



SECURITIES AND EXCHANGE COMMISSION

**LEGAL METHOD**  
**and the Securities Laws**

July 1963

Non - Public - For Staff Use Only

**Legal Method and The Securities Laws**

FOREWORD

This guide to securities law research has been prepared by Martin Goldman under the direction of Ezra Weiss, Regional Counsel, for Commission staff use. It represents, in my view, a practical and incisive review of the basic research sources in the field. I strongly commend this guide to all on our staff.

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## INTRODUCTION

Researching questions of law in the securities field requires recourse to the Securities Acts and their legislative histories, Court and Commission decisions, Commission rules, opinions and releases, and, where appropriate, the more informal products of staff interpretation. To the novice and initiate alike, this mass of source material may appear overwhelming. Therefore, some general guidelines at the outset are helpful.

The underlying policies of the various Acts are reflected in their respective legislative histories and are often commented upon by the Courts. Beyond Court and Commission decisions, interpretations of the complex statutes enforced by the Commission take a variety of forms. The Commission is expressly empowered to issue rules and regulations, and advance publicity is usually given to its draft proposals. A Commissioner or a responsible official may deliver an address or write an article; the General Counsel may issue an opinion, or release some correspondence; a staff attorney may grant a "no-action" letter, or urge a particular point of view before a decision-maker. The Annual Reports of the S.E.C., issued at the end of each fiscal

year, usually shed interpretative light on the activities of the Commission, and may indicate the outer limits of a case or rule. But whatever the form of a given interpretation, it was issued in response to a need -- to meet the exigencies of a particular situation, to correct a deficiency, or perhaps to anticipate a new set of facts affecting the investing public or the industry.

In the second Chenery case,<sup>1/</sup> the Supreme Court admitted that, generally speaking, "the choice ... lies primarily in the informed discretion of the administrative agency." Thus, one cannot strictly speak of a hierarchy of pronouncements issued by the Commission. Even when confined to the realm of rule-making, "the procedure followed by the Commission in connection with the adoption, revision, and rescission of rules of general application necessarily varies in accordance with the nature of the rule, the extent of public interest therein and the necessity for speed in its adoption."<sup>2/</sup>

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<sup>1/</sup> S.E.C. v. Chenery Corp., 332 U. S. 194 (1947). The Court was speaking of rule-making as against case by case evolution, but the analogy is clear.

<sup>2/</sup> Rules of Practice of the S.E.C., Statement on Informal and Other Procedures, Article 6(a), 17 CFR 202.6.

It is likely that a pronouncement by any person knowledgeable in the field, will be looked to by a court. Staff opinions "represent the views of persons who are continuously working with the provisions of the statute involved,"<sup>3/</sup> and merit recognition accordingly.

It should be noted that the term Commission Release covers a plethora of pronouncements officially issued by the Commission, but does not indicate the type or nature of its content. Thus, the subject matter of a Commission Release might be the text of a speech by the Chairman or one of the Commissioners,<sup>4/</sup> an opinion of the General Counsel,<sup>5/</sup> an exposition of a section of one of the Acts,<sup>6/</sup> or notice of an investigation and hearing relating to a specific broker-dealer.<sup>7/</sup> To ascertain the existence of a relevant release,

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3/ Id. at Article 1(d).

4/ Securities Act Release #4401 (August 3, 1961).

5/ Securities Act Release #285 (January 24, 1935), 11 Fed. Reg. 10952.

6/ Securities Act Release #4412 (September 20, 1961) - Section 3(a)(3).

7/ Exchange Act Release #6764 (March 27, 1962).

one is largely dependent upon texts, loose-leaf services, and any internal material <sup>8/</sup> which might guide one to the proper sources. Once the appropriate release is identified, it usually charts further avenues of research.

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8/ e.g., Summaries of Interpretations -- issued quarterly by the Division of Trading and Exchanges, and monthly by the Division of Corporation Finance.

Primary Sources

I. Legislative History

Recourse may generally be had to the legislative history of the statute,<sup>1/</sup> to the various steps which led to its final passage,<sup>2/</sup> and to the reports of the appropriate committee having charge of the bill.<sup>3/</sup> An index to legislative materials relevant to the Acts administered by the Commission<sup>4/</sup> is set forth at Appendix A.

- 1/ In case of ambiguity, see People v. Durston, 119 N. Y. 569 (1890). For the construction of unambiguous statutes, see statement by Justice Holmes in Boston Sand & Gravel Co. v. U. S., 278 U. S. 41 (1928): "It is said that when the meaning of language is plain, we are not to resort to evidence to raise doubts. This is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists..."; U. S. v. American Trucking Associations, 310 U. S. 534 (1940).
- 2/ State ex rel. Coleman v. Kelly, 71 Kan. 811, 81 Pac. 450 (1907).
- 3/ In re Hamlin, 226 N. Y. 407 (1919). Statements made in debate by members of the committee having charge of the bill are likewise admissible. U. S. v. American Trucking Associations, 310 U. S. 534 (1940).
- 4/ Since contemporaneous construction by the agency charged with the administration of the statute may be persuasive (Edwards' Lessee v. Darby, 25 U. S. (12 Wheat.) 206, 210 (1827); Norwegian Nitrogen Co. v. U. S., 228 U. S. 294, 315 (1933)), recourse should be had to the Annual Reports of the S.E.C., which contain pertinent information regarding proposed amendments.

## II. Statutes

The following Acts, as amended, are administered by the Securities and Exchange Commission:

Federal Securities Act of 1933

15 U.S.C. § 77a-77aa

Securities Exchange Act of 1934

15 U.S.C. § 78a-78jj

Public Utility Holding Company Act of 1935

15 U.S.C. § 79-79 z-6

Federal Trust Indebture Act of 1939

15 U.S.C. § 77aaa-77bbbb

Investment Company Act of 1940

15 U.S.C. § 80a-1 - 80a-52

Investment Advisers Act of 1940

15 U.S.C. § 80b-1 - 80b-21

Under Chapter X of the Bankruptcy Act (11 U.S.C. 501), the Commission exercises an advisory responsibility to the federal courts.

### III. Court Decisions

Federal court decisions pertaining to the legislation administered by the Commission are, of course, found in the Federal Supplement, the Federal Reporter and the U.S. Supreme Court Reports. The Office of the General Counsel has begun to compile all court decisions, reported and unreported, in civil and criminal cases involving statutes administered by the Commission, in a series of volumes denominated as Securities & Exchange Commission Judicial Decisions.<sup>5/</sup> Each of these volumes contains a table of cases arranged according to statute and section, and an index-digest arranged according to subject matter. To date, the following volumes have been published:

Volume I	-	1934-1939
Volume II	-	1940-1942
Volume III	-	Jan. 1, 1943-June 30, 1944
Volume IV	-	July 1, 1944-Sept. 20, 1946
Volume V	-	Oct. 1, 1946-Dec. 31, 1948

Recourse is also to be had to the appropriate "key numbers" of the West Federal Digest System, to the U.S. Code Annotated and the The CCH: Federal Securities Law Reporter which oftentimes prints decisions not officially reported.

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<sup>5/</sup> To be cited as \_\_\_\_\_ S.E.C. Jud. Dec.

#### IV. Commission Decisions

The final orders of the Commission are usually accompanied by written opinions, considered and approved at meetings of at least a quorum of the Commissioners.<sup>6/</sup>

Generally speaking, the Office of Opinion Writing assists in examining the record and preparing the final decision of the agency. The case is discussed by members of the Commission with the Office of Opinion Writing, which then prepares a draft opinion in accordance with instructions given by the Commissioners.<sup>7/</sup> The Commission endeavors to apply the doctrine of stare decisis and "the authority of its own decided cases is so clearly recognized by the Commission that adherence to the doctrine becomes an accepted fact."<sup>8/</sup>

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<sup>6/</sup> See Administrative Procedure in Government Agencies, Part 13 - the Securities and Exchange Commission, S. Doc. No. 10, 77th Cong., 1st Sess. 95-96 (1941).

<sup>7/</sup> Orrick, Commissioner Andrew D., Organization, Procedures and Practices of the S.E.C., 28 Geo. Wash. L. Rev. 50, 59 (1959).

<sup>8/</sup> Stare Decisis in N.L.R.B. and S.E.C., 16 N.Y. U.L.Q. 618, 624-630 (1939).

The decisions of the Commission in adversary proceedings, and Corporate Reorganization Reports, are to be found in the volumes of Securities and Exchange Commission Decisions and Reports.<sup>9/</sup> A table of decisions, at the beginning of each volume, refers to the section of the Act to which a given decision pertains. An index digest at the back of each volume summarizes the decisions with reference to Act and subject matter.

By virtue of the relevant provisions in the statutes administered by this Commission,<sup>10/</sup> and of Section 10 of the Administrative Procedure Act,<sup>11/</sup> final agency decisions are subject to review in the U. S. Courts of Appeal<sup>12/</sup> upon

9/ To date, 38 volumes have been published. Volume I begins with July, 1939 and the last volume concludes with March 31, 1959.

10/ 1933 Securities Act - Section 9  
 1934 Securities Exchange Act - Section 25  
 1935 Public Utility Holding Co. Act - Section 24  
 1939 Trust Indenture Act - Section 322(a)  
 1940 Investment Co. Act - Section 43  
 1940 Investment Advisers Act - Section 213

11/ 60 Stat. 237 (1946), 5 U.S.C. 1001.

12/ "within any circuit wherein such person resides or has his principal place of business, or in the Court of Appeals of the District of Columbia..." Section 9(a) of the Securities Act. See also citations in footnote 10 above.

petition of persons or parties aggrieved. The Commission is not necessarily bound in future administrative or court litigation by an adverse determination of a Court of Appeal in a prior case. However, a Court of Appeal's decision on point generally carries considerable weight with the Commission, particularly where the future litigation arises out of the Circuit which rendered the decision. However, once the Supreme Court has spoken, its determination is binding, and any S.E.C. decision to the contrary is effectively deprived of authority.

## V. Commission Rules

Because of the complex nature of the Commission's activities, flexibility is the chief characteristic of the procedure with respect to the issuance of rules and regulations. "The wide variety of rules and regulations issued, the multitude of particular situations which must be treated, the technical nature of much of the subject matter, all combine to necessitate the Commission's following an ad hoc procedure in respect of each regulation, or each type of regulation which comes before it."<sup>13/</sup> This approach is reflected in the Commission's Rules of Practice.<sup>14/</sup>

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<sup>13/</sup> S. Doc. No. 10 op. cit. supra note at 102. See also Landis, Administrative Process 106 (1938): "I have seen as little as 20 minutes elapse between the drafting and promulgation of a permissive rule where the exigencies of the situation called for quick action. On the other hand, I have watched and participated with the experts for over two years in a vain attempt to find a solution to a problem which continues to defy even a tentative experimental answer."

<sup>14/</sup> Statement on Informal and Other Procedures, passim, especially Article 6(a), 17 C.F.R. 202.6.

The weight accorded by courts to the rules of the Commission depends upon whether interpretative rules or legislative rules are involved.<sup>15/</sup> Thus, in reviewing a legislative rule, a court is free to inquire (1) whether the rule is within the delegated authority, (2) whether it is reasonable, and (3) whether it has been issued pursuant to proper procedure. But a court is not free, as it is in the case of an interpretative rule, to substitute its judgment as to the desirability or wisdom of the rule for that of the legislative body, which, by its delegation to the Commission, has committed such questions to administrative judgment.

In this connection, it may be said that the broad grant of Section 19(a) of the Securities Act -- "The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be

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<sup>15/</sup> Cf. Skidmore v. Swift & Co., 323 U. S. 134 (1944) (legislative rule) with American Telephone & Telegraph Company v. United States, 299 U. S. 232 (1936) (interpretative rule).

necessary to carry out the provisions of this title <sup>16/</sup> "... " --  
 is such as to endow the Commission with legislative rule-  
 making authority. The further language of this section  
 which grants the authority to issue rules and regulations  
 "defining accounting, technical and trade terms" <sup>17/</sup> cannot  
 be so considered and is, instead, illustrative of interpre-  
 tative rule-making power. <sup>18/</sup>

16/ See: 1933 Act - Section 3(b); 19(a)  
 1934 Act - Section 23(a); 14  
 1935 Act - Section 20(a)  
 1939 Act - Section 319(a)  
 1940 Investment Co. Act-Section 38(a)  
 1940 Investment Advisers Act-Section 211(a)

Every instruction on an S.E.C. form has the force of a rule and it may, therefore, be necessary to trace the history of a form to find out about the rule. See:

1933 Act Rules - Rule 100(a)(3)  
 1934 Act Rules - Rule 0-1(4)  
 1939 Act Rules - Rule 0-2

The Public Reference Room of the New York Regional Office has a card system enabling one to trace back all rules and forms to their origin.

17/ 1933 Act - Section 19(a)  
 1935 Act - Section 20(a)  
 1939 Act - Section 319(a)  
 1940 Investment Co. Act - Section 38(a)

18/ For a complete listing, as of 1941, of the express powers vested in the Securities & Exchange Commission to issue rules and regulations, see S. Doc. No. 10, op. cit. supra note 6, Appendix B.

Generally speaking, administrative agencies have the policy discretion to approach a new set of facts via the adjudicatory method or by means of the rule-making process. Thus, when the S.E.C. decided to apply the standards of the Public Utility Holding Co. Act in a way that they had not been previously applied, the Supreme Court felt that, although "filling in the interstices of the Act should be performed, as much as possible, through the quasi-legislative promulgation of rules ... case by case evolution" has its place, and "the choice ... lies primarily in the informed discretion of the administrative agency."<sup>19/</sup> So, when an agency, endowed with rule-making authority, does not utilize that medium in a given situation, such authority merely lies

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<sup>19/</sup> S.E.C. v. Chenery Corp., 332 U. S. 194 (1947). See also S.E.C. v. Chenery, 318 U. S. 80 (1943).

in abeyance -- non-use does not negate it. <sup>20/</sup>

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20/ For more than 60 years the I.C.C. had excluded way vehicles from the coverage of the Safety Appliance Acts. In 1957, the Supreme Court (Baltimore & Ohio R. Co. v. Jackson, 353 U. S. 325) divided five to four on the question whether this long-standing practice was binding upon it. The majority said that "there has been no expressed administrative determination of the problem. We believe petitioner overspeaks in elevating negative action to positive administrative decision."

In the recent Capital Gains Research case (S.E.C. v. Capital Gains Research Bureau, Inc., 300 F. 2d 745 (2d cir. 1961) aff'd. on rehearing, 306 F. 2d 606 (2d cir. 1962), cert. granted 371 U. S. 967 (1963), the Second Circuit upheld the lower court's refusal to grant a preliminary injunction to restrain defendants from alleged violations of Section 206(1) & (2) of the 1940 Investment Advisers Act. Rule 206(4)-1 had been proposed, but was not, as yet, adopted or effective. The Court said, through Moore, J., that "in the final analysis what the S.E.C. would have the Court do here is to create a law which Congress has never enacted, or a regulation which the S.E.C. has never promulgated which, in effect, would prohibit investment advisers or their employees from purchasing or selling any of the many stocks covered by their services. Any such drastic legislation or regulation should be enacted only after hearings upon which the need, if any, for any such remedial legislation can be explored and all interested parties are given an opportunity to be heard. For the present, and until the facts are fully developed, it seems appropriate that the courts in piecemeal fashion do not try to take over the regulatory function of the S.E.C. and single out a rather small advisory service and hold it in advance of trial responsible for violations of a rule which has not yet been promulgated, and as to which there is no certainty that it will ever be." Leaving aside the question of the correctness of its decision, the Court merely held that it would not give binding effect to a proposed rule in a motion for preliminary injunction where such relief would grant what is being sought permanently. The Commission contended that the general anti-fraud provisions of the Act were sufficient to bar the practices complained of, even in the absence of a specific rule forbidding them. Nevertheless, proposed rules, whether or not adopted, provide a source of Commission interpretation, and are set forth in the Commission's Annual Reports.

In addition to being published by the Commission, the texts of the rules are found in the loose-leaf services, the appropriate numbers of the Federal Register, and in volume 17 of the Code of Federal Regulations:

General Rules & Regulations under the  
Securities Act of 1933  
17 C.F.R. 230

General Rules & Regulations under the  
Securities Exchange Act of 1934  
17 C.F.R. 240

General Rules & Regulations under the  
Public Utility Holding Co. Act of 1935  
17 C.F.R. 250

General Rules & Regulations under the  
Trust Indenture Act of 1939  
17 C.F.R. 260

General Rules & Regulations under the  
Investment Company Act of 1940  
17 C.F.R. 270

General Rules & Regulations under the  
Investment Advisers Act of 1940  
17 C.F.R. 275

Intermediate SourcesA. Administrative InterpretationIntroduction

When the need arises for internal or external guidance in the interpretation of the Securities Acts, an Opinion of the General Counsel, a Commission release interpreting general areas of the law, or a staff opinion may be issued. Staff opinions will generally follow the course indicated in prior announcements. An opinion of the General Counsel or an interpretive Commission release may be considered as binding, insofar as it covers the relevant situation. Questions of first impression are often taken up with the General Counsel and then with the Commission.<sup>21/</sup>

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/21. See statements of Commissioner Healy before the Senate, Hearings on S. 674 S. 675 and S. 918, 77th Cong., 1st Sess. 326-27, 334-35 (1941).

1. Opinions of the General Counsel

Since the interpretive opinions of the General Counsel are carefully discussed with the Commission before they are issued,<sup>22/</sup> they are entitled to great weight.<sup>23/</sup> Such opinions are published in the form of

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22/ Id. at 326. Mr. Healy: "When a new problem arises as to which somebody wants an interpretive opinion by the General Counsel, he does research work, he writes it, he comes in, and it is talked over extensively and carefully with the Commission before it goes out. If the same problem comes up again in a few days, he does not come back, because the interpretation has been more or less fixed."

23/ Courts have disagreed as to the weight attributable to an opinion of the General Counsel. Cf. Colby v. Klune, 178 F. 2d 872, 875 ftn. 15 (2d Cir. 1949) (opinion disregarded) with S.E.C. v. Ralston Purina, 346 U.S. 119 (1953) (opinion expressly approved). Thus, counsel have, at times, sought the added protection of a formal rule; see: S. Doc. No. 10, op. cit. supra note 6, 334-5.

Commission releases. A complete file is kept in the Public Reference Room of the Regional Offices. The loose-leaf services contain an enumeration and description of Commission releases, in chronological order and according to Act.

When the Administrative Procedure Act became effective in September of 1946, the Commission decided to republish selected past opinions of its Chief Accountant, General Counsel, Division Directors, and a number of general interpretative releases. This compilation appears in 11 Federal Register 10912, No. 189 (September 27, 1946). An index of the materials published in that issue will be found in Appendix B to this outline.

## II. Commission Releases Interpreting General Areas of the Law

From time to time, the Commission issues releases of general import treating specific areas of the law. Thus, to clarify certain points under the 1933 and 1934 Acts, Securities Act Release No. 4445 (February 2, 1962) was issued relating to the distribution by broker-dealers of unregistered securities; Securities Act Release No. 4552 (November 6, 1962) sets out the prerequisites for the availability of the private offering exemption of Section 4(1), clause 2, of the Act. Such interpretive releases, as general statements of policy and law, may be cited as authority to the Commission and to the courts. Courts have usually given authoritative weight to interpretative rules and practices which embody interpretations made contemporaneously with the enactment of a statute or which have been consistently followed over a long period.<sup>24/</sup>

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<sup>24/</sup> Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827); Norwegian Nitrogen Co. V. United States, 288 U.S. 294 (1933); Commissioner v. Estate of Sternberger, 348 U.S. 187, 199 (1955). The factors of long-standing and contemporaneous interpretation apply both to legislative and interpretative rules. Peters v. Hobby, 349 U.S. 331 (1955).

Interpretive releases are found in the public reference rooms of each Regional Office. Furthermore, the Commission has issued a pamphlet compilation of the texts of all releases under the Securities Act of 1933, issued from the date of passage of this Act to and including December 31, 1936. Accounting Series Releases 1-77 are bound together in one publication of the S.E.C. The CCH: Federal Securities Law Reporter contains an index to the releases issued under each of the Acts administered by the Commission, with a brief description of the subject matter covered therein.

### III. Staff Opinions

The Division of Trading and Exchanges and the Division of Corporation Finance periodically <sup>25/</sup> issue Summaries of Interpretations which are marked as "For Staff Use Only."

These internal compilations are summaries of significant rulings on various interpretative problems which have arisen within a given time period. While they are not available to the public, they often direct the reader to publicly available materials and thus constitute a valuable research tool. <sup>26/</sup>

Additionally, the Office of Opinion Writing has prepared a descriptive word index of broker-dealer cases, <sup>27/</sup> the Division of Corporation Finance has issued an index to opinions of

25/ Issued quarterly by the Division of Trading and Exchanges and monthly by the Division of Corporation Finance.

26/ For convenience, they are indexed and arranged according to Act, section, rule and form.

27/ In its present form, the index covers only the period from November 1, 1947 through September 21, 1961 (27 S.E.C. 2 through Exchange Act Release No. 6631)

administrative proceedings under the Securities Act,<sup>28/</sup>  
and the Office of the General Counsel has distributed an  
index-digest of S.E.C. briefs.<sup>29/</sup> These indices are,  
likewise, restricted to Commission use. Reference is also  
to be had to the occasional memoranda put out by the various  
divisions and offices of the Commission. These, as well as

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28/ as of July, 1962.

29/ This is an index to briefs prepared and filed by the S.E.C. in all types of litigation between January 1, 1946 and June 30, 1959, except briefs filed in proceedings under Chapters X and XI of the Bankruptcy Act and under the Public Utility Holding Company Act and except briefs in S.E.C. criminal cases which are filed by the U. S. Attorney, not by the S.E.C. An alphabetical list of Holding Company and Chapters X and XI Bankruptcy briefs is appended thereto.

interpretive letters <sup>30/</sup> signed by staff members <sup>31/</sup> are frequently fruitful sources of citable authority. It has been the position of the Commission that interpretations with respect to the meaning and application of the Acts given by staff members, are not public property and are not to be cited as precedents by third parties. <sup>32/</sup>

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30/ As to the general import of a "no action" letter, see Orrick, op. cit. supra note 7, at 68. For an indication of the weight accorded by courts to staff opinions, see Klein v. S.E.C., 224 F. 2d 861 (2d Cir. 1955). Cf. Subin v. Goldsmith, 224 F. 2d 753, 767, 774 (2d Cir. 1955); S.E.C. v. Torr, 22 F. Supp. 602, 612 (S.D.N.Y. 1938), 1 S.E.C. Jud. Dec. 489. See also S.E.C., Rules of Practice, Statement on Informal and Other Procedures, Article 1(d). As to good faith reliance on staff opinions, see statement by Commissioner Healy in S. Doc. No. 10, op. cit. supra note 6.

31/ For a general discussion of estoppel where the agency itself had taken formal action as opposed to action by subordinate officials, see Davis, Administrative Law (1959) ¶17.01-17.06, 17.09.

32/ Brief for the S.E.C. as Amicus Curiae, Stella v. Kaiser et al (S.D.N.Y., January, 1950).

## B. Stock Exchange and NASD Rules

At the behest of the Commission and representatives of the securities industry, Congress passed the Maloney Act of 1938, which added Section 15A to the Securities Exchange Act of 1934.<sup>33/</sup> On August 7, 1939, the Commission granted the application of the National Association of Securities Dealers, Inc., a membership corporation formed under the laws of Delaware, for registration under the Maloney Act as a national securities association.<sup>34/</sup> No other association has ever applied for registration.

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<sup>33/</sup> Index to legislative history of the Maloney Act is set forth in Appendix A.

<sup>34/</sup> NASD, Inc., 5 S.E.C. 627 (1939).

In granting the application of the NASD, the Commission felt "that it should add, by way of caution, that members of the applicant association will, of course, continue to be subject to the laws administered by the Commission. Their agreement, however, to observe the by-laws and rules of fair practice of the applicant, should tend to facilitate their observance of such laws and of the rules and regulations now in force or hereafter to be promulgated thereunder."<sup>35/</sup> While the Commission does not affirmatively approve association rules, it does exercise a measure of control over them and may, in certain instances, compel the alteration of, or supplement to, these rules.<sup>36/</sup>

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<sup>35/</sup> Id. at 633. See also In the Matter of NASD, Inc.  
17 S.E.C. 459 (1944).

<sup>36/</sup> Securities Exchange Act of 1934, Sections 15A(b)(7),  
15A(K)(1) & (2)

Thus, in approving the registration of the NASD, the Commission may be said to have extended its approval to this system of cooperative regulation of the over-the-counter market, and raised the rules of the NASD to a status above that of by-laws of a private organization.<sup>37/</sup>

Similarly, Sections 6 and 19 of the 1934 Act outline the extent of S.E.C. supervision over the national securities exchanges. Here, too, while the rules of a national stock exchange do not carry the authority of Commission rules and regulations, they do enjoy a status above that of by-laws of a private club. "There is no doubt

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<sup>37/</sup> In granting the application of the NASD, the Commission was required to determine that the rules of this association comply with the requirements of 15A(b). See In the matter of NASD, Inc., 5 S.E.C. 627 (1939); In the matter of NASD, Inc., 17 S.E.C. 459 (1944); 2 Loss, Securities Regulation 1376, note 73 (2d ed. 1961).

that 6(b) places a duty upon the Stock Exchange to enforce the rules and regulations prescribed by that section. Any other construction would render the provision meaningless. Defendant's argument that the Securities Exchange Act did not alter the prior status of the Stock Exchange rules as by-laws of a private club is untenable. If all that 6(b) meant was that every exchange should pass token regulations, incapable of enforcement except at the wish of the exchange itself, there would have been no purpose for its inclusion in the Act."<sup>38/</sup>

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<sup>38/</sup> Baird v. Franklin, 141 F. 2d 238, 244 (2d Cir. 1944); Silver v. New York Stock Exchange, 302 F. 2d 714 (2d Cir.), 373 U.S. 341 (1963). See also Douglas, Democracy and Finance 65. "Operating as private-membership associations, exchanges have always administered their affairs in much the same manner as private clubs. For a business so vested with the public interest, this traditional method has become archaic." The House Committee considering the proposal text of the Exchange Act noted: "This bill proceeds on the theory that the exchanges are public institutions ... and are not private clubs to be conducted only in accordance with the interest of their members." H.R. Rep. No. 1383, 73d Cong., 2 Sess. 15 (1934). For a discussion of the Commission's authority under 19(b), see In the Matter of the Rules of the New York Stock Exchange, 10 S.E.C. 270, 293 (1941).

Furthermore, NASD and Exchange rules have value in providing evidence as to the terms and conditions under which most securities transactions are governed and have the force of law as between the contracting parties. Definitionally, they may be of assistance to a court in determining standard trade usage.<sup>39/</sup> Under Section 19(a)(1) of the 1934 Act, the Commission is empowered to suspend or expel a national securities exchange for violation of or for failure to enforce this Act and the rules and regulations promulgated thereunder. Violation of an exchange rule does not, ipso facto, involve a

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<sup>39/</sup> e.g., the Short Sales Rule of the 1934 Act (Rule 10a-1) includes such terms as "regular way," "ex-dividend," "ex-right," terms which are in no way directly defined by the Commission. However, Rules 64 and 235 of the New York Stock Exchange define these terms. Furthermore, Securities Exchange Act Release No. 1571 (February, 1938) notes with approval the interpretation of the N.Y.S.E. relative to this Commission Rule.

violation of the Federal securities laws. <sup>40/</sup> By virtue

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40/ In Rospigliosi v. Clogher, 46 So. 2d 170, 172, (Fla. 1950), cert. denied 340 U.S. 853 (1950), the court held that violation of exchange rules, filed with and approved by the Commission as a prerequisite to the exchange's registration, does not automatically involve violation of the Federal securities statutes. The court noted that "any rule or regulation which the exchange considers necessary to insure fair dealing / does not / automatically become a rule under the statute, the violation of which would amount to a transgression of that law.../ The exchange may have as many rules as it considers necessary to just operation, but it must have one that a person guilty of conduct denounced in or under the Act as inconsistent with fair dealing will be disciplined." See Sec. 6(b) of the 1934 Act. See also Section 22(a) of the Investment Company Act of 1940 which specifically empowers a "securities association registered under Section 15A of the ... Exchange Act" to prescribe certain rules. See Rule 26 of Rules of Fair Practice of the NASD.

of Section 15A(1)(1) the Commission may suspend or expel a registered securities association for violation of the 1934 Act and rules or, for failure to enforce compliance with its own rules.

## Secondary Sources

- I. Textbooks
- II. Law Review Articles
- III. Speeches

As previously stated, the relevant pronouncement of any person knowledgeable in the field of securities legislation will be looked to by a court faced with the determination of a problem. Indeed, this outline has frequently quoted or made reference to speeches and articles by present or former Commissioners of the S.E.C. Treatises, such as those by Loss,<sup>41/</sup> McCormack,<sup>42/</sup> and others<sup>43/</sup> are often the only accessible sources of guidance on minor or complex points of law. Certain

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<sup>41/</sup> Securities Regulation (2d ed. 1961)

<sup>42/</sup> Understanding the Securities Act and the SEC (1948)

<sup>43/</sup> e.g., Thomas, Federal Securities Act Handbook;  
Rappaport, SEC Accounting Practice and Procedure (1959)

abstruse topics in this field are fully covered only in law review articles, and the fact that their authors may have no official connection with the S.E.C. does not militate against the worth of their views. Articles and speeches of staff members must first be submitted to the Commission. The fact that the Commission as a matter of practice requires a pro forma disclaimer of approval<sup>44/</sup> does not detract from their merit. As long as they "represent the views of persons who are continuously working with the provisions of the statute involved,"<sup>45/</sup> such texts, articles and speeches may be quoted to courts and the Commission and will be recognized as authoritative sources of opinion.

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44/ "The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission." Conduct Regulation, Rule II (F).

45/ Statement on Informal and Other Procedures, Article I(d), 17 C.F.R. 202.6.

APPENDIX A

Appendix ALegislative History

## Securities Act of 1933

Hearings on Sale of Foreign Bonds or Securities in the United States Before the Senate Committee on Finance, 72d Cong., 1st Sess. (1931-32, 4 pts.)

S. 875, To Provide for the Furnishing of Information and the Supervision of Traffic in Investment Securities in Interstate Commerce, 73d Cong., 1st Sess. (1933)

Hearings on S. 875 Before the Senate Committee on Banking and Currency, 73d Cong., 1st Sess. (1933)

S. Rep. No. 41, on S. 882, from the Senate Committee on the Judiciary, 73d Cong., 1st Sess. (1933)

S. Rep. No. 47, on S. 875, from the Senate Committee on Banking and Currency, 73d Cong., 1st Sess. (1933)

H. R. 4314 (companion to S. 875), 73d Cong., 1st Sess. (1933)

Hearings on H. R. 4314 Before the House Committee on Interstate and Foreign Commerce, 73d Cong., 1st Sess. (1933)

H. R. 5480, To Provide Full and Fair Disclosure of the Character of Securities Sold in Interstate and Foreign Commerce and Through the Mails, and to Prevent Frauds in the Sale Thereof, and for Other Purposes (substitute for H. R. 4314), 73d Cong., 1st Sess. (1933)

H. R. Rep. No. 85, on H. R. 5480, from the House  
Committee on Interstate and Foreign Commerce,  
73d Cong., 1st Sess. (1933)

H. R. Rep. No. 152, on H. R. 5480 (Conference Report),  
73d Cong., 1st Sess. (1933)

Pub. L. No. 22, H. R. 5480 becomes the Securities  
Act of 1933, 48 Stat. 74 (1933), 15 USC  
77a-aa (1958)

## Amendments to the Securities Act of 1933

- 1) Securities Exchange Act of 1934 <sup>1/</sup>
- 2) Motor Carrier Act of 1935 <sup>2/</sup>  
 S. 1629, To Amend the Interstate Commerce Act,  
 ... by Providing for the Regulation of the  
 Transportation of Passengers and Property by  
 Motor Carriers Operating in Interstate or  
 Foreign Commerce, and for Other Purposes, 74th  
 Cong., 1st Sess. (1935)

H.R. 5262 (Companion of S. 1620), 74th Cong., 1st Sess.  
 (1935)

H.R. 6016, To Regulate the Transportation of Persons  
 and Property in Interstate and Foreign Commerce by  
 Motor Carriers Operating on the Public Highways,  
 74th Cong., 1st Sess. (1935)

Hearings on H.R. 5262 and H.R. 6016 Before the House  
 Committee on Interstate and Foreign Commerce, 74th  
 Cong., 1st Sess. (1935)

Hearings on S. 1629 Before the Senate Committee on  
 Interstate Commerce, 74th Cong., 1st Sess. (1935)

S. Rep. No. 482, on S. 1629, from the Senate  
 Committee on Interstate Commerce, 74th Cong., 1st  
 Sess. (1935)

H.R. Rep. No. 1645 on S. 1629, from the House  
 Committee on Interstate and Foreign Commerce, 74th  
 Cong., 1st Sess. (1935)

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1/ Amended the following sections: 2(1); 2(4); 2(10); 3(a)  
 (2); 4(1); 10(b)(1); 11(a); 11(b)(3)(c-d); 11(c); 11(e);  
 13; 15; 19(a).

Deleted the following sections: 4(3); 5(c).

Added the following sections: 3(a)(9); 3(a)(10); 3(a)(11)

2/ Sec. 301 amended Sec. 3(a)(6).

Pub. L. No. 225, S. 1629 becomes the Motor Carrier Act of 1935, 49 Stat. 543 (1935), 49 USC 301-27 (1952)

3) 1941 Proposed Amendments <sup>3/</sup>

Hearings on Proposed Amendments to the Securities Act of 1933 and to the Securities Exchange Act 19 1934, Before the House Committee on Interstate and Foreign Commerce (1941-1942, 6 pts.).

Report of the Securities and Exchange Commission on Proposals for Amendments to the Securities Act of 1933 and to the Securities Exchange Act of 1934. House Committee Print, 77th Cong., 1st Sess. (August 7, 1941)

4) 1945 Amendment <sup>4/</sup>

H.R. 280, To Amend Section 3(b) of the Securities Act of 1933, as Amended, So as To Permit Exemption of Security Issues Not Exceeding \$300,000 From the Provisions of Such Act, 79th Cong., 1st Sess. (1945)

S. 62 (companion to H.R. 280), 79th Cong., 1st Sess. (1945)

H.R. 1626, To Amend Paragraph 16, Schedule A, of the Securities Act of 1933, and Section 15(c) of the Securities Exchange Act of 1934, 79th Cong. 1st Sess. (1945)

H.R. 2344, To Amend Section 3(a) of the Securities Act of 1933, as Amended, Relating to Exempted Securities, 79th Cong., 1st Sess. (1945)

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<sup>3/</sup> This legislative program was not enacted because of the oncome of W.W. II, but is reflected in the 1954 amendments to this Act.

<sup>4/</sup> Amends Sec. 3(b).

S. Rep. No. 123, on S. 62, from the Senate Committee on Banking & Currency, 79th Cong., 1st Sess. (1945)

H.R. Rep. No. 489, on S. 62, from the House Committee on Interstate & Foreign Commerce, 79th Cong., 1st Sess. (1945)

Pub. L. No. 55, S. 62 Amends the Securities Act of 1933, 59 Stat. 167 (1945)

5) 1954 Amendments to the Securities Act of 1933<sup>5/</sup>

S. 2846, to Amend Certain Provisions of the Securities Act of 1933, as Amended, the Securities Exchange Act of 1934, as Amended, the Trust Indenture Act of 1939, and the Investment Companies and Investment Advisers Act of 1940, 83d Cong., 2d Sess. (1954)

H.R. 7550 (companion of S. 2846), 83d Cong., 2d Sess. (1954)

Hearings on S. 2846 Before the Subcommittee on Securities, Insurance and Banking of the Senate Committee on Banking & Currency (published as Securities Exchange Acts Amendments - Hearings), 83d Cong., 2d Sess. (1954)

S. Rep. No. 1036, on S. 2846, from the Senate Committee on Banking and Currency, 83d Cong., 2d Sess. (1954)

Hearings on S. 2846 and H.R. 7550 Before the House Committee on Interstate and Foreign Commerce, 83d Cong., 2d Sess. (1954)

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<sup>5/</sup> Title I amends the following sections: 2(3); 2(8); 2(10); 2(11); 3(a)(11); 4(1); 5; 10; 12; 17(a); 22(a).

H.R. Rep. No. 1542, on S. 2846, from the House Committee on Interstate and Foreign Commerce, 83d Cong., 2d Sess. (1954)

H.R. Rep. No. 2433, (Conference Report), 83d Cong., 2d Sess. (1954)

Pub. L. No. 577, S. 2846 amends the Securities Act of 1933, 68 Stat. 683 (1954)

- 6) Small Business Investment Act of 1958, S. 3651, Pub. L. No. 699, 72 Stat. 689, 15 USC 661-696 (1958) 6/
- 7) 1958 Act Authorizing Abbreviated Records in Reviewing Administrative Agency Proceedings. 7/

H.R. 6682, to Authorize the Abbreviation of the Record on the Review ... of Orders of Administrative Agencies ... (proposed by the Judicial Conference), 84th Cong., 1st Sess. (1955)

Hearings on H.R. 6682 Before a Subcommittee of the House Committee on the Judiciary, 84th Cong., 2d Sess. (1956)

H.R. 6788, Authorizing Abbreviated Records in Reviewing Administrative Agency Proceedings, 85th Cong., 1st Sess. (1957)

6/ Sec. 307(a) amends Sec. 3, by adding a new subsection (c).

7/ Sec. 9 amends Sec. 9(a).

H.R. Rep. No. 842, on H.R. 6788, from the House  
Committee on the Judiciary, 85th Cong., 2d Sess.  
(1958)

S. Rep. No. 2129, on H.R. 6788, from the Senate  
Committee on the Judiciary, 85th Cong., 2d Sess.  
(1958)

Pub. L. No. 791, H.R. 6788 becomes law,  
72 Stat. 945 (1958)

## Securities Exchange Act of 1934

Hearings on Stock Exchange Practices Before the Senate Committee on Banking and Currency, 73d Cong., 1st & 2d Sess. (1933-1934, 20 pts.)

S. 3420, To Provide for the Regulation of Securities Exchanges and of Over-the-Counter Markets Operating in Interstate and Foreign Commerce and Through the Mails, To Prevent Inequitable and Unfair Practices on Such Exchanges and Markets, and for Other Purposes, 73d Cong., 2d Sess. (1934)

S. Rep. No. 792, on S. 3420, from the Senate Committee on Banking and Currency, 73d Cong., 2d Sess. (1934)

H.R. 9323 (companion to S. 3420), 73d Cong., 2d Sess. (1934)

H.R. Rep. No. 1383, on H.R. 9323, from the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934)

H.R. Rep. No. 1383, pt. 2, (Minority Report), 73d Cong., 2d Sess. (1934)

S. Doc. No. 185 (Conference Report on H.R. 9323) 73d Cong., 2d Sess. (1934)

H.R. Rep. No. 1838, (Conference Report on H.R. 9323) 73d Cong., 2d Sess. (1934)

Pub. L. No. 291. H.R. 9323 becomes the Securities Exchange Act of 1934, 48 Stat. 881 (1934), 15 USC 78 (1958)

H.R. Doc. No. 85, 74th Cong., 1st Sess. (1935)

S.E.C., Report on the Government of Securities Exchanges Pursuant to Sec. 19(c) of the Securities Exchange Act of 1934

## Amendments to the Securities Exchange Act of 1934

1) 1936 Amendments to the Securities Exchange Act of 1934 8/

S. Rep. No. 1455 from the Senate Committee on Banking and Currency pursuant to S. Res. 84 (72d Cong.), A Resolution to Investigate Practices of Stock Exchanges With Respect to the Buying and Selling and the Borrowing and Lending of Listed Securities, and S. Res. 56 and S. Res. 97 (73d Cong.), A Resolution to Investigate the Matter of Banking Operations and Practices, Transactions Relating to Any Sale, Exchange, Purchase, Acquisition, Borrowing, Lending, Financing, Issuing, Distributing, or Other Disposition of, or Dealing in, Securities or Credit by Any Person or Firm, Partnership, Company, Association, Corporation, or Other Entity, With a View to Recommending Necessary Legislation, Under the Taxing Power or Other Federal Powers<sub>s</sub>/, 73d Cong., 2d Sess. (1934).

S.E.C., Report on Trading in Unlisted Securities Upon Exchanges, Pursuant to Sec. 12(f) of the Securities Exchange Act of 1934 (1936, G.P.O.)

S. 4023, To Provide for the Continuation of Trading in Unlisted Securities Upon National Exchanges, 74th Cong., 2d Sess. (1936)

H.R. 11526 (companion of S. 4023), 74th Cong., 2d Sess. (1936)

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8/ Amends the following sections: 12(f); 15; 17(a); 18(a); 20(c); 21(f); 23(a); 32.

Hearings on S. 4023 Before the Senate Committee on Banking and Currency, 74th Cong., 2d Sess. (1936)

S. Rep. No. 1739, on S. 4023, from the Senate Committee on Banking and Currency, 74th Cong., 2d Sess. (1936)

Hearings on S. 4023 Before the House Committee On Interstate and Foreign Commerce, 74th Cong., 2d Sess. (1936)

H.R. Rep. No. 2601, on S. 4023, from the House Committee on Interstate and Foreign Commerce, 74th Cong., 2d Sess. (1936)

Pub. L. No. 621. S. 4023 becomes law, 49 Stat. 1375 (1936)

2) Maloney Act of 1938 9/

S. 3255, To Provide for the Establishment of a Mechanism of Regulation Among Over-the-Counter Brokers and Dealers Operating in Interstate and Foreign Commerce or Through the Mails, Comparable to that Provided by the National Securities Exchanges Under the Securities Exchange Act of 1934, and for Other purposes, 75th Cong., 3d Sess. (1938)

H.R. 9592 (companion of S. 3255), 75th Cong., 3d Sess. (1938)

H.R. 9634, To Provide for the Regulation of Over-the-Counter Brokers and Dealers Operating in Interstate and Foreign Commerce, and for Other Purposes, 75th Cong., 3d Sess. (1938)

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9/ Adds the new Section 15A, providing for regulation of over-the-counter brokers and dealers.

Hearings on S. 3255 Before the Senate Committee on Banking and Currency, 75th Cong., 3d Sess. (1938)

S. Rep. No. 1455, on S. 3255, from the Senate Committee on Banking and Currency, 75th Cong., 3d Sess. (1938)

Hearings on S. 3255 and H.R. 9634 Before a Subcommittee of the House Committee on Foreign and Interstate Commerce, 75th Cong., 3d Sess. (1938)

H.R. Rep. No. 2307, on S. 3255, from the House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess. (1938)

Pub. L. No. 719, S. 3255 becomes the Maloney Act of 1938, 52 Stat. 1070 (1938).

3) 1941 Proposed Amendments 10/

4) Wagner Act of 1944 11/

S. 1146, To Amend Section 31 of the Securities Exchange Act of 1934, 78th Cong., 1st Sess. (1943)

H.R. 2862 (companion of S. 1146), 78th Cong., 1st Sess. (1943)

10/ See, above, Amendments to the Securities Act of 1933.

11/ Amends Section 31.

S. Rep. No. 542, on S. 1146, from the Senate Committee on Banking and Currency, 78th Cong., 1st Sess. (1943)

H.R. Rep. No. 1150, on S. 1146, from the House Committee on Interstate and Foreign Commerce, 78th Cong., 2d Sess. (1944)

Pub. L. No. 258. S. 1146 becomes the Wagner Act of 1944, 58 Stat. 117 (1944)

- 5) 1954 Amendments to the Securities Exchange Act of 1934 12/
- 6) 1958 Act Authorizing Abbreviated Records in Reviewing Administrative Agency Proceedings 13/

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12/ Amends Sections 11(d) and 12(d).

See Amendments to the Securities Act of 1933.

13/ Amends Section 25(a).

See Amendments to the Securities Act of 1933.

Hearings on S. 3255 Before the Senate Committee on Banking and Currency, 75th Cong., 3d Sess. (1938)

S. Rep. No. 1455, on S. 3255, from the Senate Committee on Banking and Currency, 75th Cong., 3d Sess. (1938)

Hearings on S. 3255 and H.R. 9634 Before a Subcommittee of the House Committee on Foreign and Interstate Commerce, 75th Cong., 3d Sess. (1938)

H.R. Rep. No. 2307, on S. 3255, from the House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess. (1938)

Pub. L. No. 719, S. 3255 becomes the Maloney Act of 1938, 52 Stat. 1070 (1938).

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S. 1146, To Amend Section 31 of the Securities Exchange Act of 1934, 78th Cong., 1st Sess. (1943)

H.R. 2862 (companion of S. 1146), 78th Cong., 1st Sess. (1943)

10/ See, above, Amendments to the Securities Act of 1933.

11/ Amends Section 31.

S. Rep. No. 542, on S. 1146, from the Senate Committee on Banking and Currency, 78th Cong., 1st Sess. (1943)

H.R. Rep. No. 1150, on S. 1146, from the House Committee on Interstate and Foreign Commerce, 78th Cong., 2d Sess. (1944)

Pub. L. No. 258. S. 1146 becomes the Wagner Act of 1944, 58 Stat. 117 (1944)

- 5) 1954 Amendments to the Securities Exchange Act of 1934 12/
- 6) 1958 Act Authorizing Abbreviated Records in Reviewing Administrative Agency Proceedings 13/

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12/ Amends Sections 11(d) and 12(d).

See Amendments to the Securities Act of 1933.

13/ Amends Section 25(a).

See Amendments to the Securities Act of 1933.

Public Utility Holding Company Act of 1935

S. Res. 83, To Authorize an Investigation of Public Utility Corporations, Holding Companies and Subsidiaries, Stockholders' Control, Their Financial Interests in Financial Engineering, Construction or Management and the Relations of One to the Other, 70th Cong., 1st Sess. (1927)

S. Doc. No. 92, pt. 1, Utility Corporations Report, letter of Transmittal from the Chairman of the Federal Trade Commission to the Secretary of State in response to S. Res. 83, 70th Cong., 1st Sess. (1927) 14/

S. 1725, To Provide for the Control and Elimination of Public Utility Holding Companies Operating, or Marketing Securities, in Interstate and Foreign Commerce and Through the Mails, To Regulate the Transmission and Sale of Electric Energy in Interstate Commerce, To Amend the Federal Water Power Act, and for Other Purposes, 74th Cong., 1st Sess. (1935)

H.R. 5423, To Provide for Control in the Public Interest of Public Utility Holding Companies Using the Mails and the Facilities of Interstate Commerce, To Regulate the Transmission and Sale of Electric Energy and Natural Gas in Interstate and Foreign Commerce, and for Other Purposes, 74th Cong., 1st Sess. (1935)

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14/ Monthly reports were made through December 31, 1935, published as Monthly Report on the Electric Power and Gas Utility Inquiry; bound volumes published as Utility Corporation (84 vols.).

Hearings on H.R. 5423 Before a House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. (1935, 3 pts.)

H.R. Doc. No. 137, Report of the National Power Policy Committee, from President to the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. (1935)

Hearings on S. 1725 Before the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. (1935)

S. 2796, To Provide for Control and Regulation of Public Utility Holding Companies, and for Other Purposes, 74th Cong., 1st Sess. (1935)

S. Rep. No. 621, on S. 2796, from the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess. (1935)

S. Rep. No. 621, pt. 2, (Minority Report), 74th Cong., 1st Sess. (1935)

H.R. Rep. No. 1318, on S. 2796 from the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. (1935)

H.R. Rep. No. 1903 (Conference Report on S. 2796), 74th Cong., 1st Sess. (1935)

Pub. L. No. 333. S. 2796 becomes the Public Utility Holding Company Act of 1935, 49 Stat. 803 (1935), 15 U. S. C. 79-z-6 (1958)

Amendments to the Public Utility Holding Company  
Act of 1935

1) Proposed Amending Acts

S. 2643, To Promote the Common Defense and the General Welfare of the People of the United States by Encouraging Maximum Development of Low Cost Electric Energy from All Sources of Power, Including Atomic Energy, Coal, Oil, Natural Gas and Water. (Introduced as an amendment to the Public Utility Holding Company Act of 1935), 84th Cong., 1st Sess. (1955)

Hearings on S. 2643 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 84th Cong., 2d Sess. (1956)

S. Rep. No. 2287, on S. 2643, from the Senate Committee on Interstate and Foreign Commerce, 84th Cong., 2d Sess. (1956)

S. Rep. No. 2529, on S. 2643, from the Joint Committee on Atomic Energy, 84th Cong., 2d Sess. (1956)

H.R. 9743, To Encourage Maximum Development of Atomic Energy Reactors for the Generation of Low Cost Electric Power and the Production, Utilization and Treatment of Special Nuclear and other Materials, and for Other Purposes, 84th Cong., 2d Sess. (1956)

H.R. Rep. No. 2694, on H.R. 9743, from the Joint Committee on Atomic Energy, 84th Cong., 2d Sess. (1956)

2) 1958 Act Authorizing Abbreviated Records in  
Reviewing Administrative Agency Proceedings 15/

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15/ Amends Section 24(a).

See Amendments to the Securities Act of 1933.

## Trust Indenture Act of 1939

S.E.C. Report on the Study and Interpretation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees, Part VI - Trustees Under Indentures (1936)

S. 2344, To Provide for the Regulation of the Sale of Certain Securities in Interstate and Foreign Commerce, and the Trust Indentures Under Which the Same Are Issued, and for Other Purposes, 75th Cong., 1st Sess. (1937)

Hearings on S. 2344 Before a Subcommittee of the Senate Committee on Banking and Currency, 75th Cong., 1st Sess. (1937)

H.R. 10292 (companion of S. 2344), 75th Cong., 3rd Sess. (1938)

S. Rep. No. 1619, on S. 2344, from the Senate Committee on Banking and Currency, 75th Cong., 3d Sess. (1938)

Hearings on H.R. 10292 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess. (1938)

S. 477, To Provide for the Regulation of the Sale of Certain Securities in Interstate and Foreign Commerce and the Regulation of the Trust Indentures Under Which the Same Are Issued, and for Other Purposes, 76th Cong., 1st Sess. (1939)

H.R. 2191 (companion to S. 477), 76th Cong., 1st Sess. (1939)

Hearings on S. 477 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 1st Sess. (1939)

H.R. 5220, To Provide for the Regulation of the Sale of Certain Securities In Interstate and Foreign Commerce and Through the Mails, and the Regulation of the Trust Indentures Under Which the Same Are Issued, and for Other Purposes, 76th Cong., 1st Sess. (1939)

Hearings on H.R. 2191 and H.R. 5220 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. (1939)

S. 2065, To Provide for the Sale of Certain Securities in Interstate and Foreign Commerce and Through the Mails, and the Regulation of the Trust Indentures Under Which the Same Are Issued, and for Other Purposes, 76th Cong., 1st Sess. (1939)

H.R. Rep. No. 1016, on S. 2065, from the House Committee on Interstate and Foreign Commerce, 76th Cong., 1st Sess. (1939)

Pub. L. No. 253. S. 2065 becomes the Trust Indenture Act of 1939, 53 Stat. 1149 (1939)  
15 USC 77aaa-bbbb (1958)

## Amendments to the Trust Indenture Act of 1939

- 1) 1954 Amendments to the Trust Indenture Act of 1939 16/
- 2) Small Business Investment Act of 1958 17/

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16/ Section 301-306 amends the following Sections:  
303, 304, 305, 306; 324.

See Amendments to the Securities Act of 1933.

17/ Section 301(b) amends Section 304.

See Amendments to the Securities Act of 1933.

Investment Companies and Investment Advisers Acts  
of 1940

S.E.C. Study of Investment Trusts and Investment Companies Pursuant to Section 30 of the Public Utility Holding Company Act of 1935

H.R. 8935, To Provide for the Registration and Regulation of Investment Companies and Investment Advisers, and for Other Purposes, 76th Cong., 3d Sess. (1940)

S. 3580 (companion to H.R. 8935), 76th Cong., 1st Sess. (1940)

Hearings on S. 3580 Before A Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. (1940, 4 pts.)

S. 4108 (substitute for S. 3580), 76th Cong., 3d Sess. (1940)

S. Rep. No. 1775, on S. 4108, from the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. (1940)

H.R. 10065 (substitute for H.R. 8935), 76th Cong., 3d Sess. (1940)

Hearings on H.R. 10065 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess. (1940)

H.R. Rep. No. 2639, on H.R. 10065, from the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess. (1940)

Pub. L. No. 768, H.R. 10065 becomes the Investment Company and Investment Advisers Act of 1940, 54 Stat. 789 (1940), 11 U.S.C. 72(a) and 107(f), 15 U.S.C. 80a-1-80b-21

Amendments to the Investment Companies and  
Investment Advisers Acts of 1940

- 1) 1954 Amendments to the Investment Companies and Investment Advisers Act of 1940 18/
- 2) Small Business Investment Act of 1958 19/
- 3) 1958 Act Authorizing Abbreviated Records in Reviewing Administrative Agency Proceedings 20/
- 4) Pub. L. No. 750, S. 3773 amends the Investment Advisers Act of 1940, 74 Stat. 885 (1960) 21/

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18/ Sec. 401-403 amends Section 2(a)(30) and 24(d)  
Sec. 401-403 adds Section 24(e)  
See Amendments to the Securities Act of 1933

19/ Section 307(c) adds a new subsection (K) to  
Section 18  
See Amendments to the Securities Act of 1933

20/ Sec. 26 amends Section 43(a) and Section 213(a)

21/ Amends the following Sections: 202(a)(12);  
202(a)(18); 203(c)(1)(F); 203(c)(2); 203(d);  
203(e); 203(g); 204, 205, 206, and adds para. 4  
to Sect. 206; 208; 208(c), and adds subsection  
(d); 209(e); 210(b); 211(a); 217; and adds Sect. 222

APPENDIX B

Appendix B

## Republication of Past Commission Releases

When the Administrative Procedure Act became effective in September of 1946, the S.E.C. decided to republish 1/ the following past releases 2/ in volume 11 of the Federal Register (#189, pp. 109212 ff., September 27, 1946):

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1/ The Commission added the following caveat:  
"The interpretative opinions included herein are opinions issued in the past for the guidance of the public by members of the Commission's staff (or in a few instances by the Commission) and heretofore made public pursuant to Commission authorization. The opinions are to be read as of the date of original publication and in the context of the rules, statutes and circumstances then existing. However, opinions or portions of opinions which are clearly obsolete have been omitted. While it is not clear that publication of interpretative opinions of this kind in the Federal Register is required, it is believed that such publication may be helpful to the public and that it falls within the spirit of the Administrative Procedure Act. ..."

2/ For a brief description of the subject-matter covered in Commission releases pertaining to a specific Act, see CCH: Federal Securities Law Reporter.

- A. Accounting Series Releases #1-55
- B. Interpretative releases relating to the Securities Act of 1933 and General Rules and Regulations thereunder:

<u>Number</u>		<u>Date</u>
45	of	September 22, 1933
70	"	November 6, 1933
86	"	December 13, 1933
97	"	December 28, 1933
131	"	March 13, 1934
185	"	June 20, 1934
201	"	July 20, 1934
285	"	January 24, 1935
312	"	March 15, 1935
401	"	June 18, 1935
464	"	August 19, 1935
493	"	September 20, 1935
538	"	October 26, 1935
603	"	December 16, 1935
646	"	February 3, 1936
802	"	May 23, 1936
828	"	June 4, 1936
874	"	July 2, 1936
929	"	July 29, 1936
1256	"	February 9, 1937
1376	"	April 7, 1937
1459	"	May 29, 1937
1503	"	July 12, 1937
1580	"	October 19, 1937
1862	"	December 14, 1938
1934	"	April 5, 1939
2029	"	August 8, 1939
2340	"	August 23, 1940
2623	"	July 25, 1941
2899	"	February 5, 1943
2955	"	November 16, 1943
2956	"	November 11, 1943

<u>Number</u>		<u>Date</u>
2997	of	June 1, 1944
3000	"	June 7, 1944
3011	"	August 28, 1944
3088	"	January 4, 1945

C. Interpretative releases relating to the Securities Exchange Act of 1934 and General Rules and Regulations thereunder:

<u>Number</u>		<u>Date</u>
21	of	October 1, 1934
68	"	July 22, 1934
116	"	March 9, 1935
175	"	April 16, 1935
227	"	May 14, 1935
1131	"	April 7, 1937
1350	"	August 13, 1937
1411	"	October 7, 1937
1462	"	November 15, 1937
1571	"	February 5, 1938
1965	"	December 21, 1938
2066	"	May 5, 1939
2446	"	May 18, 1940
2687	"	November 16, 1940
2690	"	November 15, 1940
2822	"	March 17, 1941
3040	"	October 13, 1941
3056	"	October 27, 1941
3085	"	December 6, 1941
3380	"	February 2, 1943
3385	"	February 17, 1943
3505	"	November 16, 1943
3506	"	November 16, 1943
3572	"	June 1, 1944
3674	"	April 9, 1945
3803	"	March 28, 1946

D. Interpretative releases relating to the Trust Indenture Act of 1939 and General Rules and Regulations thereunder:

<u>Number</u>		<u>Date</u>
16	of	November 14, 1941
30	"	August 28, 1944
31	"	January 4, 1945

E. Interpretative releases relating to the Investment Company Act of 1940 and General Rules and Regulations thereunder:

<u>Number</u>		<u>Date</u>
12	of	November 16, 1940
69	"	February 19, 1941
71	"	February 21, 1941
78	"	March 4, 1941
87	"	March 14, 1941
89	"	March 13, 1941
150	"	June 20, 1941
167	"	July 23, 1941
214	"	September 15, 1941
446	"	February 5, 1943
448	"	February 17, 1943
735	"	January 3, 1945

F. Interpretative releases relating to the Investment Advisers Act of 1940 and General Rules and Regulations thereunder:

<u>Number</u>		<u>Date</u>
2	of	October 28, 1940
8	"	December 12, 1940
40	"	February 5, 1945

G. Interpretative releases relating to Corporate Reorganizations under Chapter X of the Bankruptcy Act:

<u>Number</u>		<u>Date</u>
1	of	September 26, 1938
2	"	September 26, 1938

An Annual Codification Guide is published to each volume of the Federal Register, and if the release number is known, it may be found with the help of the following guide:

Title 17, Chapter II relates to Securities Law  
 Section 211 - refers to accounting releases  
 " 231 - " " 1933 Act releases  
 " 241 - " " 1934 Act releases  
 " 251 - " " 1935 Act releases  
 " 261 - " " 1939 Act releases  
 " 271 - " " 1940 Inv. Co.  
 Act releases  
 " 276 - " " 1940 Inv. Adv.  
 Act releases  
 " 281 - " " Chap. X releases

Thus, 211.17 - means accounting release #17;  
 231.3890 - means 1933 Act release #3890.

