

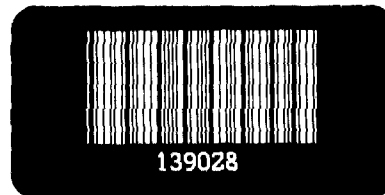
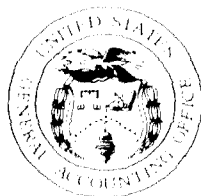
GAO

Report to the Chairman, Subcommittee on  
Government Information, Justice, and  
Agriculture, Committee on Government  
Operations, House of Representatives

June 1989

# INFORMATION ACCESS

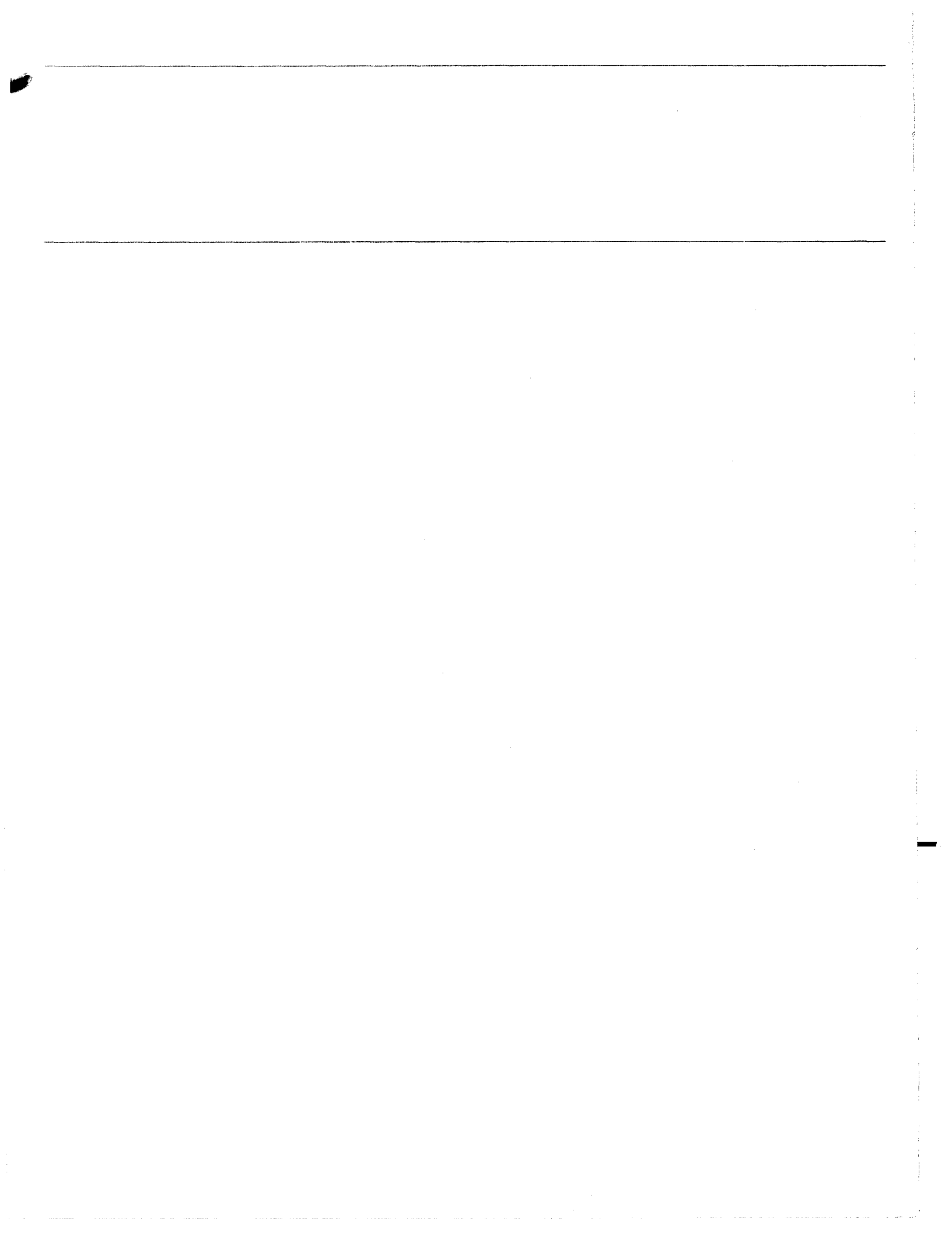
## Improving Securities and Exchange Commission's Public Reference Room Operations



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General Government Division

B-231278

June 7, 1989

The Honorable Robert E. Wise, Jr.  
Chairman, Subcommittee on Government  
Information, Justice, and Agriculture  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

In response to the July 14, 1988, request of the former Chairman, we have reviewed complaints by regular users of the Securities and Exchange Commission's (SEC) public reference room in Washington, D.C., stemming from SEC changes in public access rules. We have also examined related legal issues. We found that SEC has continued to adjust reference room operating procedures. The changes made have been consistent with applicable laws, regulations, and court decisions.

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## Background

The SEC is mandated by law to disseminate information to the public. It operates public reference facilities containing current and historical corporate filings (documents disclosing material financial and other information companies must file with the SEC), SEC releases, and other public documents in paper and microfiche format. At these facilities, the public may inspect documents and obtain copies for a fee.

The reference room in Washington, D.C., is used primarily by employees of companies (called regular users) who research and sell copies of and information from corporate filings and other documents.

In June 1988, SEC eliminated public access to the microfiche files maintained in its reference room. This resulted in an outcry from regular users who also raised questions about the legality of SEC's actions.

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## Objectives, Scope, and Methodology

As agreed with the Subcommittee, our objectives were to (1) identify the concerns of regular users of SEC's Washington, D.C., public reference room, (2) obtain SEC staff views on these concerns, (3) provide any observations and recommendations we had on areas of concern, and (4) identify and give opinions on relevant legal issues.

We interviewed regular users of the reference room, employees of SEC's contractor for producing microfiche copies of filings, and SEC staff

responsible for the operation of the reference room. We reviewed reference room rules and procedures, applicable statutes, relevant court decisions and regulations, and observed the operation of the reference room. We did our initial work in August 1988 and we resumed work in November 1988 after additional SEC rules changes became effective. We completed our work in early February 1989. We did our review in accordance with generally accepted government auditing standards. Appendix I contains further discussion of our review objectives, scope, and methodology and provides additional background information on the operation of the reference room.

## Results

In August, we identified six areas of concern to regular users caused by SEC's restriction on reference room operations. (See app. II.) However, SEC made changes in the management of the reference room, hired and trained new employees, adopted new operating rules, reallocated carrels (the space assigned to regular users in the reference room), and extensively remodeled the room. Thus, our subsequent work identified only two remaining areas of concern.

Regular users said that:

- Closing the microfiche files to the public and allowing only SEC staff to fill users' microfiche requests led to delays in obtaining these materials and more difficulty in doing research.
- SEC's microfiche contractor received copies of certain time-sensitive documents before regular users received them in the reference room. This gave the contractor an unfair advantage over regular users, who compete with the contractor in selling information from these documents.

SEC officials told us that they operate the reference room to benefit the public, not just the regular users. They said that to maintain microfiche files in an orderly condition so that information will be readily available to the public, they must control access to the files. Open access to the microfiche files resulted in disorderly files and was conducive to microfiche theft. They also said that increased use of the files had exacerbated these problems.

In our opinion, open microfiche files might provide operating economies to SEC because fewer staff may be required if files are open and users help themselves. Researchers could also benefit by being able to browse through material when they are uncertain about the specific document being sought. However, on balance, we agree with SEC's closing of the

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files. Closed microfiche files may increase the time needed to obtain materials, but such a policy makes it easier to maintain orderly and secure files so that the materials will be available to all. Moreover, an open files policy may also increase the time needed to obtain materials if files become so disorderly that it is difficult to locate materials. SEC has established some time goals for filling microfiche requests and appears to be meeting them.

We observed that the microfiche contractor did have earlier access to certain time-sensitive documents. Although SEC staff delivered copies of these documents to the reference room before they delivered copies to a nearby location for the contractor, the reference room staff processed the copies to facilitate subsequent shelving and retrieval before releasing them to users of the reference room. Because the processing time in the reference room could exceed the time it took the messenger to deliver copies to the contractor, the contractor could receive access first.

We discussed the need to eliminate the contractor's earlier access to information with SEC reference room officials. They told us they planned to eliminate nearly all SEC staff processing of certain filings, which they later said had been accomplished. Regular users decided among themselves to give these filings the batch numbers SEC staff had been assigning to help the users later find and retrieve the information. A complete discussion of original concerns, remaining concerns, SEC actions, and our observations are contained in appendix III. Appendix IV identifies legal issues raised by the former Chairman's July 14, 1988, letter and gives our opinions.

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## Agency Comments

As agreed, we did not obtain written agency comments. However, we discussed our work with SEC officials responsible for the operation of the reference room. They told us they do not necessarily accept regular user complaints as reasons for making changes to reference room operations. They said that operating the reference room to benefit all the public may not always serve the profit-making needs of regular users. They also suggested some technical changes, which are incorporated where appropriate.

As agreed with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the issue date. At that time, we will send copies to the Chairman, Securities and Exchange Commission, and other interested parties upon request.

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If you have any questions regarding this report, please contact me on (202) 275-8678. Major contributors to the report are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Craig A. Simmons". The signature is fluid and cursive, with a large initial "C" and "S".

Craig A. Simmons  
Director, Financial Institutions  
and Markets Issues



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## Abbreviations

GAO	General Accounting Office
SEC	Securities and Exchange Commission





# Background and Objectives, Scope, and Methodology

## Background

The Securities Act of 1933 and the Securities Exchange Act of 1934 together mandate the principle of full disclosure. Full disclosure requires (1) disclosure of sufficient information concerning an investment opportunity to enable prospective investors to make an informed investment decision, and (2) a continuous flow of information to investors (ensured by periodic reporting requirements). SEC is mandated by law to disseminate such information to the public, although the specifics of how this should be accomplished are left to the agency. SEC makes information available at public reference room facilities in its Washington, D.C.; New York; and Chicago offices. These public reference facilities maintain current and historical corporate filings (documents disclosing material financial and other information companies must file with SEC), SEC releases, and other public documents in paper and microfiche format. At these facilities, the public may inspect documents and obtain copies for a fee.

SEC receives corporate filings in multiple copies in paper form at its headquarters office in Washington, D.C. It transfers these filings to microfilm copies, called microfiche, which have served as the official SEC records since 1979. The agency has a contractor who microfilms, from paper copies supplied by SEC, all filings it receives. Paper copies are maintained in the reference room in Washington, D.C., for about 30 days, until the contractor delivers microfiche copies.

When SEC's reference room was moved to its current location at 450 5th St., N.W., Washington, D.C., the microfiche files were initially closed to the public, and SEC staff filled the public's requests. (The files were completely open to the public in the prior location.) However, increased demand for microfiche files without a commensurate increase in SEC staff soon led the agency to open the files to the public again. According to SEC staff, the microfiche files became disorderly. On June 20, 1988, SEC closed direct public access to the microfiche files to regain control of and restore order to the files and to implement a new filing system. Regular users expressed concern over being denied direct access to the files and also expressed dissatisfaction with other aspects of the reference room's operation.

The reference room in Washington, D.C., is used primarily by employees of companies (called regular users) who research and sell to clients copies of and information from corporate filings and other documents. The number of filings made with the SEC has increased significantly in recent years, as has the demand for information from those filings and the number of regular users. Regular users may be assigned space in the

reference room (designated desks or carrels) at no charge and are permitted to install telephones at their own expense. Of 64 carrels, 48 are assigned to regular users, with the remaining 16 designated for the public.

The microfilm contractor does not charge SEC for the microfiche it produces for the agency. The contractor provides photocopying and microfiche copying machines in the reference room and charges the public (including regular users) SEC-approved prices for these copying services. The contractor also sells information from and copies of corporate filings and other documents to clients in competition with regular users of the reference room. In contrast to regular users, the contractor is not assigned space in the reference room and uses its own copies of filings, received for microfilming purposes, and the copies and microfiche it produces from them to provide these services.

During the interval between the time SEC receives a filing in paper form and the time the microfiche copy is made, a paper copy is available in the reference room for inspection and copying. There is considerable demand for many of these filings, particularly when they are initially received in the reference room. In order to facilitate initial access, paper copies are systematically circulated among regular users who wish to use or copy them ("rotation"). Each regular user may use the paper documents on rotation for specified periods of time, from 1 to 1-1/2 hours, depending on the type of filing.

Demand is especially great for certain filings called Williams Act (82 Stat. 454, as amended) filings. These filings contain particularly time-sensitive information relating to mergers and acquisitions that can be extremely valuable to potential investors. Recognizing this demand, SEC makes two copies of these filings available hourly in the reference room for inspection and copying and has provided two separate rotations among users for these filings.

An additional single copy of Williams Act filings is also made available hourly to SEC's contractor for producing microfiche copies, and these copies are placed in a tray separate from the container in which all other filings are placed. The contractor picks up other filings in batches twice daily. The contractor's copies are made available in SEC's document control center, a room across the lobby from the public reference room.

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Until July 1988, the contractor's copies of Williams Act filings were made available before these filings were delivered to the reference room. Since then, the contractor's copies have not been made available until after copies have been delivered to the public reference room.

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## **Objectives, Scope, and Methodology**

As stated previously, our objectives were to (1) identify the concerns of regular users of SEC's Washington, D.C., public reference room, (2) obtain SEC staff views on these concerns, (3) provide any observations and recommendations we had on areas of concern, and (4) identify and give opinions on relevant legal issues.

In August 1988, we interviewed nine regular users of the reference room who contacted us or were referred to us. The regular users related many complaints. We identified six areas that were of concern to more than one regular user, that is, at least two of the nine users had the same complaints. (See app. II.)

After changes in the reference room rules became effective in November 1988, we again interviewed regular users. We broadened our contacts to include all regular users of the reference room who were assigned carrels (21 firms) plus 2 other regular users. Eighteen regular users responded, and they indicated that two of the original six areas of concern remained after November 1988. To qualify as a remaining area of concern, a complaint had to be common to at least 4 of the 18 regular users, equivalent to the same proportion used for identifying the earlier six concerns.<sup>1</sup>

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<sup>1</sup>The same two remaining areas of concern would have emerged if the threshold level of commonality had been three instead of four. We also note that each of the two remaining areas of concern were common to 10 or more regular users.

# Earlier Concerns of Regular Users

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Six areas of concern emerged from our interviews with regular users in August 1988. According to them:

- Closed microfiche files forced users who needed such materials quickly to buy them from SEC's microfiche contractor.
- SEC's contractor for producing microfiche copies of corporate filings received paper copies of certain time-sensitive filings (Williams Act filings) before they were available in the reference room. This provided the contractor with an unfair advantage over other vendors in marketing this information.
- SEC did not provide sufficient notice and opportunity for comment on changes in reference room procedures.
- The rotation system for circulating paper copies of new filings among regular users in the reference room was not a true rotation but a fixed routing favoring older, established regular users.
- SEC did not establish clear and fair criteria for assigning carrels in the reference room to regular users. Those users assigned carrels were allowed to install phones (at their own expense), thereby facilitating their ability to market information to customers.
- Staff was insufficient and inadequately trained.

# SEC Actions and Remaining Concerns of Regular Users

## SEC Actions

About the time we began our work, management of the reference room was transferred to SEC's Office of Applications and Report Services. Staff in that office have many years of experience in managing SEC's "staff only" microfiche files. SEC hired and trained new employees to work in the reference room and established goals for filling microfiche requests within specified times. The room was extensively remodeled and two electronic boards were installed to display titles of Williams Act filings about to be delivered in the reference room.

SEC reallocated carrels in November 1988 to provide at least one assigned space for each regular user who requested carrels and whose primary business was information research and dissemination of reference room materials. Additional carrels were allocated on the basis of the number of years a firm was located in the reference room, the number of employees per firm using the reference room, and the number of times those employees were actually in the reference room. Carrel allocations are temporary. Depending upon the number of applicants and other considerations at the time, different criteria may be used when SEC reexamines carrel allocations in July 1989.

SEC also adopted new rules for the operation of its reference room in November 1988. Among the changes in rules was a new system for rotating filings among regular users. This system eliminates the fixed routing system that favored older, established regular users. SEC now prepares lists governing the order in which each regular user will receive a copy of each type of paper filing. Regular users must apply in writing for this privilege. Each week SEC issues a new rotation list for each filing type such as corporate annual reports (10K) or quarterly reports (10Q). Each week the regular user that was first to receive the particular filing type the prior week moves to last place on the list for that filing type, and in each succeeding week the user will move up one place on the list.

When we again interviewed regular users after the SEC actions described above became effective, we found that the number of areas of concern had declined to two. In these latter interviews, regular users frequently commented favorably upon management efforts and changes in the reference room. While they were opposed to closed microfiche files, many users noted a more rapid turnaround for microfiche requests. Many firms also noted the fairness of the criteria for allocating carrels, improved staffing, and the fairness of the system for rotating filings.

The SEC actions described may be the main reason for the decline in the number of areas of concern by regular users and the favorable comments about SEC reference room management.

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## **Remaining Concerns of Regular Users**

The two remaining areas of concern were the closed microfiche files and the contractor's earlier access to filings.

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### **Closed Microfiche Files**

After SEC closed the microfiche files, regular users told us that SEC staff were taking too long to fill their microfiche requests and frequently were unable to locate them at all.

According to SEC staff, microfiche files must be maintained in an orderly condition so that the information will be readily available to the public. Only by controlling access to the microfiche files could they ensure the orderly condition of those files. They cited 15 years of experience with open files in a disorderly condition in supporting their decision to keep the files closed. They were also concerned with theft of the microfiche, and they claimed that if the files were open they could not control theft. They stated further that if the files were open they could not ensure that charge-out slips would be left when microfiche was in use, that microfiche would be returned in the allowable charge-out time periods, or that the microfiche would be properly filed after it had been used.

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### **GAO Observations**

Open microfiche files might provide operating economies to SEC because fewer staff may be required if files are open and users help themselves. Researchers could also benefit by being able to browse through material when they are uncertain about the specific document they seek. However, on balance, we agree with SEC's closing of the files. Closed microfiche files may increase the time for obtaining materials, but such a policy makes it easier to maintain orderly and secure files so that the materials will be available to all. Moreover, an open files policy may also increase the time for obtaining materials if files thereby become so disorderly that it is difficult to locate materials.

Closed microfiche files require more staff than an open system of files in which a self-help policy is permitted. SEC tried a closed access system before and returned to open access because of increased demand for microfiche without a commensurate staff increase. The current closed

access system can be satisfactorily maintained only if SEC sufficiently staffs the reference room to meet the demand for information.

We analyzed summary records provided by SEC of the time required to fill microfiche requests for 1 week in December 1988. Each record may have included one to six pieces of microfiche. Our analysis of these records indicates that SEC's goal of 1 to 2 hours' turnaround time for microfiche covering the most recent 3 years was met in 93 percent of the requests; the goal of 24 hours' turnaround time for microfiche between 4 and 10 years old was met in 100 percent of the requests.

The reason why some regular users might have concluded that some microfiche could not be located was that SEC staff did not or could not explain the category of "unobtainable" marked on the request slips when microfiche requests were returned unfilled. A new policy was adopted in February 1989 that should eliminate such cases. If a request is returned as unobtainable, it must be further marked by SEC staff to indicate the reason; for example, "unobtainable-charged out" or "unobtainable-nonpublic request."

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## Earlier Access to Filings

According to regular users, SEC's contractor for producing microfiche copies of corporate filings received paper copies of certain time-sensitive (Williams Act) filings in the document control center before they were made available in the reference room. Thus the contractor could have an unfair advantage over other vendors in marketing the information contained in these filings.

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## GAO Observations

SEC's method of distributing filings enabled its contractor to gain access to Williams Act filings before regular users did. Although these filings were delivered first to the reference room, they were processed to facilitate subsequent shelving and retrieval before they were released to users of the reference room.<sup>1</sup> From the perspective of the regular users, information from SEC filings is not public until that information is released to users in SEC's public reference room.

While the filings were being processed in the reference room, the messenger delivered the contractor's copy in the document control center. Because the processing time in the reference room could exceed the time

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<sup>1</sup>The processing consisted mainly of labeling each filing with a control number, and labeling printouts of document titles and file folders with corresponding control numbers.



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**Appendix III  
SEC Actions and Remaining Concerns of  
Regular Users**

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it took the messenger to deliver the filings to the contractor, the contractor could receive earlier access. Indeed, in most of the instances we observed, this processing enabled the contractor to pick up his copies before they were released in the reference room.

We discussed the need to eliminate the contractor's earlier access to information with SEC reference room officials. They told us they planned to eliminate nearly all SEC staff processing of Williams Act filings which they later said had been accomplished. Regular users decided among themselves to give these filings the batch numbers SEC staff had been assigning to help the users later find and retrieve the information.

# Legal Issues

The following legal issues were raised by the former Subcommittee Chairman's July 14, 1988, letter, and we are providing GAO's opinions on these issues.

## Issue 1

Did SEC's action in closing direct user access to microfiche files in its public reference room violate any applicable statute or regulation?

## GAO Opinion

No. Neither the statutes nor regulations governing SEC's actions in making its files available to the public address this specific issue. In our opinion, this action is a matter of internal reference room management and operations.

Two separate sets of statutory requirements regulate SEC's actions in making information available to the public. First, provisions in a variety of securities laws, including the Securities Act of 1933, 15 U.S.C. Sec. 77f(d); the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78m(f)(3); the Public Utility Holding Company Act of 1938, 15 U.S.C. Sec. 79v(a); the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-44(a)(b); and the Investment Advisors Act of 1940, 15 U.S.C. Sec. 80b-10(a) govern public disclosure of SEC filings.<sup>1</sup>

Second, under the separate requirements of the Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552, every federal agency must (unless specifically exempted by FOIA provisions found at 5 U.S.C. Sec. 552[b]), upon any reasonably descriptive request for records in compliance with the agency's FOIA procedures, provide these records promptly to the requester (5 U.S.C. Sec. 552[a][3]).

SEC's regulations implementing both its own securities disclosure statutes and FOIA are found at 17 C.F.R. Part 200. Under 17 C.F.R. Sec. 200.80(c)(1), SEC provides that:

"In order to disseminate records, including those listed in Appendix A to this section, the Commission has a specially staffed and equipped public reference room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C. (202-272-7450) and public reference facilities in some regional offices."

<sup>1</sup>As a representative example, 15 U.S.C. Sec. 77f(d) provides: "The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe."

Requests for access to records available through the Commission's public reference facilities may be made in person during normal business hours at those facilities or by mail (17 C.F.R. Sec. 200.80[d][1]).

Either closed or open microfiche files are plainly permissible under the applicable statutes and SEC regulations. SEC went from an open-stack policy to closed stacks for a brief period of time, then back to open stacks when the staffing level of the reference room could not handle the demand—all without significant change in the applicable regulation.<sup>2</sup> This change is a matter of SEC's internal operation of its public reference facility.

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## Issue 2

Did the manner in which SEC changed microfiche access provisions in its public reference room (without notice and opportunity for comment) violate any applicable statutes or regulations?

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## GAO Opinion

No. SEC's decision to close direct public access to its microfiche files was an internal policy decision. SEC's decision to change this policy on very short notice did not violate the Freedom of Information Act or any general requirements for regulatory notice and comment as found in the Administrative Procedures Act.

Under FOIA, at 5 U.S.C. Sec. 552(a)(1)(A), an agency must publish in the Federal Register descriptions of the places at which, employees from whom, and methods by which the public may obtain information, make submittals or requests for information, or obtain decisions. Furthermore, an agency must publish in the Federal Register any amendment, revision, or repeal of the above material (5 U.S.C. Sec. 552[a][1][E]). As discussed in response to issue 1, the provisions of 17 C.F.R. Part 200, specifically at 200.80(a), set out in general terms the procedures by which the public may obtain information from SEC's public reference rooms. These regulations are sufficiently general to give SEC the discretion to provide open or closed microfiche access. And as already noted, SEC has changed its reference room policy several times over the past 10 years.

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<sup>2</sup>Although the language at 17 C.F.R. Sec. 200.80(a) was revised in June 1987, exchanging the term "requests for inspection of records" to "requests for access to records," this change is not significant for purposes of this discussion. (See 52 Fed. Reg. 24146 [1987].)

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**Issue 3**

Is SEC authorized to allocate specifically reserved desks (carrels) to users of its public reference room facilities?

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**GAO Opinion**

Yes. The reserved desk privilege is a type of license for exclusive use of a reference room desk during business hours. GAO cases have determined that the head of a government department or agency is authorized, in appropriate circumstances, to grant to a private person a nonexclusive, nontransferable, revocable permit or license for the use of government property for nongovernment business, provided that the use does not injure the property in question and serves some purpose that is useful or beneficial to the government (B-191943, Oct. 16, 1978). As to SEC's method of granting certain users special access to reference desks over other users, we believe this matter is within the discretion of SEC's management of the reference room.

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