuals who were receiving the benefits of the proceeds of the sale. Six of the defendants received sentences ranging from a $1000 fine to a $1000 fine and a year's imprisonment following pleas of guilty or nolo contendere to various counts. Defendant Rupp, who after trial was found guilty of securities fraud, mail fraud and conspiracy, was sentenced to a 5-year prison term and a $10,000 fine. Intermountain was fined $5,000. A remaining defendant, who had been a fugitive, was recently apprehended.

Another indictment charging fraud in an insurance company promotion, U.S. v. National Union Life Insurance Company et al. (S. D. Fla.), alleges, among other things, that Basil P. Autrey and the other defendants devised a scheme to defraud investors by means of false and misleading statements; that the defendants bought the capital stock of National Union at prices ranging from $2 to $40 per share and thereafter by means of manipulative and other fraudulent practices resold the stock to investors at prices ranging from $5 to $63.50 per share; that the defendants caused the company to issue 10,000 shares of its stock allegedly in exchange for an office building, knowing that the stock was to be acquired by one of the defendants rather than the vendor, the purpose of such transaction being to defeat the preemptive rights of the stockholders and also to enable the defendants to acquire a large block of stock for resale; that the defendants caused the company to issue 5,000 shares of its stock ostensibly for seasoned first mortgages, knowing that the mortgages never would be received by the company; that the defendants artificially caused the market price of the stock to rise by effecting a series of transactions among themselves, with investors and with brokers and dealers, by placing and giving scale-up orders for the stock, by causing the company to declare a 25% stock dividend and by circulating-fraudulent misrepresentations concerning the company and its affairs. The indictment further charged that the defendants kept false, inaccurate and incomplete books and records in order to conceal the company's true financial condition. A motion by certain defendants for transfer of the trial to the Northern District of Alabama was granted. A motion by the Department of Justice for retransfer to the Southern District of Florida is pending.

A 12-count indictment was returned charging Carl D. Schaeffer (N. D. Ill.) with devising a scheme and artifice to defraud investors in the sale of investment contracts and evidences of indebtedness relating to the development of a machine for generating steam through hydraulic forces. According to the indictment Schaeffer made numerous fraudulent statements to investors, including statements that Schaeffer had a written contract with a syndicate of companies comprised of Dow Chemical Company, the duPont Company, Chrysler Corporation, General Motors and others, whereby these companies had agreed to purchase the rights to Schaeffer's steam machine and had put $10,000,000 in escrow with the Chase National Bank; that General Motors was interested in buying Schaeffer's machine; that Fairbanks-Morse and Co. had offered to buy Schaeffer's machine for a million dollars and that he could pick up a million dollar check from that company any time he wished, although he had turned down this offer; that Crane Company had offered to buy the rights to Schaeffer's machine for a million dollars and that Schaeffer had turned down this offer; that the United States Navy and a big chemical company were bidding against each other for the right to purchase Schaeffer's machine and that whichever purchased it would pay in the vicinity of $30,000,000; that the United States Navy was interested in Schaeffer's machine for use in submarines and was experimenting with the machine in extracting ocean minerals; that monies invested with Schaeffer were placed by him in the Northern Trust Co. in Chicago and that if an investor ever wanted his money back he would get it because it was on deposit with that institution; and that all investors would realize $10 for every $1 invested.

Another scheme to defraud investors which involved an invention was alleged in an indictment charging William L. Dorsey, Sr. (W. D. Mo.) with fraud in the sale of the common stock of Southwestern Industries, Inc., a corporation which he controlled. In connection with the sale of this stock Dorsey made numerous false and misleading statements to investors, including representations that the company owned the patent to an irrigation pump known as the Cochran Power Unit; that an investment in the company would yield dividends as high as 100% a year; and that Dorsey would not receive any salary, commissions or expenses from the company until such time as the pumps were manufactured and sold. It was further charged that Dorsey concealed from investors the fact that Southwestern Industries owed royalties to the owner of the patent on the irrigation pump; that the company had no orders for and had sold no pumps; that the company had a continually increasing deficit and that Dorsey was using the funds of the company for his personal expenses. Dorsey pleaded guilty to 4 counts charging him with violations of the anti-fraud provisions of the Securities Act and 4 counts charging him with violations of the registration requirements of that Act. He was sentenced to a term of a year and a day on each of the fraud counts. The sentences are to run concurrently and he is to be placed on probation for five years upon release from confinement.

In U.S. v. Hugh Van Valkenburgh et al. (D. Neb.), one of the defendants, Abraham Schapiro, was placed on probation for 30 months and fined $2,000 following his plea of nolo contendere to 8 counts of an indictment charging him and his co-defendant with having engaged in a scheme to defraud in connection with the sale of stock of Instant Beverage, Inc., a corporation organized and promoted by the defendants to manufacture an instant powder product which, when mixed with water, was stated to produce a carbonated beverage. Misrepresentations were alleged to include assertions that several large companies would be interested in buying or handling the formula and that the United States Government would take the entire output of the powder for the first six months of its production. The indictment further charged that the defendants failed to disclose the number of shares of Instant Beverage stock issued to promoters and the prices paid for such shares; that Instant Beverage did not own the formula for the powder, but only held a franchise for its use; and that the United States Army had previously rejected samples of the powder as being unfit for use by the Army. [Footnote: Subsequent to the end of the fiscal year the remaining defendant, Hugh Van Valkenburgh, entered a plea of nolo contendere to four counts of indictment and was fined $11,500 plus costs and was sentenced to three years' imprisonment on each count, the sentences to run concurrently. Execution of the sentence was suspended and the defendant was placed on probation for three years.]

Fraudulent promotions involving finance company ventures were alleged in the indictments in U.S. v. A. B. Shoemake et al. (S. D. Tex.); U.S. v. Consul Mayo Forsyth et al. (E. D. Tex.); and U.S. v. Hilding L. Jacobson (D. Neb.). In the Forsyth case the indictment charged, among other things, that the defendants, in the sale of stock of Central Finance Service, Inc., falsely represented to investors that the stock being offered was unissued stock of Central and the money received from the sale of such stock would be used by Central in its business operations; that Central was realizing substantial profits from its business operations; that Central would pay substantial dividends; and that investors would receive a return of all the money they invested in Central stock upon request. The indictment further charged that the Central stock offered and sold to investors was personally owned stock and not the unissued stock of Central; that Central had operated at a substantial loss throughout its existence and that it had no surplus and, therefore was not in a position to pay any dividends. Defendant Forsyth entered a plea of guilty to 2 counts of the indictment and was sentenced to 2 years' imprisonment and a suspended sentence of 5 years; the other defendant, Roy W. Adams, has entered a plea of not guilty. [Footnote: Subsequent to the end of the fiscal year Adams was convicted on one count of the indictment and sentenced to a term of 18 months.]

In the Jacobson case the defendant was sentenced to a suspended term of 2 years and 3 years' probation on each of 17 counts, the sentences to run concurrently, upon his conviction of charges in an information that he violated the anti-fraud provisions of the Securities Act and the Mail Fraud Statute and filed false statements with the Securities and Exchange Commission. [Footnote: 18 U.S. C. § 1001.]

In the Shoemake case the indictment charges that the defendants misrepresented that funds deposited with the U.S. Trust and Guaranty Company were insured and guaranteed up to $10,000 by 100% reserves and that financial statements supplied to customers and prospective customers contained a true and correct statement of the financial condition of the company. The indictment further charged that the defendants made false statements concerning the use to be made of funds deposited with the company, made false and misleading entries in the books of the company, and obtained false appraisals of real estate owned by the company.

Frauds by broker-dealers were charged in the indictments in U.S. v. Charles M. Graves (D. Alaska) and U.S. v. Branch J. Garden, Jr. (W. D. Va.). In the Graves case the defendants Graves and The Locators, Inc. pleaded guilty to various counts of an indictment charging violations of the broker-dealer registration requirements of the Securities Exchange Act and violations of the anti-fraud provisions of that Act. Both the Locators, Inc. and Graves were fined $250 and, in addition, Graves received a 6-month suspended sentence.

In the Garden case the defendant pleaded guilty to an indictment that charged him, among other things, with accepting payment for securities and, by written confirmation, representing to customers that the securities had been purchased and would be delivered to them in accordance with customs and practices of the business when, in fact, the defendant converted the customers' funds to his own use. The indictment also charged the defendant with accepting securities from customers to be sold for the customers' accounts and with converting such securities to his own use. The indictment charged further that, for the purpose of deceiving the customers and concealing from them the scheme to defraud, the defendant intentionally refrained from recording certain transactions in his books and records. The defendant was sentenced to two years' imprisonment.

Sentences ranging from 2 years' probation to 12 months' imprisonment were imposed upon Sidney Barcley (E. D. Mich.) and six other defendants following their pleas of guilty to one count of an indictment charging violations of the broker-dealer registration provisions of the Securities Exchange Act. According to the indictment, investors in the United States were solicited by the defendants through the mails and by long distance telephone from Montreal, Canada, to purchase from T. M. Parker, Inc., shares of stock of various Canadian corporations, at a time when T. M. Parker, Inc. was not registered as a broker-dealer with the Commission in accordance with the requirements of the Securities Exchange Act. [Footnote: The enforcement problems arising in connection with fraudulent promotions originating in Canada are discussed in detail in previous annual reports. See, for example, pages 202-204 of the 22nd Annual Report which contain a discussion of U.S. v. Link and Green (1955) S. C. E. 183, an action for extradition brought in connection with the T. M. Parker case. See also pages 178-182 of the 23rd Annual Report.]

In U.S. v. Jesse S. Gill, et al. (N. D. Georgia), convictions were obtained against two of the defendants on all counts of an indictment charging that the defendants induced Paleo Oil & Gas Corp. to retain their firm as an underwriter for an offering of shares of the corporation, and the defendants converted to their own use a sum of money advanced for expenses and maintained fraudulent records to conceal their actual disbursements in connection with the offering of the Paleo stock. Sentences of imprisonment for a term of one year were imposed, but execution of the sentences was suspended and the defendants were placed on probation for five years on condition that restitution be made in the sum of $2,000 for each defendant. The case was dismissed as to the one remaining defendant.

In U.S. v. David L. Shindler et al. (S. D. .N. Y.), the indictment charges that the defendants conspired to defraud purchasers of stock of Jerry O'Mahoney, Inc. by manipulative practices which artificially raised the market price of the stock and maintained the artificial price. The practices alleged include the buying of large amounts of stock through dummy accounts, inducing others to buy on the American Stock Exchange by promises to sell additional shares off the exchange at a price below the exchange price, and by purchasing large amounts of stock off the exchange to prevent such stocks being sold on the exchange and thereby depressing the price. In addition, the indictment charges that the defendants engaged in a scheme to defraud purchasers of the stock by omitting to state that the exchange price had been artificially raised and maintained by the manipulative practices of the defendants.

An indictment was returned charging Edward J. Vitale (E. D. Mich.) with violating the anti-fraud provisions of the Securities Act and the Mail Fraud Statute in connection with his activities as manager of a branch office of a Boston broker-dealer firm registered with the Commission. The indictment alleges that the defendant, after gaining the trust and confidence of certain customers, induced them to sell their holdings of investment company securities and turn the proceeds over to him by falsely representing that such funds would be invested in various profit-sharing ventures, such as the purchase, renovation and resale of houses, and the development of residential building projects and other business enterprises in which the defendant was engaged when, in fact, such projects were either not in existence or the defendant was not a participant therein.

In U. S, v. Paul H. Collins (S. D. Ill.), the indictment charged that the defendant, while acting as a branch manager for a broker-dealer, not only defrauded customers of the company, but also defrauded the company itself. The indictment alleged that Collins engaged in fraudulent and fictitious transactions in securities with customers and made fraudulent representations and promises concerning such transactions and the handling of customers' funds. Shortly after the end of the fiscal year Collins pleaded guilty to ten counts of the indictment. The imposition of sentence was suspended and Collins was placed on probation for three years.

Fraud in connection with the delivery of forged and counterfeit securities was charged in the indictment in U.S. v. Albert Hefferan (W. D. Mich.). The indictment alleged that, as a part of a scheme to defraud, the defendant placed a series of newspaper advertisements soliciting investors to advance sums of money. It was alleged that these advertisements represented that the defendant would furnish collateral described as "listed, high-grade securities" and "grade-A negotiable listed securities" having values substantially in excess of the amounts of the investments solicited and that the defendant did not intend to and did not pledge genuine securities as collateral but, on the contrary, delivered forged securities which he falsely represented to be genuine. Hefferan pleaded guilty to five counts of the indictment and, shortly after the close of the fiscal year, was sentenced to three years' imprisonment.

In United States v. Edgar Robert Errion et al. (D. Oregon), sentences were imposed on the defendants who had previously pleaded guilty or had been convicted on an indictment charging violations of the anti- fraud provisions of the Securities Act, as well as the Mail Fraud and Conspiracy statutes. Errion, who pleaded guilty to two counts of the indictment, received a sentence of three years' imprisonment on each count. He also entered a guilty plea to two counts of another indictment charging violations of the same statutes in the sale of membership certificates of Beaver Plywood Cooperative and Co-op Loggers, and was sentenced to a term of three years on each of those counts. All the sentences are to run consecutively, making Errion's sentence a total of 12 years. Five other defendants, who had previously been convicted after a trial lasting three weeks, were sentenced to terms ranging from one year to seven years. One of these defendants, Helen A. Davenport, filed an appeal and subsequent to the end of the fiscal year her conviction was affirmed by the Court of Appeals for the Ninth Circuit.

A fine of $1,000 was imposed upon Christopulos & Nichols Brokerage Company and fines of $500 each were imposed upon Plato G. Christopulos and Louis P. Nichols upon their being adjudged in criminal contempt for violation of an injunction prohibiting, among other things, the defendant brokerage company, its officers, agents, employees and assigns from further violating the provisions of Sections 7 (a) and 17 (a) of the Securities Exchange Act, Section 4 (c) of Regulation T adopted by the Federal Reserve Board, and Rules 15C1-4 and 17A-3 adopted by the Commission under the Securities Exchange Act. These provisions prohibit the extension of credit, without an authorized extension, by a brokerage firm for more than seven days from the date of a transaction; the use of the mails in connection with an over-the-counter securities transaction unless, in confirmation thereof, there has been a disclosure by the broker of his role with respect to all the parties; and the over-the-counter sale of securities while the broker is not in compliance with the Commission's bookkeeping and record requirements.

An indictment for "bail jumping" was returned against Donald F. Thayer (D. Mass.), who has been a fugitive since his release in July 1953 on $10,000 bail following an indictment charging him and others with violating the anti-fraud provisions of the Securities Act, as well as the Mail Fraud and Conspiracy Statutes. This is reported to be the first indictment of this type returned in the District of Massachusetts.

The United States Court of Appeals for the Second Circuit affirmed a conviction for securities fraud, mail fraud and conspiracy of Walter F. Tellier, head of Tellier and Company, formerly a New York securities dealer (255 F. 2d 441 (1958)). Tellier and his co-defendants Elton B. Jones and Albert Joseph Proctor had been found guilty of all 36 counts of an indictment following a trial lasting seven weeks in the United States District Court in Brooklyn, New York. The charges related to fraud in connection with the sale of 4 series of debentures of the Alaska Telephone Corporation, totalling approximately $900,000. The evidence had disclosed that under Tellier's direction and supervision Tellier and Company engaged in a boiler-room securities sales operation, employing a large number of high-pressure telephone salesmen and deceptive printed material. Tellier had been sentenced to four and one-half years' imprisonment and fined a total of $18,000.6 Still pending against Tellier are two indictments charging fraud in the sale of more than 19,000,000 shares of stock of a number of uranium mining corporations.

Convictions for violations of the anti-fraud provisions of the Securities Act were affirmed in Wilson H. Walters, et al. v. United States, 256 F. 2d 840 (C. A. 9, 1958), Arthur V. Donaldson v. United States, 248 F. 2d 364 (C. A. 9, 1957),7 and Richard W. Bowler v. United States, 249 F. 2d 806 (C. A. 9, 1957). In both the Donaldson case and the Walters case the appellants had been convicted in connection with insurance company promotions. In the Bowler case the appellant had sold stock of a warehouse and storage company. The appeal of Homer W. Snowden from his conviction for fraud (E. D. Ill.) in the sale of oil and gas interests was dismissed on the motion of his counsel. Additional details concerning this case are contained on pages 172-73 of the 23rd Annual Report.

DISCIPLINARY PROCEEDINGS AGAINST PERSONS PRACTICING BEFORE THE COMMISSION

In a private investigation to determine whether Union Electric Company and certain other persons directly or indirectly made political contributions in violation of section 12 (h) of the Public Utility Holding Company Act of 1935, William A. Dougherty, an attorney, testified under oath with respect to the circumstances relating to a check for $5,000 which was drawn by him to his order and endorsed by him and was deposited in a private bank account of Orville E. Hodge, then Auditor of Public Accounts of the State of Illinois. Dougherty at first testified that the check represented a loan to a "friend" who was not a public official and whom he refused to identify, and indicated that he did not know how the check had reached Hodge's account. Later he was recalled and he again refused to identify the recipient of the check, claiming his privilege against self-incrimination. He was directed to answer pursuant to the immunity provision of section 18 (e) of the Act, whereupon he identified the person for whom he issued the check as Hodge and disclosed other information which directly contradicted his prior sworn testimony.

Private proceedings were instituted pursuant to rule II (e) of the Commission's Rules of Practice to determine whether Dougherty should be temporarily or permanently denied the privilege of practicing before the Commission. After a private hearing the Commission issued its opinion in which it found that Dougherty's sworn testimony contained false and misleading statements and that in giving such testimony he had engaged in improper professional conduct. It ordered that Dougherty be denied the privilege of practicing before the Commission until he obtained the Commission's approval. Subsequently, Dougherty filed an application for reinstatement, and the Commission, giving consideration to his age, the fact that he had engaged in active and substantial practice for 38 years without having been involved in any other case of improper professional conduct, the serious financial loss resulting from his disqualification, his expression of contrition and his representation that his future professional conduct would be beyond question, readmitted him to practice before it.

On May 5, 1957, the Commission pursuant to rule II (e) of its Rules of Practice instituted private proceedings against Morris Mac Schwebel, a New York attorney, to determine whether he should be temporarily or permanently denied the privilege of practicing before the Commission because of unethical and improper professional conduct in connection with his representation of clients before the Commission.

Schwebel filed a complaint in the District Court for the District of Columbia for a preliminary injunction and temporary restraining order enjoining the members of the Commission from prosecuting disciplinary proceedings against him. In granting the Commission's motion to dismiss the complaint, the District Court held that, because of the particular delicacy of an attorney's good reputation, it had jurisdiction to determine whether the Commission had authority to maintain the rule II (e) proceeding without first requiring Schwebel to exhaust his administrative remedies, but that under the Com-mission's general statutory powers to prescribe rules necessary for the execution of its functions the Commission has implied authority to establish qualifications for attorneys practicing before it and to take disciplinary action against those found guilty of unethical professional conduct. The Court further held that the Commission had not violated section 9 (b) of the Administrative Procedure Act in instituting the proceeding without first giving Schwebel an opportunity to demonstrate or achieve compliance.

An appeal was taken by Schwebel to the Court of Appeals for the District of Columbia Circuit which, in a per curiam decision, affirmed the decision of the District Court, stating, "though we think the District Court was right in dismissing the complaint, we think the plaintiff failed to exhaust his administrative remedy and the court therefore erred in ruling on the Commission's authority to disbar attorneys." Schwebel filed a petition for writ of certiorari which was denied on April 7, 1958.

The Commission's administrative proceeding under rule II (e) was pending at the close of the fiscal year.

COMPLAINTS AND INVESTIGATIONS

The statutes administered by the Commission specifically authorize investigations to determine whether violations of their provisions have occurred. The nine regional offices, with the assistance of their branch offices, are chiefly responsible for the conduct of such investigations. The Division of Trading and Exchanges, which exercises general supervision over, and coordination of, regional office investigative activities, examines and analyzes the results of investigations periodically and recommends appropriate action to the Commission, giving serious consideration in each case to the recommendation of the regional office.

Complaints or inquiries from the investing public are a major source of information leading to investigations. If, after careful consideration of the information received from these or other sources, it appears that violations may have occurred, a preliminary investigation may be made. In some cases the preliminary .investigation will disclose a violation due to ignorance of the law or some misunderstanding and, where no serious harm to the public is involved, no further action is ordinarily taken, except to inform the offender of the violation and to insure that steps are taken for future compliance.

However, if the preliminary investigation indicates a more serious violation or the need to acquire more facts, the case is docketed and a full investigation is made, sometimes involving the issuance by the Commission of a formal order of investigation appointing members of its staff as officers to issue subpoenas and take testimony under oath. During the year, seventy-six formal orders of investigation were issued. Care is exercised by the Commission and its staff to keep investigations private until some official action is taken by the Commission. The non-public nature of the investigation serves to protect innocent parties who may be involved and contributes largely to the effectiveness of such investigations.

After an investigation has been completed and reviewed by both the regional office concerned and the Division of Trading and Exchanges, a report of the investigation prepared by the regional office is submitted to the Commission for decision together with the recommendations of the regional and principal office. The Commission then has several courses of action available to it.

If it decides the public interest requires criminal action be taken, the Commission may refer the evidence to the Department of Justice. In such a case members of the staff most familiar with the situation assist the Department of Justice and the United States Attorney assigned to the matter in presentation of the case to the Grand Jury and, where an indictment is returned, with the prosecution of the case. At other times the Commission may, when such action is warranted, authorize institution of a civil proceeding for injunctive relief or institute administrative proceedings.

The Commission may, if it considers it appropriate, close the investigation. A case may be closed when all possible legal steps have been taken or when any action taken would be ineffective; for example, when the subject has fled the country with little chance of his return or when the damage is so slight that further action is not warranted. Before a case is closed, however, it is carefully examined by both the staff of the regional office concerned and the staff of the principal office to determine if any other course of action is practical or warranted before closing is recommended to the Commission.

The following table reflects in summarized form the investigative activities of the Commission during the fiscal year:

[table omitted]

ENFORCEMENT PROBLEMS WITH RESPECT TO CANADIAN SECURITIES

The Commission continues to be confronted with serious enforcement problems arising from the offer and sale of securities by Canadian issuers and broker-dealers in violation of the registration provisions of the Securities Act. Solution of these problems remains difficult since the Commission is without authority to conduct investigations outside the United States and the evidence necessary to establish proof of such violations in most of these cases, as well as the violators, are usually located in a foreign country, beyond our subpena power. However, action is taken by the Commission to prohibit such violations in cases where personal service can be obtained in the United States.

The problems arising under the Supplementary Extradition Convention between the United States and Canada and the narrow construction placed on this agreement by Canadian courts were discussed in the 22nd Annual Report. Negotiations seeking to solve this problem are continuing through appropriate diplomatic channels.

In the meantime, effective enforcement work in this area is dependent almost wholly upon cooperation between this Commission and the Canadian provincial enforcement authorities. There is no Dominion securities legislation, but each Province has its own legislation. In general excellent cooperation has been obtained during the fiscal year from the Provinces in the enforcement work of the Commission. Upon being supplied by this Commission with evidence that Canadian residents were engaged in violating the laws of the United States some of the Provinces have taken action under their respective statutes. The Canadian registrations of six broker-dealers were canceled or suspended by provincial authorities during the past fiscal year following receipt of information supplied by this Commission.

With the cooperation of Canadian authorities this Commission brought three injunctive actions during the past fiscal year based upon the illegal sale of Canadian securities in the United States. Additional details concerning these actions, in S.E.C. v. James G. Graye, doing business as J. G. Graye Co. et al., S.E.C. v. Alan Russell Securities, Inc., and S.E.C. v. J. H. Lederer Co., Inc., are described above in the section on Litigation under the Securities Act of 1933. Further proceedings were also had in the case of S.E.C. v. Kaiser Development Corporation Limited and E. David Novelle, referred to in the 23rd Annual Report. Permanent injunctions were issued by the court, restraining the defendants from further violations of the registration and anti-fraud provisions of the Securities Act.

The Commission continues to maintain its "Canadian Restricted List," which is a list of the names of Canadian issuers whose securities the Commission has reason to believe recently have been, or currently are being, offered and sold in the United States in violation of the Securities Act of 1933. The list is designed to warn investors of the possible risks involved in their purchase of unregistered Canadian securities and to alert broker-dealers to possible illegal distributions of Canadian securities so they may avoid participation in such distributions.

Names are added to and deleted from this list as circumstances warrant. During the fiscal year 1958, fourteen supplements were issued which added fifty names to the list and deleted two others. On May 5, 1958, the Canadian Restricted List was revised and consolidated, resulting in the deletion of the names of seventy-nine companies concerning whose securities the Commission had no evidence of a public offering and sale in the United States during the last five years. In many instances, the companies were no longer in existence. This list as presently constituted, totals 201 names.

The current list, reflecting additions and deletions to December 1, 1958, follows:

CANADIAN RESTRICTED LIST

Aero Mining Corporation

Alba Explorations Limited

Aldor Exploration and Development Company Limited

Algro Uranium Mines Limited

A. L. Johnson Grubstake

Alouette Mines Limited

Alscope Explorations, Inc.

Amican Petroleum and Natural Gas Corporation Limited

Anthony Gas and Oil Explorations Limited

Apollo Mineral Developers Inc.

Atlas Gypsum Corporation Limited

Angdome Exploration Limited

Barite Gold Mines Ltd.

Basbary Gold Mines Limited

Basic Minerals Limited

Beaucoeur Yellowknife Mines Limited

Belleehasse Mining Corporation Limited

Black Crow Mines Limited

Bli-Riv Uranium and Copper Corporation Limited

Blumont Mines Limited

Britco Oils Limited

Cabanga Developments Limited

Calumet Uranium Mines Limited

Cameron Copper Mines Limited

Camoose Mines Limited

Canada Radium Corporation Limited

Canadian Alumina Corporation Limited

Canadian Natural Resources Limited

Can American Copper Limited

Canso Mining Corporation Limited

Casa Loma Uranium Mines Limited

Cavalcade Petroleums Limited

Cavalier Mining Corporation Limited

Centurion Mines Limited

Cessland Gas and Oil Corporation Limited

Colonial Asbestos Corporation Limited

Comet Petroleums Limited

Concor-Chibougamau Mines Limited

Consolidated Easter Island Mines Limited

Consolidated Quebec Yellowknife Mines Limited

Consolidated Thor Mines Limited

Continental Consolidated Mines and Oils Corporation Limited

Continental Mining Exploration Ltd.

Continental Uranium Corporation Limited

Copper Island Mining Company Limited

Copper Prince Mines Limited Cordon

Cobalt Mines Limited

Courageous Gold Mines Limited

Cove Uranium Mines Limited

Cree Mining Corporation Limited

David Copperfield Explorations Limited

Demers Chibougamau Mines Limited

Dencroft Mines Limited

Derogan Asbestos Corporation Limited

Desmont Mining Corporation Limited

DeVille Copper Mines Limited

Diadem Mines Limited

Dolmac Mines Limited

Dolsan Mines Limited

Dubar Exploration Limited

Dupont Mining Company Limited

Eagle Plains Explorations Limited

East Trinity Mining Corporation

Eastern-Northern Explorations Limited

Embassy Mines Limited

Explorers Alliance Limited

Export Nickel Corporation of Canada Limited

Falgar Mining Corporation Limited

Famous Gus Uranium Mines Limited

Fleetwood Yellowknife Mines Limited

Forbes Lake Mining Corporation Limited

Glacier Explorers Ltd.

Golden Hope Mines Limited

Granwick Mines Limited

Great Valley Exploration and Mining Limited

Halstead Prospecting Syndicate

Harvard Mines Limited

Hercules Uranium Mines Limited

Hoover Mining and Exploration Limited

Huddersfield Uranium and Minerals Limited

International Ceramic Mining Limited

Irando Oil and Exploration Limited

Jacobus Mining Corporation, Ltd.

Jilbie Mining Company Limited

Judella Uranium Mines Limited

Kaiser Development Corporation Limited

Kamis Uranium Mines Limited

Key West Exploration Company, Limited

Kirk-Hudson Mines Limited Lake

Kingston Mines Limited

Lake Otter Uranium Mines Limited

Lake Superior Iron Limited

Lama Exploration and Mining Company Limited

Lambton Copper Mines Limited

Landolac Mines Limited

Langis Silver and Cobalt Mining Company Limited

Lavandin Mining Company Lee Gordon Mines Limited

Lindsay Explorations Limited

Lithium Corporation of Canada Limited

Loranda Uranium Mines Limited

Lucky Creek Mining Company Limited

Lynwatin Nickel Copper Limited

Madison Mining Corporation Limited

Mallen Red Lake Gold Mines Limited

Marian Lake Mines Limited

Marpic Explorations Limited

Marvel Uranium Mines Limited (formerly Marvel Rouyn Mines Limited)

Masters Oil and Gas Limited

Mercedes Exploration Company Limited

Mexicana Explorations Limited

Mexuscan Development Corporation

Mid-West Mining Corporation Limited

Min-Ore Mines Limited (formerly Ryan Lake Mines Limited)

Monpre Mining Company Limited

Monpre Uranium Exploration Limited

Montclair Mining Corporation Limited

Montco Copper Corporation Limited

Nationwide Minerals Limited

Nealon Mines Limited

New Campbell Island Mines Limited

New Faulkenham Mines Limited

New Goldvue Mines Limited

New Hamil Silver-Lead Mines Limited

New Jack Lake Uranium Mines Limited

New Lafayette Asbestos Company Limited

New Metalore Mining Company Limited

New Spring Coulee Oil and Minerals Limited

New Vinray Mines Limited

Norcopper and Metals Corporation

Normalloy Explorations Limited

Normingo Mines Limited

Norseman Nickel Corporation Limited

North American Asbestos Co. Limited

North Gaspe Mines Limited

Northwind Explorations Limited

Nortoba Mines Limited

Nortoba Nickel Explorations Limited

Nu-Reality Oils Limited

Nil-World Uranium Mines Limited

Oakridge Mining Corporation Limited

Obabika Mines Limited

Ordala Mines Limited

Pantan Mines Limited

Paramount Petroleum and Mineral Corporation Limited

Plexterre Mining Corporation Limited

Principle Strategic Minerals Limited

Purdex Minerals Limited

Quebarik Uranium Copper Corporation

Quebec Developers and Smelters Limited

Quebec Graphite Corporation

Quinalta Petroleum Limited

Regal Minerals Limited

Resolute Oil and Gas Company Limited

Ridgefield Uranium Mining Corporation Limited

Riobec Mines Limited

Rockcroft Explorations Limited

Rouandah Oils and Mines Limited

Saskalon Uranium & Oils Limited

Sastex Oil and Gas Limited

Sentry Petroleums Limited

Sheba Mines Limited

Sheraton Uranium Mines Limited

Shoreland Mines, Ltd.

Skyline Uranium and Minerals Corporation Limited

St. Pierre & Miquelon Explorations Inc.

St. Stephen Nickel Mines Limited

Stackpool Mining Company Limited

Sudbay Explorations and Mining Limited

Surety Oils and Minerals Limited

Tamara Mining Limited

Tamicon Iron Mines Limited

Taurcanis Mines Limited

Temanda Mines Limited

Three Arrows Mining Explorations Limited

Titan Petroleum Corporation Limited

Torbrook Iron Ore Mines Limited

Trenton Mines Limited

Trio Mining Exploration Limited

Trio Uranium Mines Limited

Triton Mines and Metals Corporation Limited

Triton Uranium Mines Limited

Trojan Consolidated Mines Limited

United Copper and Mining Limited

United Uranium Corporation Limited

Val Jon Exploration Limited

Valray Explorations Limited

Vanguard Exploration Ltd.

Venus Chibougamau Mines Limited

Vico Explorations Limited

Virginia Mining Corp.

Viscount Oil & Gas Limited

Wakefield Uranium Mines Limited

Wayne Petroleums Limited

Webbwood Exploration Company Limited

Westore Mines Limited

West Plains Oil Resources Limited

Westville Mines Limited

Whitney Uranium Mines Limited

Winston Mining Corporation Limited

Woodgreen Copper Mines Limited

SECTION OF SECURITIES VIOLATIONS

A Section of Securities Violations is maintained by the Commission as a part of its enforcement program to provide a further means of detecting and preventing fraud in securities transactions. The Section maintains files providing a clearing house for other enforcement agencies for information concerning persons who have been charged with violations of various Federal and State securities statutes. Considerable information is also available concerning violators resident in the provinces of Canada. The specialized information in these files is kept current through the cooperation of the United States Post Office Department, the Federal Bureau of Investigation, parole and probation officials, State securities authorities, Federal and State prosecuting attorneys, police officers, better business bureaus, chambers of commerce and other agencies. At the end of the fiscal year these records contained information concerning 65,563 persons against whom Federal or State action had been taken in connection with securities violations. In keeping these records current, there were added during the fiscal year items of information concerning 8,942 persons, including 2,959 persons not previously identified in these records.

The Section issues and distributes quarterly a Securities Violations Bulletin containing information received during the period concerning violators and showing new charges and developments in pending cases. The Bulletin includes a "Wanted" section listing the names and references to bulletins containing descriptive information as to persons wanted on securities violations charges. The Bulletin is distributed to a limited number of cooperating law enforcement officials in the United States and Canada.

Extensive use is made of the information available in these records by regulatory and law enforcing officials. During the past year the Commission received 3,475 "securities violations" letters or reports and dispatched 1,633 communications to cooperating agencies.

ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

Successive reports of the Commission have called attention to the fact that the detailed provisions of the several acts administered by the Commission recognize the importance of dependable informative financial statements which disclose the financial status and earnings history of a corporation or other commercial entity. These statements, whether filed in compliance with the statutes administered by the Commission or included in other material available to stockholders or prospective investors, are indispensable to investors as a basis for investment decisions.

The Congress recognized the importance of these statements and that they lend themselves readily to misleading inferences or even deception, whether or not intended. It accordingly dealt extensively in the several statutes administered by the Commission with financial statement presentation and the disclosure requirements necessary to set forth fairly the financial condition of the company. Thus, for example, the Securities Act requires the inclusion in the prospectus of balance sheets and profit and loss statements "in such form as the Commission shall prescribe" 17 and authorizes the Commission to prescribe the "items or details to be shown in the balance sheet and earnings statement, and the methods to be followed in the preparation of accounts * * *." Similar authority is contained in the Securities Exchange Act, and more comprehensive power is embodied in the Investment Company Act and the Holding Company Act.

The Securities Act provides that the financial statements required to be made available to the public through filing with the Commission shall be certified by "an independent public or certified accountant." The other three statutes permit the Commission to require that such statements be accompanied by a certificate of an independent public accountant, and the Commission's rules require, with minor exceptions, that they be so certified. The value of certification by qualified accountants has been conceded for many years, but the requirement as to independence, long recognized and adhered to by some individual accountants, was for the first time authoritatively and explicitly introduced into law in 1933. Out of this initial provision in the Securities Act and the rules promulgated by the Commission, and the action taken by the Commission in certain cases, have grown concepts of accountant-client relationships that have strengthened the protection given to investors.

The Commission's standards of independence are stated in rule 2-01, paragraphs (b) and (c), of Regulation S-X which provides among other things that "an accountant will be considered not independent with respect to any person or any of its parents or subsidiaries in whom he has, or had during the period of report, any direct financial interest or any material indirect financial interest; or with whom he is, or was during such period, connected as a promoter, underwriter, voting trustee, director, officer or employee." In determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof.

In the recent revision of this rule the Commission has recognized the impact of mergers and the growth of corporations through widespread affiliations. The emphasis in the rule has been changed to make it clear that where the relationships described in the rule exist the Commission will find that an accountant is in fact not independent with respect to the company involved, but in those instances where lack of independence is not established the Commission will make no finding with respect to the accountant's independence.

Several situations, described in the 22nd and 23rd Annual Reports, in which accountants were not eligible under our rules to certify financial statements because they were lacking in independence continue to cause difficulty. In many of these instances the accountants and their clients were coming in contact with the Commission's filing requirements for the first time and the reason for the lack of independence was ownership by a member of the accounting firm of stock of the client company during some of the periods certified. In other cases the accountant or his firm may have been interested in serving the client's management, or in some cases large stockholders, in several capacities and in doing so had not taken care to maintain a clear distinction between giving advice to management and serving as personal representatives of management or owners in making business decisions for them. Many of these problems could be avoided if the accountants would look forward to the day when the public interest in their clients would require certification of financial statements by independent public accountants.

As shown above, the statutes administered by the Commission give it broad rule-making power with respect to the preparation and presentation of financial statements. Pursuant to authority contained in the statutes the Commission has prescribed uniform systems of accounts for companies subject to the Holding Company Act; has adopted rules under the Securities Exchange Act governing accounting and auditing of securities brokers and dealers; and has promulgated rules contained in a single, comprehensive regulation, identified as Regulation S-X, which govern the form and content of financial statements filed in compliance with the several acts. This regulation is implemented' by the Commission's Accounting Series releases, of which 80 have so far been issued. These releases were inaugurated in 1937, and were designed as a program for making public, from time to time, opinions and accounting principles, for the purpose of contributing to the development of uniform standards and practice in major accounting questions. The rules and regulations thus established, except for the uniform systems of accounts, prescribe accounting to be followed only in certain basic respects.

In the large area not covered by such rules, the Commission's principal reliance for the protection of investors is on the determination and application of accounting principles and auditing standards which are recognized as sound and which have attained general acceptance.

Since changes and new developments in financial and economic conditions affect the operations and financial status of the several thousand commercial and industrial companies required to file statements with the Commission, accounting and auditing procedures cannot remain static and continue to serve well a dynamic economy. It is necessary for the Commission to be informed of the changes and new developments in these fields and to make certain that the effects thereof are properly reported to investors. The Commission's accounting staff, therefore, engages in studies of-the changes and new developments for the purpose of establishing and maintaining appropriate accounting and auditing policies, procedures and practices for the protection of investors. The primary responsibility for this program rests with the chief accountant of the Commission who has general supervision with respect to accounting and auditing policies and their application.

Progress in these activities requires constant contact and cooperation between the staff and accountants both individually and through such representative groups as, among others, the American Accounting Association, the American Institute of Certified Public Accountants, the American Petroleum Institute, the Controllers Institute of America, the National Association of Railroad and Utilities Commissioners, the National Federation of Financial Analysts Societies, as well as other government agencies. Recognizing the importance of cooperation in the formulation of accounting principles and practices, adequate disclosure and auditing procedures which will best serve the interests of investors, the American Institute of Certified Public Accountants, the Controllers Institute of America, and the National Federation of Financial Analysts Societies regularly appoint committees which maintain liaison with the Commission's staff.

The many daily decisions of the Commission require the almost constant attention of some of the chief accountant's staff. These include questions raised by each of the operating divisions of the Commission, the regional offices and the Commission. This day-to-day activity of the Commission and the need to keep abreast of current accounting problems cause the chief accountant's staff to spend much time in the examination and re-examination of sound and generally accepted accounting and auditing principles and practices. From time to time members of this staff are called upon to assist in field investigations, to participate in hearings and to review opinions, insofar as they pertain to accounting matters.

Profiling and other conferences, in person or by telephone, with officials of corporations, practicing accountants and others, occupy a considerable amount of the available time of the staff. This procedure, which has proven to be one of the most important functions of the office of the chief accountant, and of the chief accountant of the Division of Corporation Finance and his staff, saves registrants and their representatives both time and expense.

Many specific accounting and auditing problems arise as a result of the examination of financial statements required to be filed with the Commission. Where examination reveals that the rules and regulations of the Commission have not been complied with or that applicable generally accepted accounting principles have not been adhered to, the examining division usually notifies the registrant by an informal letter of comment. These letters of comment and the correspondence or conferences that follow continue to be a most convenient and satisfactory method of effecting corrections and improvements in financial statements, both to registrants and to the Commission's staff. Where particularly difficult or novel questions arise which cannot be settled by the accounting staff of the divisions and by the chief accountant, they are referred to the Commission for consideration and decision. By these administrative procedures the Commission deals with many accounting questions.

Inquiries in ever-increasing volume as to the propriety of particular accounting practices come from accountants and from companies not presently subject to any of the acts administered by the Commission who wish to have the benefit of the Commission's views and thus utilize and apply the Commission's experience to the facts of their own case. Teachers of accounting and their students also use the public files and confer with the staff in the study of accounting problems.

Cooperation between the Commission and professional groups interested in improving financial reporting has been mentioned. An example is the publication in April, 1958, by the Committee on Accounting Procedure of the American Institute of Certified Public Accountants of its Accounting Research Bulletin No. 49 dealing with a number of the problems arising in connection with the computation of earnings per share and the presentation of such statistics in prospectuses, proxy material and annual reports to shareholders and in the compilation of business earnings statistics for the press, statistical services and other publications.

Appropriate determination of earnings per share has been a frequent subject for comment by the staff in connection with filings with the Commission. A decrease in improper presentations since publication of the bulletin may fairly be credited in part to the wide distribution of the bulletin. Such literature contributes to greater uniformity in financial reporting, improves investor understanding, and decreases staff time spent in processing material filed with the Commission.

A further example of the importance of cooperation between the staff and professional accounting organizations is found in the Commission's authorization for its chief accountant to serve as a member of the American Institute of Certified Public Accountants' Special Committee on Research Program. This committee, the other members of which are leaders of the accounting profession in public and private practice and in teaching, was appointed to consider a new approach to accounting research. Since investors in securities depend upon the results of the accounting process, it is appropriate that the Commission be represented in this endeavor to find a better means for the development of generally accepted accounting principles which serve as a guide for independent accountants practicing before the Commission.

Some significant characteristics of the past year in the accounting field may be mentioned. As in the prior two years, accounting for mergers has again required much staff time in conferences with registrants and their accountants. Usually the problem has been to determine the propriety of applying the pooling of interests concept which avoids the booking of goodwill by using the accounting basis of the constituent companies and permits the carrying forward of the earned surplus of the parties to the merger.

In contrast to this desire of established companies to avoid the recognition of intangibles is the insistence by promoters of new ventures to place excessive valuations on the books for both tangible and intangible properties. Examples during the past year have been reminiscent of the early clays of the Commission when it was found necessary to deal vigorously with promotional ventures in which shares of the issuer's stock were exchanged for assets of doubtful value but were recorded at the par value of the shares issued. For an example of this kind see the discussion of the Commission's decision In the Matter of the Fall River Power Company at page 39 of this report.

Another characteristic of the past year has been the number of cases coming to the attention of our accountants in which a change in accounting policy has been adopted or desired. Where a change has appeared to be motivated by a desire to improve current earnings by deferring the expensing of incurred costs, we have objected unless it could be shown that the new method was clearly in the interest of improved financial reporting in the long run. Accounting for research and development costs for new products or expansion into new sales territories are examples of this problem which require further study.

Of a somewhat different order but a problem requiring further study is the matter of accounting for pensions and other forms of deferred compensation. There are so many difficulties in the way of determining the amounts involved and the proper allocation of such costs to accounting periods that a considerable lack of uniformity in accounting treatment persists between companies and between periods in the same company. Improvement in reported earnings resulting from omission of any charge for pensions is an extreme example of the problem which seems to be vulnerable to severe criticisms but which has been defended when pensions have been overfunded in prior years. These and other problems in the reporting of corporate income are receiving active consideration by the accounting profession and by the Commission's accounting staff.

OPINIONS OF THE COMMISSION

Opinions are issued by the Commission in contested and other cases arising under the statutes administered by it and under the Commission's Rules of Practice, where the nature of the matter to be decided, whether substantive or procedural, is of sufficient importance to warrant a formal expression of views. These opinions include detailed findings of fact and conclusions of law based on evidentiary records taken before a hearing examiner who serves independent of the operating divisions, or, in an occasional case, before a single Commissioner or the entire Commission. In some cases, formal hearings are waived by the parties and the findings and conclusions are based on stipulated facts or admissions.

The Commission is assisted in the preparation of findings and opinions by its Office of Opinion Writing, a staff office completely independent of the operating divisions of the Commission and directly responsible to the Commission itself. The independence of the staff members of this office reflects the principle, embodied in the Administrative Procedure Act, of a separation between staff members performing investigatory or prosecutory functions and those performing quasi-judicial functions. In some cases, with the consent of all parties, the interested operating division participates in the drafting of opinions.

Opinions are publicly released and distributed to representatives of the press and to persons on the Commission's mailing list. In addition, the opinions are printed and published by the Government Printing Office in bound volumes entitled "Securities and Exchange Commission Decisions and Reports."

During the fiscal year 1958, the Commission issued findings and opinions and other rulings in 121 cases of an adversary nature.

APPLICATIONS FOR NON-DISCLOSURE OF CERTAIN INFORMATION

The Commission is authorized under the various Acts administered by it to grant requests for non-disclosure of certain types of information which would otherwise be disclosed to the public in applications, reports or other documents filed pursuant to these statutes. Thus, under paragraph (30) of Schedule A of the Securities Act of 1933, disclosure of any portion of a material contract is not required if the Commission determines that such disclosure would impair the value of the contract and is not necessary for the protection of the investors. Under section 24 (a) of the Securities Exchange Act of 1934, trade secrets or processes need not be disclosed in any material filed with the Commission, and under section 24 (b) of that Act written objection to public disclosure of information contained in any such material may be made to the Commission which is then authorized to make public disclosure of such information only if in its judgment such disclosure is in the public interest. Similar provisions are contained in section 22 of the Public Utility Holding Company Act of 1935 and in section 45 of the Investment Company Act of 1940. These statutory provisions have been implemented by rules outlining the procedure to be followed by persons applying to the Commission for a determination that public disclosure is not necessary in a particular case.

The number of applications granted, denied or otherwise acted upon during the year are set forth in the following table:

[table omitted]

STATISTICS AND SPECIAL STUDIES

The Section of Economic Research provides the Commission with statistical information needed in the administration of the Securities Acts and furnishes financial data to the Congress and other government agencies as part of the overall Government Statistical Program under the direction of the Bureau of the Budget.

The regular statistical series which are prepared include data on securities effectively registered under the Securities Act of 1933, offerings of securities by all corporations in the United States (including issues not registered with the Commission, such as privately placed issues and railroad securities), retirements of corporate securities, net change in corporate securities outstanding, stock prices and trading. The research and statistical activity carried out under the direction of the Bureau of the Budget includes individuals' saving in the United States, income flow and investments of private pension funds of United States corporations, current liquid position of United States corporations, sources and uses of corporate funds, anticipated expenditures for plant and equipment by United States businesses, and a quarterly financial report for all United States manufacturing concerns.

During the past year special effort was devoted to improvement in methodology and source data for several of these series. A special project was undertaken to re-examine the industrial classification of all listed companies to comply with the revised Standard Industrial Code of the Government, the revised codes for each company to be published during the 1959 fiscal year. Plans were also laid for a detailed survey of the assets and liabilities of all registered brokers and dealers in the United States. During the year data were prepared for two papers, the first of which was entitled "Implications of Pension Fund Accumulations" delivered in September, 1957, before the American Statistical Association, and the second of which was "The Structure and Realization of Business Investment Anticipations" presented in November, 1957, at the Conference on the Quality and Economic Significance of Anticipation Data, National Bureau of Economic Research. There was also participation during the year in plans of the National Bureau of Economic Research for a major study of the Nation's pension funds. Certain basic data derived from the Commission's surveys of corporate pension funds are to be provided in this study.

The statistical series described below are published in the Commission's Statistical Bulletin and in addition, except for data on registered issues, current figures and analyses of the data are published in quarterly press releases. The Commission's stock price index is released weekly, together with the data on round-lot and odd-lot trading on the two New York stock exchanges.

The various statistical series are as follows:

Issues Registered Under the Securities Act of 1933

Monthly and quarterly statistics are compiled on the number and volume of registered securities, classified by industry of issuer, type of security, and use of proceeds. Data for the 1958 fiscal year appear on page 30-32 and in appendix tables 1 and 2.

New Securities Offerings

This is a monthly and quarterly series covering all new corporate and non-corporate issues offered for cash sale in the United States. The series includes not only issues publicly offered but also issues privately placed, as well as other issues exempt from registration under the Securities Act such as intrastate offerings and railroad securities. The offerings series includes only securities actually offered for cash sale, and only issues offered for account of issuers. Annual statistics on new offerings since 1953, as well as monthly figures from January 1957 through June 1958, are given in appendix tables 3 and 4. A summary of the data is shown annually from 1934 through June 1958 in appendix table 5.

Corporate Securities Outstanding

Estimates of the net cash flow through securities transactions are prepared quarterly and are derived by deducting from the amount of estimated gross proceeds received by corporations through the sale of securities the amount of estimated gross payments by corporations to investors for securities retired. Data on gross issues, retirements and net change in securities outstanding are presented for all corporations and for the principal industry groups.

Stock Market Data

Statistics are regularly compiled on the market value and volume of sales on registered and exempted securities exchanges, round-lot stock transactions of the New York exchanges for accounts of members and non-members, odd-lot stock transactions on the New York exchanges, special offerings and secondary distributions. Indexes of stock market prices are compiled, based upon the weekly closing-market prices of 265 common stocks listed on the New York Stock Exchange. The indexes are composed of 7 major industry groups, 29 subordinated groups, and a composite group.

Saving Study

The Commission compiles quarterly estimates of the volume and composition of individuals' saving in the United States. The series represent net increases in individuals' financial assets less net increases in debt. The study 'shows the aggregate amount of saving and the form in which the saving occurred, such as investment in securities, expansion of bank deposits, increase in insurance and pension reserves, etc. The Commission has been cooperating in a program on national saving covering government, business and individuals' saving, and several changes and improvements have been made in the saving series in the course of the last fiscal year. A reconciliation of the Commission's estimates with the personal saving estimates of the Department of Commerce, derived in connection with its national income series, is published annually by the Commerce Department as well as in the Securities and Exchange Commission Statistical Bulletin.

Corporate Pension Funds

An annual survey is made of pension plans of all United States corporations where funds are administered by corporations themselves, or through trustees. The survey shows the flow of money into these funds, the types of assets in which the funds are invested and the principal items of income and expenditures.

Financial Position of Corporations

The series on working capital position of all United States corporations, excluding banks, insurance companies and savings and loan associations, shows the principal components of current assets and liabilities, and also contains an abbreviated analysis of the sources and uses of corporate funds.

The Commission, jointly with the Federal Trade Commission, compiles a quarterly financial report for all United States manufacturing concerns. This report gives complete balance sheet data and an abbreviated income account, data being classified by industry and size of company.

Plant and Equipment Expenditures

The Commission, together with the Department of Commerce, conducts quarterly and annual surveys of actual and anticipated plant and equipment expenditures of all United States business, exclusive of agriculture. Shortly after the close of each quarter, data are released on actual capital expenditures of that quarter and anticipated expenditures for the next two quarters. In addition, a survey is made at the beginning of each year of the plans for business expansion during that year.

PUBLIC DISSEMINATION OF INFORMATION

As indicated, one of the basic objectives of the Federal securities laws is the public disclosure of financial and other information with respect to securities so that they may be realistically appraised by the investing public. Not only is the 'Commission a repository for a vast amount of such information concerning several thousand companies which are subject to the Commission's registration and reporting requirements, but the data receive widespread circulation among members of the investing public through the medium of the prospectus on new issues, through the financial press and through various securities manuals and statistical services used extensively by securities firms, investment advisers, investment companies, trust departments, insurance companies and others. Thus, the analysis and evaluation of their securities by a broad segment of investors is made possible.

To facilitate public dissemination of financial and other proposals filed with and actions by the Commission, a daily News Digest is issued to the press containing a resume of these filings and actions. For example, the News Digest contained a synopsis of each financing proposal reflected in the 779 registration statements filed during the year, as well as the 134 filings by investment companies increasing the amount of securities previously registered. Much of this information is published in the daily newspapers and in financial and other periodicals. Furthermore, most of the Commission's official pronouncements take the form of orders, decisions and rules, copies of which are issued in "release" form to mailing lists comprising the names of persons who have requested particular types of releases. During the year, a total of 800 such releases were issued and distributed to these lists; and a resume of each was included in the News Digest. Another 77 releases were issued announcing the results of the Commission's regular statistical studies referred to at page 188 hereof. An additional 173 releases were issued announcing actions with respect to court injunctions and criminal prosecutions, plus 33 miscellaneous releases.

In order that the investing public may better understand the Commission's role of investor protection, the Chairman, other members of the Commission and staff officials frequently deliver addresses before local groups or participate in radio or television discussions of the Commission's functions and activities. They also address professional and trade bodies to discuss particular aspects of the Commission's law enforcement activities or its general policies and practices. In addition, they make themselves available for interview by representatives of the press, individually or collectively, particularly when visiting financial centers throughout the country.

To alert the public to the risks involved in buying securities from unknown sources, such as the "boiler room" operators discussed in Part I of this report, the Commission has distributed more than 60,000 copies of an "Investors Beware" poster setting forth a 10-point guide for prospective purchasers of securities.

[Footnote: The poster warns investors to observe the following ten-point guide to safer investments :

1. Before buying . . . Think !

2. Don't deal with strange securities firms. (Consult your broker!)

3. Beware of securities offered over the telephone by strangers.

4. Don't listen to high-pressure sales talk.

5. Beware of promises of spectacular profits.

6. Be sure you understand the risks of loss.

7. Don't buy on tips and rumors . . . Get all the facts !

8. Tell the salesman to : Put all the information and advice in writing and mail it to you . . . Save it!

9. If you don't understand all the written information . . . Consult a person who does.

10. Give at least as much consideration to buying securities as you would the purchase of any valuable property.]

With the cooperation of the Post Office Department copies of the poster have been placed on the bulletin boards of all post offices in the United States and the Federal Deposit Insurance Corporation has assisted the Commission in distributing copies of the poster to all insured banks. In addition, copies have also been distributed to state securities commissioners, securities exchanges, brokers and dealers, better business bureaus, chambers of commerce and other organizations interested in the prevention of fraud in the offer and sale of securities.

Information Available for Public Inspection

During every fiscal year thousands of requests for information are received by mail and through telephone calls and personal visits. Most of these requests are answered by employees in the Commission's public reference rooms in Washington, Chicago, and New York City.

The files of the Commission provide information of interest to a large cross section of the public. Numerous people visit the public reference rooms seeking information on which to base decisions to buy or sell securities; they are furnished the files which contain financial and other information about the issuers of the securities. Many visitors, on the other hand, consult Commission records. They may be representatives of business or financial journals, or students doing research for theses or other projects. Research of a slightly different nature is carried on by representatives of legal and accounting firms, corporations and labor unions; they are interested largely in gathering information to be used as specimens, as precedent material, or for other specialized purposes. The inquiries received through the mails and over the telephone follow the same pattern.

Copies of any public information filed with the Commission may be examined at the principal office in Washington, D. C. Such information includes registration statements, applications and declarations filed under the various statutes administered by the Commission, together with the records of agency action. In Washington, as in the regional offices, space considerations have necessitated the transfer of some of this material to warehouse-type space in nearby federal records centers. Files from these centers are usually available within twenty-four hours.

The New York Regional Office has copies of recent filings made by companies having securities listed on exchanges other than the New York Stock Exchange and the American Stock Exchange, and copies of current filings of many companies which have effective registration statements under the Securities Act of 1933. The Chicago Regional Office has copies of recent reports of companies which have securities listed on the New York and American stock exchanges.

All regional offices have copies of prospectuses used in recent public offerings of securities registered under the Securities Act, of active broker-dealer and investment adviser registration applications originating in their respective regions and of Regulation A letters of notification filed in their respective regions.

The public reference room in Washington had about 3,400 visitors during the fiscal year. Requests were filled for an additional 28,500 persons who were sent almost 660,000 copies of Commission publications. More than 112,000 photocopy pages of information were sold pursuant to over 2,000 orders.

Additional thousands of persons made use of the facilities provided by the New York and Chicago public reference rooms.

PUBLICATIONS

Publications issued during the fiscal year included:

<u>Monthly:</u>

Statistical Bulletin.

Official Summary of Security Transactions and Holdings of Officers, Directors, and Principal Stockholders.

<u>Quarterly:</u>

Financial Reports, U. S. Manufacturing Corporations (Jointly with the Federal Trade Commission).

Plant and Equipment Expenditures of U.S. Corporations (Jointly with the Department of Commerce).

New Securities Offered for Cash.

Volume and Composition of Individual's Saving.

Working Capital of U.S. Corporations.

Annually:

Securities Traded on Exchanges under the Securities Exchange Act of 1934, as of December 31, 1957.

Companies Registered under the Investment Company Act of 1940, as of December 31, 1957.

Twenty-Third Annual Report of the Commission.

Other publications:

Volume 37 of the Decisions and Reports of the Commission, (to June 30, 1957).

The Work of the Securities and Exchange Commission (edition of August 20, 1957).

Amendment, dated November 5, 1957, to Statement of Policy under the Investment Company Act of 1940.

ORGANIZATION

The staff of the Commission is composed of lawyers, accountants, engineers, security analysts and examiners, and administrative and clerical employees. It is divided into divisions and offices, including nine regional offices and eight branch offices.

Under the Commission's program of continuing review of its organization and functions, a number of changes were made during the fiscal year in the interest of increased efficiency.

On December 15, 1957, the New York Regional Office was realigned to provide for a more functional organization. Corporate reorganization work under Chapter X of the Bankruptcy Act was transferred from the Branch of Operations to a new Branch of Reorganization. The remaining functions of the former Branch of Operations, i. e., interpretative work and the administration of Regulation A, were assigned to a new Branch of Interpretations and Small Issues.

In December 1957, a Branch of Examination and Training was established in the Division of Corporation Finance for the purpose of initiating, developing and executing a training program for professional employees assigned to the Division. The training activities of this Branch supplement those conducted in the various Branches of Corporate Analysis and Examination as part of the day-to-day employee development resulting from work assignments. All new employees are assigned to the Branch of Examination and Training for intensive job instruction, as are middle-level employees who have demonstrated the growth potential for supervisory positions.

The Commission established a Branch Office of the Atlanta Regional Office in Miami, Florida, on March 3, 1958, and a Branch Office of the Fort Worth Regional Office in Houston, Texas, on April 14, 1958. [Footnote: On October 21, 1958, the Commission announced the establishment of a Branch Office of the Chicago Regional Office in St. Louis, Missouri.] The establishment of these Branch Offices will not increase overall personnel requirements but will enable the Commission to increase the effectiveness of its investigative activities and its broker-dealer inspection program in those areas in the public interest.

PERSONNEL, BUDGET AND FINANCE

The following comparative table shows the personnel strength of the Commission as of June 30, 1957 and 1958 :

[table omitted]

The table on the opposite page shows the budget estimates of the Commission, the recommendations of the President, the appropriation actions of the House of Representatives, the Senate and the House-Senate conferees and the appropriations (including supplementary appropriations for statutory pay increases) made for the Commission by the Congress for the fiscal years 1949-1959.

[table omitted]

The Commission is required by law to collect fees for registration of securities issued, qualification of trust indentures, registration of exchanges, and sale of copies of documents filed with the Commission. [Footnote: Principal rates are (1) 1/100 of 1 percent of the maximum aggregate price of securities proposed to be offered but not less than $25; (2) 1/500 of 1 percent of the aggregate dollar amount of stock exchange transactions. Fees for other services are only nominal.]

The following table shows the Commission's appropriations, total fees collected, percentage of fees collected to total appropriation, and the net cost to the taxpayers of Commission operations for the fiscal years 1956, 1957, and 1958 :

[table omitted]

In furtherance of the objectives of the Joint Accounting Improvement Program, an Imprest Fund was established in Headquarters as well as in the New York Regional Office for the purpose of simplifying the procurement and payment procedures of the Commission.

Personnel Program

During fiscal 1958 the Commission continued to give special emphasis to its recruitment program designed to attract outstanding college and law school graduates for starting professional level positions such as financial analyst, attorney, and investigator. Through on-campus interviews and contacts with the placement offices of various colleges and universities, the Commission was successful in appointing to its staff a substantial number of well qualified applicants of college caliber.

On March 31, 1958 the Commission approved a Promotion Program Policy and Guidelines statement as required by the Civil Service Commission's new government-wide Merit Promotion Program. The program statement was developed with the active assistance of Division and Office Heads and the views and comments of employees also were solicited. Merit Promotion Plans which implement these policies and guidelines systematically in specific groups of positions are being developed and will be adopted by January 1, 1959.

The proper allocation of top level positions continues to be of utmost importance to the Commission for the effective execution of its programs. In the interest of attracting and retaining highly qualified persons for these positions, recommendations for the allocation of additional positions to grades GS-16, GS-17 and GS-18 were presented to the Civil Service Commission.

The passage of the Government Employees Training Act on July 7, 1958 for the first time provides the Commission with general training authority. As required under this Act, a complete review of the needs and requirements of the Commission for the training of its employees will be made and a suitable program providing for in-service, inter-agency or out-service training to meet identified needs and requirements will be established.

During fiscal 1958, special health programs for the benefit of the staff were undertaken in the Commission. On November 6, 1957,140 members of the staff in Washington were inoculated against Asian influenza. Sixty-four employees in the regional offices also received this inoculation under programs arranged by Regional Administrators.

The first and second of a series of three inoculations of anti-polio vaccine were administered under the direction of a private physician on March 3 and March 25, 1958, respectively. A total of 121 employees participated in this program which was sponsored by the Commission's Employee Recreation and Welfare Association.

Recognition of career service with the Commission, meritorious work performance awards and public recognition in the form of awards made by outside organizations for outstanding achievements by staff members continued to be stressed under the Commission's incentive awards program. In September 1957, ten- and twenty-year service pins and certificates were presented to a total of 51 employees for service with the Commission. Six employees were awarded $195 for adopted suggestions. Cash awards totalling $5,805 and certificates of merit were presented to 66 employees.

Mr. Robert S. Wood of the Budget and Finance office was one of 120 successful candidates out of a total of 236 nominations submitted by government agencies for participation in the Civil Service Commission's 1958 Management Intern Program. In May 1958, a Certificate of Merit was awarded to Jule B. Greene, Attorney-in-Charge of the Commission's Miami Branch Office, by the William A. Jump Memorial Foundation. In June 1958, the National Civil Service League awarded certificates of merit to four Commission employees -- John T. Callahan, Special Counsel in the Division of Trading and Exchanges, Amerst E. Huson, Chief of the Office of Research and Service Company Regulation in the Division of Corporate Regulation, Franklin E. Kennamer, Jr., Chief Enforcement Attorney in the San Francisco Regional Office, and Edward H. Rakow, Assistant Regional Administrator in charge of the Detroit and Cleveland branch offices.

Canons of Ethics for Members of the Commission

The Commission for many years has had a Regulation regarding conduct of Members and Employees and Former Members and Employees of the Commission, which was codified in substantially its present form in 1953. This regulation prohibits any member or employee of the Commission from, among other things, acting in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment; accepting, directly or indirectly, any valuable gift, favor, or service from any person with whom he transacts official business; and becoming unduly involved, through frequent or expensive social engagements or otherwise, with any person outside the Government with whom he transacts official business.

Supplementary to the overall Conduct Regulation, on July 22, 1958 the Commission adopted Canons of Ethics for Members of the Commission. These canons, which are presented in appendix table 30, set forth standards which the Commission has always believed are applicable to its executive, legislative and judicial responsibilities. They include statements of principle with respect to, among other things, Commission members' personal conduct, maintenance of independence, relationships with persons subject to agency regulation and avoidance of appearances of improper influence.