U.S. SECURITIES AND EXCHANGE COMMISSION

"Annual report, 54th, 1988

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D C 20549

OFFICE OF
THE CHAIRMAN

May 23, 1989

The Honorable Dan Quayle
President of the Senate
Washington, D.C. 20510

The Honorable Thomas S. Foley
Speaker of the House
Washington, D.C. 20515

Gentlemen:

It is an honor to transmit the Fifty-Fourth Annual Report of the Securities and Exchange Commission for the fiscal year ended September 30, 1988.

Although the 1988 fiscal year was dominated by activities relating to the October 1987 market break, the Commission carried out its statutory responsibilities successfully during the fiscal year.

Statutory responsibilities of the Commission include enforcing the federal securities laws, mandating complete and accurate disclosure by issuers, overseeing stock exchanges and secondary market participants, regulating investment companies and investment advisers and engaging in appellate and other litigation. The Commission successfully discharged these responsibilities during the fiscal year in both headquarters and regional offices.

The chart below shows some indicators of Commission activities during the year:*

	1984	1985	1986	1987	1988
Enforcement Actions	299	269	312	303	252
Filings Given Full Review	7,237	9,571	10,526	10,797	10,985
Broker-Dealer Oversight Exams	389	447	481	452	421
SRO Inspections	20	21	22	23	21
Investment Co. and Adviser Inspections	1,334	1,606	1,906	2,033	2,150

* Resources: Although the Commission carried out its mission successfully during fiscal year 1988, several factors have severely strained resources. One has been an increase in the number of complex enforcement cases requiring extensive commitment of resources. Another has been the continued dramatic growth in the numbers of broker-dealers, investment companies, and investment advisers subject to Commission regulation. The October 1987 market break and its aftermath have created resource demands, and increasing internationalization of the securities markets is also having an on-going effect on the Commission and its resources. As a means of addressing resource constraints, and in response to a request from the Senate Banking Committee, the Executive Director's Office of the Commission prepared a study and offered legislative alternatives on the feasibility of various means of self-funding the agency while retaining accountability to Congress. The study also analyzed the effects of salary differentials between the Commission and those in the private sector or in the industry the Commission regulates.

Enforcement: During the fiscal year, the Commission initiated 252 enforcement actions. These cases involved insider trading, market manipulation, deficient or fraudulent corporate reporting and accounting, broker-dealer violations, and other matters. Some of the most significant cases in the Commission's history were initiated or successfully litigated during the time period. The number of complex cases, requiring substantial resources, increased markedly during the year, accounting for a lower number of cases brought than in previous fiscal years.

The Commission took steps to enhance enforcement authority, both domestically and internationally. During the fiscal year, the Commission developed and sent to Congress the International Enforcement Cooperation Act of 1988. The Act was designed to strengthen the Commission's ability to protect investors and to enforce the federal securities laws in increasingly internationalized markets. (Significant aspects of this legislation were enacted after the close of the fiscal year.) As part of its internationalization efforts, the Commission signed memoranda of understanding with three Canadian provinces and with Brazil, which serve as models for future negotiations. In addition, the Commission transmitted to Congress a legislative proposal, the "Securities Law Enforcement Remedies Act of 1988," based on recommendations in the Report of the National Commission on Fraudulent Financial Reporting (the Treadway Commission) that would increase enforcement remedies for a broad range of securities law violations.

Market Manipulation Task Force: In response to increasing abuses in the penny stock market, the Commission established the Market Manipulation Task Force. The Task Force, composed of representatives of both headquarters and regional offices, is considering a number of initiatives to combat the growing problem of penny-stock fraud and market manipulation, believed to be spreading nationwide. Working closely with other law enforcement agencies, the self-regulatory organizations, and state securities regulators, the Task Force is considering a variety of law enforcement and regulatory actions to protect investors against the risks of market manipulation and fraud.

Full Disclosure: Both on-going responsibilities and the challenges presented by changes in the marketplace and internationalization were met in the Full Disclosure program during the fiscal year. The total number of filings given full reviews increased during the fiscal year. The number of filings relating to tender offers, "going-private" transactions, and proxy statements given full reviews during the year also increased, as did the number of annual report reviews. (Registration statements received during the fiscal year declined somewhat, as a result of the October 1987 market break.) A special analysis was undertaken of registrant disclosures in "management's discussion and analysis of financial condition and results of operations."

Domestic rulemaking projects were completed during the fiscal year in the areas of proxy rules, prospectus delivery, availability of no-action and interpretive letters, and shareholder communications. The Commission also adopted rules intended to facilitate capital formation by small businesses.

The far-reaching implications of increasing internationalization of the securities markets were a major focus of the full disclosure program. Rules governing the transnational scope of registration requirements under the Securities Act of 1933

were proposed during the year. The Commission also proposed a rule providing a safe harbor from requirements for resales of securities to institutions, which may afford foreign issuers greater access to United States capital markets. In addition, Commission staff discussed the development of a coordinated registration process for multi-jurisdictional securities offerings and tender offers with the Canadian provinces of Ontario and Quebec.

Accounting and Auditing Matters: During the fiscal year, on-going activities in regard to disclosure issues and oversight of private sector standard setting were carried out. Additionally, new challenges were addressed, such as those presented by the recommendations in the Treadway Commission Report and by internationalization. Nine Staff Accounting Bulletins were issued during the year, and rules were adopted concerning changes by public corporations of their independent accountants. Rulemaking initiatives were also undertaken concerning opinion shopping and management reports in response to the report of the Treadway Commission. Oversight of private sector standard setting continued, as the standard setting bodies dealt with both emerging issues and with projects designed to enhance the quality of financial reporting.

During the fiscal year, the Commission continued its work with international groups, such as the International Organization of Securities Commissions and the International Federation of Accountants, to facilitate capital formation by addressing questions of differing international accounting and auditing standards.

EDGAR: The Commission's EDGAR system (Electronic Data Gathering, Analysis, and Retrieval) functioned successfully and effectively during its fourth year of operation, and plans were implemented for the operational stages. During the fiscal year, the Request for Proposals (RFP) for the operational project was issued and amended as necessary. Three offers were received and evaluated based on specific criteria, on-site visits, and face-to-face discussions, with a goal of selecting the offeror whose proposal was most advantageous to the government, considering costs and other factors set forth in the RFP. (The contract was awarded on January 3, 1989, after the close of the fiscal year.)

Regulation of the Securities Markets: The October 1987 market break occurred two weeks into the fiscal year. Activities related to this event were the major focus in regulation of the markets. Immediately prior to, during, and after the break, the Commission engaged in intensive monitoring and analysis of market movements and indicators; the financial condition of broker-dealers and clearing and transfer agents; the financial and operating condition of stock exchanges; and other relevant facets of the market. Communications and coordination with market participants, exchange officials, and other government regulators on concerns about credit, liquidity, financial soundness, and international ramifications of developments were frequent and productive. Further intensive study resulted in the publication, in February 1988, of the Staff Report of the Division of Market Regulation on the October 1987 Market Break, containing descriptions of the events and recommendations for further exploration. During this period, the Commission also cooperated with the Presidential Task Force on Market Mechanisms (the Brady Commission), exchanging information on various market developments. Subsequent testimony by the Commission before several Congressional committees incorporated some of these recommendations, as means for preventing

or ameliorating certain aspects of stress on market systems and mechanisms in the future. The Commission was a participant in the President's Working Group on Financial Markets, formed on March 18, 1988. In May 1988, the Working Group issued an interim report to the President of the United States. The Commission also acted on several proposals submitted by exchanges and others designed to address concerns over the events of October 1987. The Commission also transmitted recommendations for legislation to Congress.

Additionally, the Commission worked with other regulatory agencies and with exchanges to take steps, in addition to those outlined above, based on analysis of the October 1987 market break. These steps addressed the most pressing issues identified in the staff report: expanding capacity, improving coordination and retarding market velocity. Specialist and market-maker performance, capital adequacy, and clearing and settlement concerns were also addressed during and after the fiscal year.

Economic Research and Analysis: During the fiscal year, the Commission consolidated its economic program to provide more comprehensive economic analysis and financial data. The revised Office of Economic Analysis incorporates existing economic functions, and will also compile, analyze, and disseminate macroeconomic and financial data to the Commission. The Office continued to perform regulatory flexibility analyses, and other required functions.

Litigation and Legal Activities: The Office of General Counsel represents the Commission in appellate and other litigation, and acts as Chief Legal Officer for the Commission. During the fiscal year, the Office represented the Commission in 314 litigation matters. The Commission also participated amicus curiae in 50 cases, and entered its appearance in 50 reorganizations under Chapter 11 of the United States Bankruptcy Code. Results favorable to the Commission were obtained in almost all matters that were concluded during the fiscal year in the Supreme Court, and the appellate and district courts.

The General Counsel also assists the Commission in preparation of testimony on a number of important issues, and on legislative proposals submitted to Congress. During the fiscal year, the number of Congressional appearances reached an all-time high. Testimony and legislative proposals often involved complex and difficult interpretations of existing laws and their history (such as the Glass-Steagall Act) or of new and challenging developments in the marketplace, such as market reform in the wake of the October 1987 market break.

Investment Companies and Advisers: Again this fiscal year, the number of investment companies, investment advisers, and assets managed by them increased, while staff in the Division of Investment Management remained essentially unchanged. Examinations completed by headquarters and regional staff during the year numbered 2,150, a substantial increase that was made possible in part by the use of computers.

During the year, the Division published a report on financial planners. The report, prepared at the request of the Subcommittee on Telecommunications and Finance of the Energy and Commerce Committee of the House of Representatives, explored the status of the financial planners/investment advisers, and issues of abuse, and included demographic data and a report on a pilot project of inspections of

investment advisers registered as broker-dealers with the National Association of Securities Dealers (NASD). Based on the data gathered for the study, the staff report concluded that violations by planners were not materially different from those by advisers (although they were more frequent), that potential for self-interested behavior exists when planners provide advice and sell products, and that demonstrated abuses by both planners and advisers involve only a very small portion of the industry. The study also said that the NASD's pilot project demonstrated the feasibility of having NASD inspectors conduct examinations of financial planners.

Also during the fiscal year, the Commission adopted rules on disclosures of changes of accountants and disclosures of fees in tabular form in mutual fund prospectuses. Additional rules standardized computation of performance data in advertisements and sales literature to enhance comparability of data for the benefit of investors. Other rules adopted during the year require investment advisers to retain records relating to performance advertisements. Among rules proposed during the year are some that would, if adopted by the Commission, permit mutual funds and unit investment trusts to make exchange offers under certain conditions, clarify provisions of Rule 12b–1 plans, permit contingent deferred sales loads under certain conditions, and exempt some small financial advisers from federal regulation if they register with state regulatory authorities.

Management and Program Support: During the fiscal year, management and administrative support activities were provided regarding domestic and international policy issues, and regarding the Commission's deliberations on such issues. For example, during the year, the Commission testified 24 times on issues such as the October 1987 market break, the President's Working Group on Financial Markets, Glass-Steagall reform, international enforcement, insider trading, arbitration, financial planners, and the Commission's authorization and appropriations.

During the year, a study and proposed legislative language on alternative approaches to transferring the agency to self-funding status were substantially completed by the Office of the Executive Director. (Soon after the close of the fiscal year, the study was transmitted to Congress.) This study was conducted at the request of the Securities Subcommittee of the Senate Committee on Housing, Banking and Urban Affairs. In this regard, it is significant that for the sixth consecutive year, and the seventh time in its 54-year history, the Commission collected revenues in excess of its appropriation. During fiscal year 1988, $250 million, most of it from filing fees, was transmitted to the United States Treasury.

During the year, about 49,000 complaints or inquiries from investors, and 2,308 Freedom of Information Act requests were received and processed. The increase of 22 percent in consumer inquiries was primarily a result of the October 1987 market break. Other requests under the Privacy Act and for records were processed during the year as well.

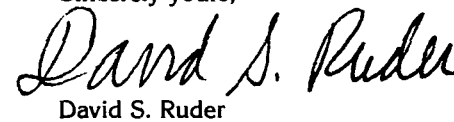
Also during the fiscal year, activities were carried out to increase or locate space for various offices; to modernize financial systems; to increase the number and use of computers in carrying out the Commission's mission; and to implement a number of measures relating to hiring, retention, and personnel management.

As the new fiscal year began on October 1, 1988, the aftermath of the October

market break continued to be of concern and to occupy Commission resources. In addition, a dominant theme, which appears throughout the Report and affects all areas of the Commission, was internationalization of the securities markets. Positioning the Commission to exercise leadership in international securities regulation has been a major endeavor, and efforts in this area are continuing.

As the fiscal year drew to a close, preparations were underway for, among other efforts, presentation of a paper on regulation of international securities markets to the International Organization of Securities Commissions. Presented in Melbourne, Australia after the close of the fiscal year, the paper, unanimously approved by the Commission, has served as a working document for international securities regulation.

Sincerely yours,



David S. Ruder
Chairman

Enforcement Program

Key 1988 Results

In fiscal 1988, the Commission continued to devote significant enforcement resources to the investigation and litigation of complex cases involving potential insider trading, financial disclosure and market manipulation violations. There was also a notable increase in the number of securities offering cases, as well as cases primarily involving investment advisers and investment companies.

Total Enforcement Actions Initiated

	FY'84	FY'85	FY'86	FY'87	FY'88
Total	299	269	312	303	252
Civil Injunctive Actions	179	143	162	144	125
Administrative Proceedings	114	122	136	146	109
Civil and Criminal Contempt Proceedings	4	3	14	13	17
Reports of Investigation	2	1	0	0	1

In fiscal year 1988, the Commission obtained court orders requiring defendants to return illicit profits amounting to approximately $26.1 million, either as disgorgement or as restitution to defrauded investors or entities. Disgorgement orders in insider trading cases amounted to $1.9 million. Civil penalties under the Insider Trading Sanctions Act of 1984 (ITSA) amounted to $1.2 million.

The Commission referred matters, or granted access to its files to federal and state prosecutorial authorities in 136 cases. An estimated 50 criminal indictments or informations and 55 convictions were obtained by criminal authorities during fiscal year 1988 in Commission-related cases.

Introduction

An aggressive and comprehensive program to enforce the federal securities laws is essential to investor protection and to investor confidence in the integrity, fairness and efficiency of the securities markets. The Commission's enforcement program is designed to maintain a presence in all areas within the Commission's jurisdiction, to concentrate on particular problem areas, and to anticipate emerging problems.

The Commission's enforcement actions generally are preceded by an examination pursuant to the Commission's inspection powers or an investigation. The Commission is empowered to conduct examinations of broker-dealers, municipal securities dealers, investment advisers, investment companies, transfer agents and self-regulatory organizations. The Commission conducts informal and formal investigations. Informal investigations are

conducted on a voluntary basis, with the Commission requesting persons with relevant information to cooperate by providing documents and testifying before the Commission staff. The federal securities laws also empower the Commission to conduct formal investigations providing the Commission with the authority to issue subpoenas compelling the production of books and records and the appearance of witnesses to testify. Both types of investigations are generally conducted on a confidential, nonpublic basis.

The federal securities laws authorize the Commission to institute both civil and administrative enforcement actions. The Commission may file injunctive actions, seek civil penalties in insider trading cases, and institute administrative proceedings. The Commission may also refer matters to the appropriate governmental authority or self-regulatory organization for enforcement action.

The primary enforcement action utilized by the Commission is the injunctive action. The federal securities laws authorize the Commission to seek temporary restraining orders and preliminary and permanent injunctions against any person who is violating or about to violate any provision of the federal securities laws. Conduct which violates the courts' injunctions is punishable by civil or criminal contempt and violators are subject to fines or imprisonment. In addition to seeking orders prohibiting future violations, the Commission often seeks other equitable relief in the form of an accounting and disgorgement of illegal profits, rescission or restitution. When seeking temporary restraining orders the Commission often requests an order freezing assets to prevent concealment of assets or dissipation of proceeds of illegal conduct.

The Commission is specifically authorized to seek civil penalties in connection with insider trading violations. Pursuant to the Insider Trading Sanctions Act of 1984 (ITSA), the Commission may seek and the court may impose civil penalties of up to three times the profits gained or losses avoided. In August 1988 the Commission was authorized to seek civil penalties of up to $10,000 in connection with violations of Section 30A, the anti-bribery provision of the Exchange Act.

The Commission is also authorized to institute several types of administrative proceedings. Section 8(d) of the Securities Act of 1933 (Securities Act) enables the Commission to institute proceedings to suspend the effectiveness of a registration statement which contains false and misleading statements. Administrative proceedings pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (Exchange Act) may be instituted against any person who fails to comply and any person who is a cause of failure to comply with the reporting, beneficial ownership, proxy and tender offer provisions; respondents may be ordered to comply or effect compliance with the relevant provisions. The Commission may also institute administrative proceedings against regulated entities and associated persons. Sanctions include censures, limitations on activities, suspension or revocation of the registration of such entities. The Commission may impose similar sanctions on persons associated with such entities and persons affiliated with investment companies. Administrative proceedings may be instituted against persons who

appear and practice before the agency such as accountants and attorneys and may impose sanctions including suspensions or bars.

Under appropriate circumstances the Commission refers matters to other federal, state or local authorities or self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers. The Commission's staff may render substantial assistance to criminal authorities such as the Department of Justice for the criminal prosecution of securities violations.

As a result of developments in the securities markets, the complexity of the Commission's enforcement activities has increased. Over the past several years the number of broker-dealers and investment advisers has grown, trading volume and the volatility of the markets have increased, and new and more complex trading vehicles and strategies are being offered.

The increased internationalization of the securities markets often has required the Commission to obtain evidence in its investigations and litigation from persons residing outside the United States. To accommodate this development, the Commission has expanded its Office of International Legal Assistance which coordinates international aspects of the Commission's enforcement activities. This office also assists in the negotiation of memoranda of understanding with other countries. The Commission has signed Memoranda of Understanding with Switzerland, the United Kingdom and Japan. During fiscal year 1988, the Commission entered into comprehensive agreements with three provinces in Canada and Brazil. These memoranda of understanding have substantially facilitated the Commission's efforts to obtain evidence essential to its enforcement program.

A result of the Commission's efforts to conduct an aggressive, comprehensive and effective enforcement program is an increase in protracted litigation. The Commission has been litigating an important injunctive action against a brokerage firm, *SEC v. First Jersey Securities, Inc.*,[1] alleging violations of the antifraud provisions and seeking disgorgement. During the course of discovery in that action, employees of the firm refused to produce corporate documents based upon an assertion of the privilege against self-incrimination. The Commission prevailed on this issue but only after litigating the matter in the Court of Appeals. The Commission is currently litigating a significant market manipulation case, *SEC v. Monarch Funding Corp., et al.*,[2] and a case involving allegations of antifraud violations by a major public accounting firm, *SEC v. Price Waterhouse*.[3]

Program Areas

During 1988, the Commission maintained an aggressive enforcement presence in each of the areas within the Commission's jurisdiction. The Commission also established new programs and maintained existing programs to address particular problem areas. The principal program areas for 1988 included insider trading and other violations related to contests for corporate control; manipulation of over-the-counter stocks; securities offering violations; financial fraud; and broker-dealer, investment adviser and invest-

ment company violations. The Commission has utilized the full complement of enforcement remedies available to it during the past fiscal year, selecting the type of action and relief appropriate in light of the violative conduct and parties involved.

Insider Trading

Insider trading refers generally to the purchase and sale of securities in breach of a fiduciary duty or a relationship of trust or confidence, while in possession of material nonpublic information about an issuer or the trading market for an issuer's securities. The federal securities laws prohibit such trading not only by corporate officers and directors and other persons having a relationship of trust or confidence with the issuer or its shareholders, but also by persons who misappropriate material nonpublic information from sources other than the issuer. Tippees of such persons may also be subject to the prohibition. Insider trading in the context of tender offers is also prohibited. Although cases involving insider trading are only one component of the Commission's comprehensive enforcement program, the magnitude and gravity of the cases recently brought by the Commission and the criminal prosecutions initiated by the U.S. Attorney's Office for the Southern District of New York reflect the continuing importance of this issue.

With respect to insider trading cases the Commission has filed actions seeking temporary restraining orders and asset freezes to prevent the concealment and movement of illegal profits. The Commission has also sought permanent injunctions and other equitable relief including disgorgement of profits or losses avoided. Generally, in insider trading cases the Commission has sought civil penalties under ITSA. Also, if broker-dealers or investment advisers or persons associated with such entities engage in insider trading violations the Commission will institute administrative proceedings and seek suspensions or bars from further association with the securities industry. This past fiscal year, the Commission brought 25 enforcement actions based primarily on insider trading violations, and 2 other actions which included insider trading allegations.

Many of the insider trading cases brought by the Commission this fiscal year reflected aspects of the continuing internationalization of the securities markets. The Commission dealt with challenges such as obtaining service of persons abroad and securing and protecting assets against movement outside the Commission's jurisdiction. In *SEC v. Wang and Lee*,[4] a major international insider trading case filed in June 1988, the Commission alleged that an analyst in the mergers and acquisitions department of a major investment banking firm provided information concerning proposed mergers or other extraordinary transactions involving the firm's clients to an investor who was a Taiwan national residing in Hong Kong. While in possession of this information, the investor allegedly directed the purchase and sale of securities of at least 25 issuers through various accounts, realizing at least $19 million in illegal profits.

The Commission obtained a temporary restraining order which included a freeze of all assets belonging to the defendants. Following entry of the order,

one defendant attempted unsuccessfully to retrieve funds in Hong Kong from a bank. At the Commission's request, the court ordered the defendants not to seek further relief from the previous order in either foreign or other United States courts, and ordered the bank holding the investor's funds, which had a branch in New York which was utilized in defendant's fund transfers, to pay over $12 million into the registry of the court for safekeeping pending further order of the court. A default judgment was entered against the foreign investor in October 1988 and at year end proceedings were continuing before a Magistrate to fix the amount of disgorgement. The bank has noticed an appeal with respect to the order requiring payment into the registry.

The analyst, who admitted receiving $200,000 from the trading scheme, pleaded guilty to these felony charges and was sentenced to a three-year prison term, to be followed by three years of probation.

Two fiscal 1988 insider trading cases highlighted the importance of multinational agreements and cooperation. In one, the Commission made use of the Hague Convention to effect service on two foreign nationals named as defendants. In *SEC v. Kerherve* [5] the Commission alleged that the two foreign nationals, who resided in Cairo, Egypt, unlawfully traded in the securities of Texas International Co. while in possession of inside information about the discovery of a major oil field in Egypt. Within days of filing the case, and the entry of a temporary restraining order and an order freezing assets, the two defendants in Egypt were personally served with process at their offices in Cairo, Egypt pursuant to the Hague Convention. The Department of State and the Egyptian authorities provided extraordinary assistance in this case. Shortly after being served, defendants consented to the entry of injunctions against them and to over $50,000 in disgorgement and penalties.

In *SEC v. Collier*,[6] an action involving inside information about proposed takeover attempts by clients of an international investment bank, a managing director of the investment bank allegedly used this information to purchase and direct the purchases of shares in the target companies. United States accounts were used to purchase shares on the London Stock Exchange; trading was also effected through a Cayman Islands entity. Injunctions were entered, by consent, against the two defendants. The British Department of Trade and Industry provided assistance in this matter, in accordance with the Memorandum of Understanding executed by the two countries.

Among the cases alleging violations of Section 14(e) and Rule 14e-3 of the Exchange Act, which prohibits insider trading in connection with tender offers, were *SEC v. Sierchio* [7] and *SEC v. Chestman*.[8] In these cases, the Commission alleged that the defendants traded in securities of Waldbaum, Inc., while in possession of inside information obtained from the president of Waldbaum concerning an imminent tender offer for the company. Injunctions, disgorgement orders and ITSA penalties were entered by consent against two of the three defendants. Defendant Chestman, against whom the injunctive action remained pending at the close of the year, was subsequently indicted; this indictment was the first to allege criminal violations of Section 14(e).

The Commission filed an injunctive action against Marcus Schloss & Co., Inc., a registered broker-dealer, alleging that trades for the account of Marcus

Schloss were made based on information concerning proposed mergers and acquisitions obtained from Michael N. David. David, an associate of a law firm, was enjoined previously. Injunctions by consent were entered this year against Marcus Schloss [9] and against Andrew Solomon,[10] an employee of Marcus Schloss. Marcus Schloss agreed to pay $136,900 in disgorgement of trading profits and an ITSA penalty of $273,800. An injunctive action filed this fiscal year against Douglas Ronald Yagoda, another employee, remained pending at the end of the fiscal year.[11]

The Commission also took additional remedial administrative action. Solomon, who had also allegedly tipped David concerning a proposed leveraged buyout which Marcus Schloss had been approached about, received a 12-month suspension from association with a broker-dealer and certain other regulated entities.[12] Marcus Schloss was censured and ordered to adopt and implement recommendations of an independent consultant employed to review relevant policies and procedures of the firm.[13]

Considerable staff resources are used in insider trading cases, many of which are litigated over an extended period of time. The Commission successfully litigated an action against two alleged tippees named in *SEC v. Musella*.[14] This injunctive action, instituted in 1983, alleged that a number of individuals traded while in possession of nonpublic information concerning proposed mergers or acquisitions obtained from a law firm by an employee of that firm. In January 1988, the court ruled that the remaining two defendants, who had no direct link with either the primary tipper or the first tier of tippees, had not insulated themselves from a finding of scienter by consciously avoiding learning about the confidential sources of the information. Summary judgment was entered against the two tippees.

A judicial determination also resolved competing claims for priority to profits ordered to be disgorged by defendants in two settled cases, *SEC v. Levine*,[15] and *SEC v. Wilkis*.[16] In addition to the entry of injunctions, defendants in these cases had consented to orders to disgorge approximately $14.8 million. The court denied claims for priority for payment by government tax authorities, and approved a Commission plan pursuant to which all disgorged funds will be made available to investor claimants. At the close of 1988, this matter was on appeal.

Other significant insider trading cases during fiscal year 1988 included *SEC v. Karcher*,[17] in which the Commission alleged that a number of employees of Carl Karcher Enterprises and members of the Karcher family sold shares while in possession of inside information prior to the announcement of anticipated decreased earnings for the company in the coming quarter. This case was in litigation at the end of the fiscal year. In *SEC v. Russolillo*,[18] the Commission obtained the entry of an injunction against an insider who allegedly purchased 8,000 shares of stock while in possession of information concerning an imminent merger proposal from another bank. Russolillo also consented to an order of disgorgement in the amount of $33,307 and payment of $49,961 in civil penalties. In related criminal proceedings, six persons were charged with trading while in possession of inside information in this case, and, by the close of the fiscal year, Russolillo and three others had pleaded guilty.

Manipulative Activities

The Commission is charged with ensuring the integrity of trading on the national securities exchanges and in the over-the-counter markets, and, along with the exchanges and the NASD, engages in continuing surveillance of these markets. Attempts to manipulate the market may take many forms, and may involve raising or lowering the price of listed securities as well as "penny" stocks (low-priced securities traded in the over-the-counter markets). The Commission has attempted to deal with these violations by instituting a number of different types of enforcement proceedings.

In September 1988 the Commission filed *SEC v. Drexel Burnham Lambert*,[19] an injunctive action alleging that a multi-service investment banking firm registered as a broker-dealer with the Commission, its vice-president and manager of its high yield and convertible bond department, and others devised and carried out a scheme involving stock manipulation, fraud on the broker-dealer's own clients, failure to make required disclosures regarding the beneficial ownership of securities, insider trading and numerous other securities law violations. The complaint alleged that at least sixteen series of violative transactions were undertaken pursuant to a secret arrangement with Ivan Boesky, who last year was enjoined and sanctioned administratively by the Commission based on alleged insider trading violations.

Defendants allegedly retained an undisclosed beneficial interest in securities which were purportedly sold and were the subject of proposed merger or acquisition activity. These securities were traded by the Boesky organization, in certain instances under the direction of the Drexel defendants. This arrangement allegedly allowed the firm, among other things, to trade secretly in securities on its restricted list, and to profit from use of material nonpublic information to which it had access solely because of its fiduciary relationship with corporate clients. The complaint also alleged that the firm and its vice-president traded while in possession of inside information received from clients in at least two transactions not involving Boesky, and that other persons arranged to have Boesky take securities positions for them, and failed to disclose their beneficial ownership as required. This action was in litigation at the close of the year.

This fiscal year the Commission proceeded administratively against a broker-dealer and its president alleging manipulative activities in connection with three securities offerings (*In the Matter of Rooney, Pace, Inc.*[20]). The Commission found, among other things, that the broker-dealer sold to its own customers almost all of the shares of an offering which it underwrote and thereafter manipulated the market which it dominated, that it failed to exercise due diligence in connection with another offering it underwrote, and that, acting as an undisclosed underwriter of a third offering, it sold stock short in advance of the secondary offering and failed to report acquisition of an interest in over five percent of the outstanding shares. By consent, the broker-dealer withdrew its registration with the Commission; the president was suspended for nine months and agreed to certain limitations on his conduct for five years.

Market manipulation may also occur on the international level. In *SEC v. Zico Investment Holdings, Inc.*,[21] a British Virgin Islands corporation and citizens of Great Britain were enjoined, by consent, based on allegations that they had engaged in a manipulative scheme to depress the market price of the common stock of Bancroft Convertible Fund, Inc. (a closed-end investment fund traded on the American Stock Exchange) in order to depress the price prior to the commencement of a tender offer by Zico for Bancroft.

"Penny" stocks have become the subject of numerous manipulative schemes. Typically, these schemes involve "shell" companies, either newly formed "blank check" companies (companies which conduct registered offerings disclosing that the proposed use of proceeds is to seek business opportunities) or older companies with no assets or operations, but small trading markets. These companies are then merged with private companies purported by the promoters to have great growth potential. Stocks in the merged companies are promoted through releases announcing the merger and marketed to the investing public through the use of extreme high-pressure tactics. The securities may then be manipulated to reach inflated prices, at which point the promoters may dump shares they own, and move on.

Participants in these schemes may include promoters, broker-dealers, attorneys, accountants, and transfer agents. While the shares are low-priced, often actually priced in pennies, profits of broker-dealers involved in trading these stocks can be enormous, and investors can suffer major losses. These schemes have spread nationwide, and the Commission has commenced active programs to deal with them, including establishment of an in-house task force to propose regulatory solutions.

In 1988 in *SEC v. Porto* [22] the Commission initiated an injunctive action in which it alleged that a loose confederation of defendants created corporations, took them public and manipulated the price of the stocks in the aftermarket. Five issuers, also named in the enforcement action, allegedly filed false and misleading registration statements with the Commission that, among other things, failed to disclose their control by two of the major promoters. Figureheads or persons totally unassociated with the issuers were listed as officers, directors and controlling shareholders. All of the issuers' filings were untimely or delinquent, and many were false and misleading and contained forged or unauthorized signatures. The defendants also allegedly misappropriated money raised from the investors and engaged in kickback schemes.

The offering documents and structures of the companies were similar, each a blank check offering involving units consisting of common stock and warrants. All of the issuers and securities were listed in the "pink sheets" and generally traded at substantial premiums above their offering price in after-market trading. Each issuer, through the same financial public relations firm, allegedly disseminated false and misleading information concerning impending mergers and acquisitions.

In January 1988, the district court froze the assets of the defendant companies. The Commission also instituted five separate administrative proceedings pursuant to Section 8(d) of the Securities Act, based on alleged misstatements and omissions in companies' registration statements. Pursu-

ant to default judgments, the Commission issued stop orders suspending the effectiveness of the registration statements.[23]

In November 1987, the Commission successfully litigated an action against *SEC v. Steven A. Keyser*.[24] The United States District Court for the District of Utah enjoined the former president of the company, who was alleged to have diverted all of the proceeds of the initial "blank check" offering of the company to his own use. As part of the remedial relief, shares he held in the company were returned.

In fiscal 1988, the Commission, pursuant to Section 12(k) of the Exchange Act, instituted ten-day suspensions of trading of 124 penny stocks listed in the "pink sheets." In most instances, trading suspensions are ordered because of substantial questions as to the adequacy, accuracy or availability of public information concerning a company's financial condition or business operations or because transactions in the company's securities suggested possible manipulation or other violations.

In the first proceeding of its type instituted recently, the Commission censured a broker-dealer, *In the Matter of Richfield Securities, Inc.*,[25] which consented to findings that it had no reasonable basis for believing that information in its files concerning a previously suspended security was reasonably reliable and current, as required by Rule 15c2-11 of the Exchange Act. The broker-dealer was also ordered to comply with its undertakings to implement procedures to assure future compliance with Rule 15c2-11.

Where possible, the Commission brings proceedings against professionals who take an active part in penny stock schemes. In November 1987, for example, in *In the Matter of Tommy B. Duke*, an attorney who had previously consented to be enjoined in connection with the fraudulent promotion and manipulation of shares of two formerly dormant shell companies, and who, among other things, had written opinion letters and facilitated the issuance of the shares, consented to an order pursuant to Rule 2(e) of the Commission's Rule of Practice denying him the privilege of practicing before the Commission for 18 months.[26]

Corporate Control

Sections 13 and 14 of the Exchange Act require, among other things, disclosures in connection with the acquisition of more than five percent of a class of equity securities registered with the Commission, proxy solicitations and tender offers for more than five percent of a class of equity securities registered with the Commission. These requirements are intended to ensure that investors have material information needed to make informed investment or voting decisions concerning potential changes in the control of a corporation. The Commission instituted both administrative and injunctive proceedings in corporate control cases this fiscal year.

In June 1988, following a trial on the merits, the United States District Court of the District of Columbia, in *SEC v. First City Financial Corp.*,[27] determined that the defendants had engaged in a "parking" scheme to conceal their intentions to accumulate shares of stock of Ashland Oil Corp. The court determined that the defendants violated Commission requirements for timely

disclosure of accumulations of over five percent of a class of securities by accumulating shares held in various nominee and proprietary accounts held by a New York broker-dealer. Noting that these requirements serve a "vital public function to alert the marketplace to every large, rapid aggregation of accumulation of securities, regardless of technique employed," the court ordered injunctions entered against the defendants. The court also adopted the Commission's proposal for disgorgement, ordering the defendants to disgorge over $2.7 million, representing the difference between the price the defendants paid for the securities after their disclosure obligations arose and the amount they received for the shares.

Securities Offerings

Securities offering cases represent a major portion of the Commission's enforcement activities. These cases involve the offer and sale of securities in violation of the registration provisions of the Securities Act and may also involve material misrepresentations concerning risks involved, return on investment and the uses of proceeds of the offering. These cases cover a broad range of securities offerings, from $20 million in unregistered promissory notes (*SEC v. Towers Credit Corp.*[28]) to $5 million of securities in a Brazilian gold mine (*SEC v. Hunter Mack Belton* [29]) to $8.5 million of securities in an unregistered investment company (*SEC v. Joseph Anthony Belmonte* [30]).

A number of securities offering cases are filed on an emergency basis. In addition to seeking injunctive relief, the Commission may also seek asset freezes, accountings, disgorgement of profits and the appointment of receivers.

Disgorgement in the amount of $5.4 million was ordered in *SEC v. Bramble*,[31] a case involving unregistered offerings of investment contract interests in stallion/broodmare syndications, misrepresentations concerning the quality of the mares, the financial condition of the company, and the use of proceeds of the offering. The Commission also obtained disgorgement orders in a case alleging misuse of proceeds of a $3.2 million offering of unregistered securities (*SEC v. James Simpson* [32]), and a case involving an unregistered offering which generated at least $13 million based on false representations that the offeror company was in the business of refining gold from the beaches of Costa Rica (*SEC v. Goldcor, Inc.*[33]).

The Commission frequently seeks follow-up administrative sanctions in offering cases. For example, the Commission barred a previously enjoined registered representative alleged to have misappropriated proceeds from the unregistered sale of investment securities in amounts of $600,000 (*In the Matter of John A. Grant* [34]). It barred from practice before the Commission an attorney who prepared registration statements in connection with fraudulent public offerings which raised $32.5 million (*In the Matter of James F. McGovern* [35]).

The Commission also barred the owner and principal of a broker-dealer and an investment adviser who had been enjoined from violations of the antifraud and registration provisions in connection with a $3 million offering of oil, gas and real estate limited partnerships (*In the Matter of Katherine Williams*

McGuire[36]). In a similar proceeding, the Commission sought sanctions against another principal of a broker-dealer and an investment adviser based on the entry of an injunction in connection with the unregistered offering of interests in real estate partnerships and misappropriation of at least $7 million of the proceeds (*In the Matter of William Edgar Crowder*[37]). That proceeding was pending at the close of the fiscal year.

Financial Disclosure

Actions involving false and misleading disclosures concerning the financial condition of companies and the issuance of false financial statements are often complex and require more resources than other types of cases, but their effective prosecution is essential to preserving the integrity of the disclosure system. In fiscal year 1988 the Commission brought 28 cases containing significant allegations of financial disclosure violations against issuers, regulated entities or their employees (including 5 actions in which financial disclosure violations were alleged in addition to other primary violations). Many of these cases included alleged violations of the accounting provisions of the Foreign Corrupt Practices Act. The Commission also brought 5 cases alleging misconduct on the part of accounting firms or their partners or employees.

With respect to financial fraud cases, the Commission instituted a variety of enforcement actions. The Commission filed injunctive actions against issuers and responsible officers and directors. Administrative proceedings pursuant to Section 15(c)(4) were instituted against persons who failed to comply with certain provisions of the federal securities laws and persons who caused such failures. The Commission also instituted administrative proceedings pursuant to Rule 2(e) against both accountants who served as chief financial officers of issuers and against accountants who were involved in audits of publicly-held companies.

A number of cases involved the improper recognition of revenue or income. These included recognition of sales of computer systems despite contingencies affecting customer obligations to pay for the systems (*SEC v. Flexible Computer Corp.*[38]), recognition of sales of franchises despite the absence of reasonable assurances that the purchase price was collectible (*SEC v. Primo, Inc.*[39]) and improper recognition of six "bill and hold" transactions totalling $4.5 million (*SEC v. Electro-Catheter Corp.*[40]).

In *SEC v. The Cannon Group Inc.*[41] the Commission alleged that a film producer and distributor had materially overstated reserves by, among other devices, underamortizing film costs and overestimating anticipated revenues from the sale of films. In addition to the entry of permanent injunctions against defendants, Cannon was required, among other things, to undergo a review by its auditors of the adequacy of its accounting procedures and controls.

Some cases were based on violations of the books and records and internal controls provisions of the Exchange Act in connection with interim or quarterly financial statements. In *SEC v. Stereo Village*[42] an injunction was entered based on allegations that books and records which were not posted on

a current basis resulted in an overstatement of earnings for the first three quarters of the year; the corrected figures resulted in reductions of between 47 and 98 percent in net earnings for each quarter. In *SEC v. Lane Telecommunications, Inc.*,[43] the Commission alleged that the company overstated revenues by approximately $1.4 million and pretax net income by approximately $754,000 for the second quarter of its 1984 fiscal year, and as a result, materially overstated its revenues and understated its loss at year end. Two defendants consented to the entry of an injunction; at year end the action was pending with respect to a third defendant.

The Commission used its authority pursuant to Section 15(c)(4) of the Exchange Act to order future compliance with the reporting provisions by persons found to be a "cause" of financial reporting violations. These included the chief financial officer of an insurance company, found to be a cause of the company's improper recognition of gains upon simultaneous sale and repurchase of debt securities (*In the Matter of USF&G Corp.*[44]); three officers and directors of an operating company, found to have made inadequate provision for bad debts in the company's financial statements (*In the Matter of Michael P. Richer*[45]); and the chief financial officer of a computer services and equipment company, found to be a cause of improper recognition of sales of ATM terminals due to false and inadequate information concerning the transactions in the company's books and records, (*In the Matter of Steven L. Komm*[46]).

The Commission also instituted proceedings under Section 15(c)(4), *In the Matter of E.F. Hutton Group, Inc.*,[47] finding that internal accounting controls deficiencies prevented adequate disclosure to customers of the risks of trading in certain industrial revenue bonds and created a potential loss contingency for the broker-dealer. The Commission ordered future compliance by the broker-dealer, and further ordered it to include an explanation of issues raised in the Order in its forthcoming annual report.

In a combined proceeding, the Commission issued a Report of Investigation and the Federal Home Loan Bank Board instituted administrative proceedings pursuant to Section 15(c)(4), *In the Matter of American Savings and Loan Association of Florida* (ASLA),[48] based on the false and misleading disclosures ASLA made in periodic reports and proxy materials concerning the unusual nature of and risks attendant to repurchase and reverse repurchase transactions that resulted in an overcollateralized position of approximately $100 million with E.S.M. Securities, Inc., ultimately causing a $69 million after-tax loss to ASLA. Pursuant to Section 15(c)(4), the FHLBB ordered ASLA to comply in the future with applicable provisions of the federal securities laws, and also ordered that outside counsel review various ASLA filings and press releases for a period of five years. The Commission published a Report of Investigation pursuant to Section 21(a) of the Exchange Act, setting forth in detail its findings and conclusions in the matter.

Proceedings against accountants are an important part of the Commission's enforcement program. Pursuant to Rule 2(e) of the Commission's Rules of Practice, the Commission instituted proceedings alleging improper professional conduct on the part of a chief financial officer who prepared financial

statements which materially misstated net income *In the Matter of Keith Bjelajac*;[49] a chief financial officer who was responsible for financial statements which improperly recorded financial transactions as sales (*In the Matter of Steven L. Komm*);[50] and an independent auditor found to have conducted an inadequate audit with respect to recordation of taxes and inventory, resulting in overstatement of net income by the subject company (*In the Matter of Norman Abrams*).[51] Commission-imposed sanctions ranged from permanent bars from practicing before the Commission, to bars with a right to reapply to practice after a period of years and upon satisfying certain specified conditions, to review by supervisors or outside auditors of work to be filed with the Commission.

Investment Companies

With respect to investment companies the Commission initiated civil actions seeking injunctive relief and further equitable relief including accountings, suspension of redemption of fund shares, and the appointment of a disbursing agent to liquidate a trust. The Commission also filed an injunctive action against the officers and interested directors of an investment company, its adviser and its underwriter. During fiscal 1988, the Commission instituted the first administrative proceedings involving distribution plans pursuant to Rule 12b–1.

In two instances, the Commission sought the liquidation of investment companies as ancillary relief in civil injunctive proceedings. In *SEC v. The Santa Barbara Fund*,[52] the Commission alleged that the fund, among other things, breached various stated investment restrictions, exceeded stated expense limitations, and sold and redeemed shares based on a materially incorrect net asset value. The Commission also alleged that the fund's president and adviser had redeemed initial shares of the fund at considerable personal gain, in violation of representations made in the fund's prospectus. The fund consented to entry of an order permanently enjoining it, together with the ancillary remedies of an accounting, suspension of redemption of fund shares pending liquidation, and liquidation. In *SEC v. Western Guaranteed Income Trust, Series 85–1, et al.*,[53] the Commission obtained a permanent injunction by consent against several registered unit investment trusts and their affiliates, alleging that in connection with offerings of interests in the trusts the defendants had overstated trust assets in prospectuses and annual reports to unitholders, failed to deposit trust monies with a custodian as represented, and incurred operating fees greatly in excess of prospectus estimates. As ancillary remedies, the court ordered an accounting and appointed a disbursing agent to liquidate the trusts.

Several other cases highlighted the unique strictures according to which investment companies, their affiliates, and governing bodies are required to operate under the Investment Company Act of 1940. In *In the Matter of The Gabelli Group, Inc.*,[54] the adviser and other affiliates of two registered investment companies consented to the entry of an administrative order finding that they participated in a joint enterprise with the funds (i.e., the concerted acquisition and holding of stock of a company included within the

funds' portfolios for the purpose of a leveraged buy-out of the portfolio company by the affiliates) without first obtaining the Commission's review and approval of the transaction, as required by Section 17(d) and Rule 17d–1 of the Investment Company Act, as well as findings of failure to comply with the beneficial ownership reporting provisions of Section 13(d) and Rule 13d–1 of the Exchange Act.

In *SEC v. Forty Four Management, Ltd., et al.*,[55] the Commission obtained a permanent injunction against officers and interested directors of a registered investment company, the fund's underwriter, and its adviser, finding that the defendants had breached fiduciary duties owed to the fund and its shareholders by, among other things, causing the fund to incur legal fees (including fees paid to one of the defendant directors) to bring a lawsuit seeking damages solely for the benefit of the underwriter. Two defendants, both disinterested directors of the fund, contested the Commission's allegations that their failure to oppose the investment company's funding of the underwriter's lawsuit constituted a "breach of fiduciary duty involving personal misconduct," under Section 36(a) of the Investment Company Act; these actions remained pending at the close of the fiscal year. The remaining defendants consented to being permanently enjoined from participating in the operation of any registered investment company.

In a pair of unrelated administrative cases, the Commission brought its first enforcement cases alleging violations of Section 12(b) of the Investment Company Act, and Rule 12b–1, pursuant to which registered open-end investment companies are authorized to adopt arrangements enabling fund assets to be expended for the purpose of facilitating the distribution of fund shares. In *In the Matter of Carey Fund Management, Inc.*,[56] the Commission alleged, among other things, that an adviser had caused the fund, notwithstanding its prospectus and proxy representations to the contrary, to acknowledge an aggregate $400,000 liability to the fund's distributor for distribution expenses exceeding the annual ceiling of 0.4 percent of the fund's annual average daily net assets, as was provided by the distribution plan adopted by the fund pursuant to Rule 12b–1. The adviser was censured and ordered to comply with remedial undertakings to forego the payment of past unreimbursed distribution expenses, to reimburse the fund for non-distribution related expenses previously allocated to the fund, and to institute and maintain improved procedures to oversee the operation of any distribution plan adopted under Rule 12b–1 by any of the adviser's current or future investment company clients.

The second 12b–1 case was *In the Matter of Continental Equities Corporation of America*,[57] in which a registered broker-dealer serving as the distributor of shares of a complex of registered open-end investment companies consented to findings that it had failed reasonably to supervise its employees with a view towards preventing violations of Exchange Act recordkeeping provisions relating to the implementation of the 12b–1 distribution plans of the investment companies. Inadequate recordation of expenses prevented the broker-dealer from furnishing to the trustees of the investment companies fully detailed information regarding expenses allocated for payment pursuant

to their 12b–1 plans. The broker-dealer was censured and ordered to comply with remedial undertakings.

Investment Advisers

The Commission also instituted several significant enforcement actions involving investment advisers. These actions included injunctive actions alleging the misappropriation of client funds and seeking injunctive relief and further equitable relief in the form of the freezing of assets, and accountings, disgorgement and liquidation. The Commission also instituted administrative proceedings involving investment advisers who made unsuitable recommendations and who failed to disclose to investors material information concerning the cost and execution of trades.

In *SEC v. David Peter Bloom* [58] the Commission obtained a permanent injunction prohibiting an individual and his controlled corporation from future violations of the registration and antifraud provisions of the Investment Advisers Act of 1940. The defendants consented to findings that, without registering as investment advisers, they had engaged in an advisory business whereby more than $10 million of funds obtained from approximately 100 clients since January 1986 had been diverted to their own use. Instead of investing their clients' funds in securities, as they had indicated they would, the defendants diverted approximately $8 million to the acquisition of various paintings, real estate, furnishings, and jewelry. Additional client funds were expended upon substantial donations to various art and educational institutions. As ancillary remedies, the court appointed a receiver to perform an accounting and liquidation of the defendants' assets. In parallel administrative proceedings, the defendants also consented to the entry of orders barring them from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer.[59]

SEC v. Dennis L. Jeffers, et al.[60] involved a scheme known as the "College Assistance Program" wherein a registered investment adviser, its principal owner, and other employees advised clients to place second mortgage loans upon their residences and invest the proceeds of the loans in a series of highly speculative ventures controlled by the principal owner. Clients were falsely advised that there was little or no risk in the investment program; that their investment would generate income sufficient to meet their monthly mortgage expenses and the costs of educating their college-age children; and that, after four years, they would receive a lump sum to pay off the mortgage and any outstanding student loans, together with a residual return upon their investment. Approximately $3.1 million was raised from a total of 96 clients. Defendants were enjoined from further violations of the antifraud prohibitions of the Investment Advisers Act.

Several other Investment Advisers Act cases pointed up the fiduciary duties owed by advisers to their clients. In one administrative proceeding, *In the Matter of Mark Bailey & Co.*,[61] a registered investment adviser and its principal consented to the entry of an order finding that the respondents had, among other things, failed to disclose to their clients (75 percent of whom were referred to the registrant by registered representatives of a broker-dealer firm)

that use of the brokerage firm to effect transactions in their account could cost the customers excess commissions and not result in best execution of trades. As sanctions, the respondents were censured and ordered to comply with remedial undertakings to, among other things, fully disclose all potential conflicts of interest associated with the registrant's brokerage practices.

In another proceeding, *In the Matter of Westmark Financial Services, Corp.*,[62] a registered investment adviser and its principal consented to the entry of an administrative order finding that the respondents had breached fiduciary duties owed to their clients by failing to disclose that they would receive brokerage commissions for sale of certain securities recommended to be purchased by their clients and that the clients could purchase the securities from other unaffiliated broker-dealers, and by recommending securities unsuitable for their clients' investment needs and circumstances. As sanctions, the registrant was censured and the principal was suspended from association with any broker, dealer, municipal securities dealer, investment company, or investment adviser for a period of 120 days.

Finally, in *In the Matter of Edwin Fishbaine*,[63] a registered investment adviser consented to the entry of an administrative order finding violations of Section 17(b), the anti-touting provision of the Securities Act, as well as the antifraud provisions of the Investment Advisers Act, based on his failure to disclose the receipt of cash and other consideration in exchange for publishing favorable articles and recommendations regarding the securities of various issuers. As sanctions, the respondent's registration as an investment adviser was revoked, and he was permanently barred.

Broker-Dealers

A major segment of the Commission's enforcement cases involve broker-dealers. Allegations in these cases typically include violations of the financial responsibility and the broker-dealer books and records provisions, or involve fraudulent sales practices such as excessive markups. These types of cases remain a priority with the Commission. This past year, the Commission instituted a broad range of enforcement actions involving broker-dealers.

The Commission filed a series of proceedings involving the conduct of a former registered representative at a broker-dealer firm with offices nationwide, and the failure of his branch manager and the firm to adequately supervise him. The registered representative allegedly had made material misrepresentations and omissions in connection with his solicitation of customers to buy almost 15 percent of the float of a company traded on the American Stock Exchange; approximately half of this stock was purchased on margin. Administrative proceedings were brought and settled against the registered representative, *In the Matter of Bryce S. Kommerstad*,[64] and the branch manager, *In the Matter of Dale E. Berlage*;[65] the registered representative was also enjoined, *SEC v. Kommerstad*.[66] Noting that a system of supervision which relies solely on supervision by branch managers is not sufficient, the Commission censured the broker-dealer, *In the Matter of Dean Witter Reynolds, Inc.*,[67] and ordered it to modify, adopt and maintain procedures to assure effective supervision of the activities of its employees.

The Commission's financial recordkeeping and reporting provisions require broker-dealers subject to the Currency and Foreign Transaction Reporting Act of 1970 to report currency transactions in excess of $10,000. In April 1988, the Commission instituted injunctive proceedings in which a broker-dealer together with its principal officers consented to the entry of permanent injunctions, *SEC v. Flagship Securities, Inc.*,[68] based on allegations that they sought to avoid currency transaction reporting requirements by splitting deposits of cash into separate deposits on different days and setting up fictitious accounts. In subsequent administrative proceedings, *In the Matter of Flagship Securities, Inc.*,[69] the broker-dealer was censured and ordered to comply with undertakings to engage in no currency transactions with customers, and to undergo periodic review by independent accountants. The two principals were barred for the greater of six months or the period of incarceration or probation which may be imposed in the criminal proceeding pending against them.

In another proceeding involving currency transaction reporting, a broker-dealer, whose employees attempted to avoid these reporting requirements by converting cash into checks to be deposited in customers' accounts, was censured and undertook to review and revise its internal control procedures *In the Matter of E.F. Hutton & Co., Inc.*[70] The manager of the branch office which engaged in the conduct was suspended for 30 days. An administrative proceeding was also instituted against a salesman at the branch office, *In the Matter of Brian J. Lareau.*[71] This proceeding was pending at the close of the fiscal year.

In *In the Matter of Paine Webber, Inc.*[72] the Commission found that excessive markups had been charged to customers in sales of stripped United States Treasury bond coupons. The registered broker-dealer, which set up a program of voluntary repayment, was censured and ordered to comply with procedures designed to prevent a reoccurrence of the conduct.

In other settled administrative proceedings, the Commission barred a registered representative of a broker-dealer from association with any broker, dealer, municipal securities dealer, investment adviser or investment company on the basis of his criminal conviction in California State Court involving the theft of over $93,000 in customer funds, *In the Matter of Paul Gerald White.*[73] In a proceeding against an unregistered broker-dealer who engaged in the business of selling securities, *In the Matter of Petro-Source Securities, Inc.*,[74] the Commission also imposed a bar, with a right to reapply after three years.

Finally, the Commission instituted proceedings which alleged that a broker-dealer had allowed persons who had been convicted of crimes to become associated with it, in violation of Section 15(b)(6) of the Exchange Act, and had also allowed an individual subject to an outstanding Commission bar to become associated with it. At the close of the fiscal year, the proceeding had been settled against all respondents except the broker-dealer, *In the Matter of Robert M. Winston.*[75]

Sources for Further Inquiry

The Commission publishes in the SEC Docket litigation releases which describe its civil injunctive actions and criminal proceedings involving securities-related violations. Among other things, these releases report the identity of the defendants, the nature of the alleged violative conduct, and the disposition or status of the case. Commission orders that institute administrative proceedings or provide remedial relief also are published in the SEC Docket.

Full Disclosure System

The full disclosure system is administered by the Division of Corporation Finance. The system is designed to provide investors with material information, foster investor confidence, contribute to the maintenance of fair and orderly markets, facilitate capital formation, and inhibit fraud in the public offering, trading, voting, and tendering of securities.

Key 1988 Results

Administration of the full disclosure program was affected by a number of economic and legal developments in fiscal year 1988. In the months immediately following the October 1987 market break, there was a significant decline in the number of registered public offerings filed with the Commission. Throughout the year, the number of those filings remained below prior year levels. A total number of 3,484 registration statements were filed in fiscal year 1988 (exclusive of post-effective amendments and filings that become effective without staff action), a decrease of 29 percent from the prior fiscal year. That decrease resulted from a 28 percent decline in the number of debt offerings (774 versus 1,082) and a 29 percent decline in equity offerings (2,710 versus 3,841). The number of initial public offerings (IPOs) decreased in fiscal year 1988 by 23 percent from fiscal year 1987, which included an 18 percent decline in registration statements filed on Form S-18 with the regional offices (687 versus 835). Over half of the regional filings (56 percent) were blank check offerings, representing a 1 percent increase from the prior fiscal year (384 versus 380). Resources in the regional offices continued to be needed to review post-effective amendments containing new financial statements and descriptions of properties and businesses acquired with the proceeds of such blank check offerings. With the decline in the number of filings under the Securities Act of 1933 (Securities Act), the staff was able to review the financial statements and management's discussion and analysis in approximately twice as many annual reports. Additional resources were used to review tender offer and merger proxy filings, which increased considerably in the last three quarters of the year. A special review of registrants' disclosures in their management's discussion and analysis of financial condition and results of operations was undertaken.

A major focus of the program was the far-reaching implications of the increasing internationalization of the securities markets. Securities markets around the world are changing as an increasing number of issuers offer both debt and equity across national boundaries and in offerings in several markets at one time. As a result, the lines of demarcation between international and domestic capital markets are beginning to blur, and domestic markets face serious competition from a largely unregulated, international financial mar-

ket. Internationalization of the markets raises numerous issues under United States securities laws for domestic issuers raising capital offshore, and for foreign issuers selling to United States investors, at home or abroad. In its activities during the year, the Commission took action to address the internationalization of the securities markets, including proposing rules to govern the transnational scope of the registration requirements of the Securities Act. The Commission also proposed a safe harbor from the registration requirements for resales of securities to institutions, which may afford foreign issuers greater access to United States capital markets. The Commission also undertook discussions with the Canadian provinces of Ontario and Quebec concerning development of a coordinated registration process for multi-jurisdictional securities offerings and tender offers.

In other rulemaking activity, the Commission adopted rules that eliminated the need for issuers to file preliminary proxy material under certain circumstances, expedited the availability of no-action and interpretive letters, reduced the statutory aftermarket prospectus delivery period for certain public securities offerings, and exempted securities held by participants in employee benefit plans from certain shareholder communications requirements. The Commission also adopted rules intended to facilitate capital formation by small businesses. These included an expansion of the accredited investor definition under Regulation D, and a provision exempting from registration securities of non-reporting issuers offered pursuant to compensatory benefit plans. In addition, the Commission issued an interpretive release regarding issuer disclosure obligations with respect to the defense contract procurement inquiry, and submitted proposed legislation to the Congress to modernize the Trust Indenture Act of 1939 (Trust Indenture Act).

Review of Filings

During the year, the Division continued its efforts to have at least 50 percent of its review staff comprised of accountants. As this program recognizes, accounting expertise is essential to review the increasingly innovative financial instruments being publicly offered, and the complex and diverse capital structures being created as a result of recent financing transactions. With an increased percentage of accountants, review efforts will be concentrated on financial statements and related management's discussion and analysis disclosures of issuers.

During fiscal year 1988, the staff fully reviewed the financial statements and related management's discussion and analysis disclosures of 2,941 reporting issuers, issuers which file reports under the Securities Exchange Act of 1934 (Exchange Act). This was accomplished through the full review of 599 reporting issuer registration statements filed under the Securities Act, 2,166 Form 10-K annual reports, and 314 merger proxies, and through the full financial statement review of the annual reports of 567 issuers. The staff reviewed 1,444 and 156 registration statements filed by new issuers under the Securities Act and the Exchange Act, respectively, proxy material relating to 93 contested proxy solicitations, 276 going private transaction filings, and

248 Schedules 14D-1 with respect to third-party tender offers for 213 issuers. In addition, another 78 Schedules 14D-1 were reviewed with respect to 9 limited partnership roll-up transactions. The table below sets forth the number of selected filings receiving a review during the last five fiscal years.

Full Disclosure Reviews					
	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
Reporting Issuer Reviews *	(Data Not Available)			1,729	2,941
Total Filings Reviewed	7,237	9,571	10,526	10,797	10,985
Major Filing Reviews					
Securities Act Registrations					
New Issuers	1,572	1,171	1,775	1,949	1,444
Repeat Issuers	586	597	807	775	640
Post-Effective Amendments **	519	617	695	707	1,045
Annual Reports					
Full Reviews ***	1,283	2,135	1,741	1,389	2,166
Full Financial Reviews	(Not Applicable)			60	567
Tender Offers (14D-1) ****	121	148	146	201	248
Going Private Schedules	220	256	210	230	276
Contested Proxy Solicitations	60	86	68	65	93
Proxy Statements					
Merger	181	255	240	248	314
Other *****	716	792	992	2,563	790

* Reporting issuers reviewed includes those issuers whose financial statements and management discussion and analysis disclosures were reviewed in Securities Act and Exchange Act registration statements, annual reports and proxy statements. It does not include issuers whose financial statements were reviewed in tender offer filings.

** In fiscal years 1987 and 1988, filings are included only if they contain new financial statements.

*** Includes reports reviewed in connection with other filings.

**** Excludes limited partnership roll-up transactions. In fiscal year 1988, there were nine roll-up transactions involving 78 limited partnerships.

***** Excludes reviews of revised and additional preliminary proxy material.

Scope of Registration Requirements

On June 10, 1988, the Commission published for comment proposed new Regulation S, a series of rules intended to clarify the extraterritorial application of the registration provisions of the Securities Act.[76] Proposed Regulation S consists of a general statement that the registration provisions apply to offers and sales that occur within the United States, but do not apply to offers and sales that occur outside the United States. The general statement would provide that the elements to be examined in determining whether an offer or sale is made outside the United States include the locus of the offer or sale, the absence of directed selling efforts in the United States, the likelihood of the securities coming to rest outside the United States, and the justified expectations of the parties to the transaction as to the applicability of the registration requirements.

The proposed regulation also provides safe harbor provisions designed to protect against an indirect offering in the United States. One safe harbor (the issuer safe harbor) would apply to offers and sales by issuers, securities professionals participating in the distribution process pursuant to contract, and their affiliates. The other safe harbor (the resale safe harbor) would apply to resales by other persons. Two general conditions would apply to the safe harbors. First, the sale must be made in an "offshore transaction," and second, no directed selling effort could be made in the United States.

The issuer safe harbor would establish several classes of securities based on the nationality and reporting status of the issuer, and the degree of United States market interest in the issuer's securities. In addition to the general requirements, a class would be subject to specific restrictions on sales, depending on the degree of likelihood that the securities sold would "flow back" to the United States. The resale safe harbor would permit persons not affiliated with either the issuer or professionals involved in the distribution process to resell any securities in generally the same manner in which they could be sold in a primary distribution, and also to resell certain securities on or through the facilities of a foreign securities exchange.

Resales to Institutional Investors

On October 21, 1988, the Commission published for comment a proposed new Rule 144A that would provide a non-exclusive safe harbor from the registration requirements of the Securities Act for resales to institutions with respect to three tiers of transactions.[77] The first tier (the qualified institutional buyer tier) would permit unlimited resales of any securities of any issuer, provided that the purchaser was a specified institution with assets in excess of $100 million, or that the seller reasonably believed that the purchaser was such a qualified institution. The second tier (the non-fungible securities tier) would allow unlimited resales of securities to a wider class of specified institutions if securities of the class offered or sold were not traded publicly in the United States, and the securities were non-convertible debt securities,

non-convertible preferred stock, or securities issued by a company subject to the reporting requirements of the Exchange Act. The third tier (the fungible securities tier) would cover resales of non-convertible debt securities, non-convertible preferred stock, and securities of reporting companies that are traded in a public market in the United States to the same class of institutions as permitted in the second tier. Such resales would be subject to greater restrictions than resales made pursuant to the first two tiers.

Change in Holding Period for Restricted Securities

In the release proposing new Rule 144A, the Commission also proposed amendments to the rules concerning the public resale of restricted securities that would amend the provisions of those rules relating to the required holding period for such securities.[78] To sell restricted securities under current Rules 144 and 145, a person must have beneficially owned the securities for at least two years, no matter how long a period has transpired since the issuer or any affiliate thereof originally sold the securities. Requiring the securities to be held for two years by each successive holder before permitting public resales, without regard to the time elapsed from the actual offering by the issuer or affiliate, appears unnecessarily restrictive. Accordingly, the amendments would redefine the two-year holding period to commence on the date the securities were acquired from an issuer or its affiliate, and to run continuously from the date of the acquisition. A comparable change would be made in the calculation of the three-year period prescribed by Rule 144(k).

Proxy Rules

On December 21, 1987, the Commission adopted amendments to its proxy rules that were proposed in fiscal year 1987. The amendments eliminated filing requirements for preliminary proxy and information statements where the only matters to be considered at a non-contested annual shareholder meeting are the election of directors, selection or ratification of auditors, and/or shareholder proposals.[79]

Shareholder Proposal Rule

In the release adopting the proxy rule amendments, amendments to the shareholder proposal rule also were adopted.[80] These amendments deleted the provision that had permitted exclusion of a shareholder proposal from a registrant's proxy materials where a proponent delivered written proxy materials to holders of more than 25 percent of a class of the registrant's securities. They also specified requirements with respect to requests by a registrant for documentary support of a proponent's beneficial ownership.

Shareholder Communications

On April 27, 1988, the Commission adopted amendments to exclude specified employee benefit plan participants from the operation of the proxy processing and direct communications provisions of the shareholder communications rules.[81] Under these amendments, the exclusion is mandatory with

respect to participants in employee benefit plans established by the registrant, but optional where such plans are established by an affiliate of the registrant and hold registrant securities. In either case, the registrant is required to cause proxy material to be furnished to plan participants. The definition of employee benefit plan was also amended, for purposes of the shareholder communications rules, to include those plans that are established primarily for employees, but also include other persons, such as consultants.

Prospectus Delivery Requirements

On April 4, 1988, the Commission adopted an amendment to its rule governing the obligation of dealers to deliver prospectuses in aftermarket transactions following registered public offerings of companies not subject to the reporting requirements of the Exchange Act.[82] For registered offerings of securities listed on a national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system of a registered securities association, the amendment reduced the 40 or 90 day prospectus delivery period to 25 calendar days after the date of the offering.

Change in Fiscal Year/Quarterly Reporting

On June 2, 1988, the Commission published for comment a proposal to revise the reporting requirements applicable when an issuer changes its fiscal year end.[83] The Commission also proposed revisions to make the new reporting requirements consistent with the existing quarterly reporting system, and to modify the period covered in a new registrant's first quarterly report. The proposed rules would permit the filing of a quarterly report for transition periods of less than six months, in lieu of a more detailed annual report. The proposed rules also would codify existing staff administrative practices relating to acceptance of less than full year financial statements.

Acquisitions by Limited Partnerships

On July 8, 1988, the Commission published for comment two alternative versions of a new Rule 465 concerning Securities Act disclosure requirements for acquisitions by limited partnerships during the selling period for a registered public offering.[84] The proposed rule would permit automatic effectiveness of post-effective amendments that are filed to provide information concerning significant acquisitions by blind pool limited partnerships in specified industries. Under both alternatives, offers and sales of limited partnerships could continue after an acquisition became probable, if the prospectus were supplemented with specified acquisition information and a post-effective amendment containing required acquisition information were filed by a specified date. Under either alternative, failure to file the post-effective amendment in a timely manner would require the sales effort to be suspended until such filing occurred.

Regulation D Exemptions From Registration Requirements

On March 3, 1988, the Commission adopted several amendments to the

rules comprising Regulation D, which provides certain exemptions from the registration requirements of the Securities Act.[85] The amendments revised the definition of accredited investors to (a) include additional institutional investors such as savings and loan associations, credit unions, broker/dealers, and certain trusts, partnerships, and corporations; (b) permit a joint as well as an individual income test for accrediting natural persons; and (c) eliminate a purchaser of securities valued at $150,000 or more. For some transactions, the total offering price limit was raised from $500,000 to $1 million, if at least $500,000 is registered at the state level, and a general solicitation now will be permitted in states which provide no qualifying registration procedure under certain circumstances. A new level of disclosure requiring that a certified balance sheet be prepared was also adopted for offerings of less than $2 million.

At the same time, the Commission proposed several additional revisions to Regulation D.[86] The proposed revisions would add to the list of accredited investors certain employee benefit plans established and maintained by state governments or their political subdivisions, agencies, or instrumentalities. The proposed revisions also would eliminate the requirement to file a Form D as a condition to the Regulation D exemption, and would provide that isolated and minor deviations from the requirements of Regulation D that occur despite a good faith and reasonable attempt to comply would not cause loss of the exemption.

Securities Act Exemptions for Compensatory Benefit Plans

On April 14, 1988, the Commission adopted Rules 701, 702, and 703, which provide an exemption from the registration requirements of the Securities Act for certain offers and sales of securities made pursuant to the terms of compensatory benefit plans or written contracts between the issuer, its parent or majority owned subsidiaries, and their employees, directors, general partners, officers, consultants, and advisors, if the issuer is not subject to the reporting requirements of the Exchange Act.[87] The amount of securities that may be subject to outstanding offers in reliance on the exemption, plus the amount of securities sold in the preceding 12 months pursuant to the exemption, may not exceed $5 million. The rules also require that a Form 701 be filed with the Commission no later than 30 days following the first sales which bring aggregate sales over $100,000.

Defense Contracts Procurement Inquiry

On August 1, 1988, the Commission issued a statement with respect to the disclosure obligations of companies affected by the government's inquiry into illegal or unethical activity in the procurement of defense contracts.[88] The statement reminded registrants of their obligations under the federal securities laws to disclose material information on the inquiry. Among other matters, specific attention was directed to the requirements of Regulation S-K regarding disclosure of a registrant's business operations, material legal proceedings involving the registrant or its management, and management's

discussion and analysis of the registrant's financial condition and operating results. The Commission also reminded registrants that the disclosure requirements apply equally to companies that are subject to the inquiry, and to companies that, although not targeted in the investigation, otherwise may be materially affected by it.

Publication of No-Action and Interpretive Letters

On April 7, 1988, the Commission adopted rule amendments to provide for the expedited publication of interpretive and no-action correspondence at the time a response is sent or given to the requesting party, unless temporary confidential treatment is granted.[89] The Commission simultaneously codified the application of the existing publication rule to certain exemption letters.

Trust Indenture Legislative Proposal

On November 30, 1987, the Commission submitted to Congress its recommendations for amendment of the Trust Indenture Act.[90] If enacted, the proposed bill, entitled the Trust Indenture Reform Act, will comprehensively modernize federal regulation of publicly offered debt securities. Under the proposed bill, mandatory indenture terms would be self-executing and imposed by law, a measure that will simplify preparation of indentures. Conflicts of interest would be relevant to a trustee's eligibility only after default. The proposal also would broaden the Commission's exemptive authority to allow variation from the statute, and would allow foreign trusteeships in specified circumstances.

Conferences

SEC Government-Business Forum on Small Business Capital Formation

The seventh annual SEC Government-Business Forum on Small Business Capital Formation was held in Washington, D.C. on September 26–27, 1988. Approximately 250 small business executives, accountants, attorneys, government officials, and other small business representatives were in attendance. The format of the conference was structured around a series of lectures and discussion groups on debt financing techniques. A report on the forum will set forth a list of recommendations for legislative and regulatory changes developed by the participants. The report will be sent to Congress and made available to the public.

SEC/NASAA Conference under Section 19(c) of the Securities Act

On April 18–19, 1988, approximately 60 senior staff officials of the Commission met with approximately 65 representatives of the North American Securities Administrators Association in Washington, D.C. to discuss methods of effectuating greater uniformity in federal and state securities matters. Following the conference, the staff issued a final report that described a number of resolutions that were approved, summarized the discussions of the working groups, and identified conference participants.

Accounting and Auditing Matters

Key 1988 Results

Fiscal year 1988 was characterized by a number of significant public and private sector initiatives intended to enhance the reliability of financial reporting and to ensure that the accounting profession meets its important public responsibilities imposed under the federal securities laws.

For example, the Commission adopted rules to improve the disclosures concerning changes in independent accountants and initiated a related rule proposal which would accelerate the timing of these disclosures. The Commission also issued a rule proposal to require managements of publicly held companies to explicitly state their responsibilities for the presentation of financial information and the effectiveness of their companies' internal controls. Also, under Commission oversight, the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) adopted nine new auditing standards designed to enhance auditors' communication and responsibilities. These actions are reflective of a comprehensive system of public and private sector initiatives—which includes the Commission's programs, private sector standard-setting, the peer review program of the AICPA, state licensing activities, and civil litigation—under which the integrity of financial reporting for public companies is constantly being reviewed, modified and improved.

The following are the primary Commission programs to achieve compliance with the accounting and financial disclosure aspects of the federal securities laws:

- *Rulemaking* initiatives to supplement accounting standards, implement financial disclosures and establish independence criteria for accountants;
- The *review and comment process* resulting in improvement of filings, identification of emerging accounting issues (which can result in rulemaking or private sector standard-setting), and identification of problems warranting enforcement actions;
- The *enforcement program* imposing legal sanctions and serving to deter irregularities by enhancing the care with which registrants and their accountants analyze accounting issues; and
- *Oversight* of private sector efforts, conducted principally by the Financial Accounting Standards Board (FASB) and the AICPA, to establish accounting and auditing standards and to improve the quality of audit practice.

The Commission's review and comment process and enforcement programs are discussed elsewhere in this report. The remainder of this section summarizes the Commission's accounting-related rulemaking initiatives and its oversight of private sector activities. In addition, this section comments on

several initiatives addressing issues arising out of the continued internationalization of the securities markets.

Accounting-Related Rules and Interpretations

Regulation S–X provides guidance as to the form and content of financial statements filed with the Commission. The Commission has also adopted various rules that specify disclosure of financial information outside of the financial statements. For example, certain supplementary financial information, selected financial data, and a management's discussion and analysis of a company's financial condition and results of operations are required by Regulation S–K. In addition to requiring financial disclosure by registrants, Commission rules also address the qualifications of accountants (including their independence) and accountants' reports on financial statements.

To address significant accounting issues, the Commission may issue interpretive releases and, when announcing rule changes, provide guidance for compliance with new or amended rules. In addition, the Commission staff periodically issues Staff Accounting Bulletins (SABs) to inform the financial community of the staff's views on accounting and disclosure issues.

Nine SABs were issued during fiscal year 1988. The SABs addressed topics such as: the appropriate income statement classification by utilities for disallowed or abandoned plant costs; requirements for financial statements of properties securing mortgage loans; the application of the "push down" basis of accounting; the appropriate disclosures concerning the potential impact of issued but not yet adopted accounting standards; the appropriate financial reporting for a proposed Mexican Debt Exchange transaction; the effect of certain *de minimis* sales by affiliates on pooling of interests accounting; the appropriate accounting for the allocation of debt issue costs; accounting for quasi-reorganizations; and accounting for transactions undertaken by a company's principal shareholder for the benefit of the company.[91]

National Commission on Fraudulent Financial Reporting

In recognition of the accounting profession's responsibilities in the area of reliable and complete financial reporting, various organizations came together to sponsor the National Commission on Fraudulent Financial Reporting (Treadway Commission).[92] The Treadway Commission studied issues involved in the prevention and detection of fraud in the context of financial reporting, and issued its final report in October 1987.[93] The report contains recommendations for the public company, the independent public accountant, the Commission, and others to improve the regulatory and legal environment.

The SEC has taken the following rulemaking actions in areas discussed in the Treadway Commission report.

Opinion Shopping—The SEC has adopted amendments to its disclosure requirements regarding changes in accountants and potential opinion shopping situations.[94] Subsequent to fiscal year end, the SEC also adopted rule amendments to accelerate the timing for reporting these disclosures.[95]

Management Reports—The SEC has proposed requiring a report regarding management's responsibilities for the preparation of the registrant's financial statements and the registrant's system of internal controls.[96]

Peer Review—The SEC has proposed mandatory peer review for auditors of SEC registrants.[97]

Timely Reviews By Auditors of Interim Information—The SEC voted to issue a concept release soliciting comments on whether its rules should be amended to require that a registrant's independent accountant review on a timely basis interim financial information filed with the SEC.

In addition to these rulemaking activities, the SEC has taken the following other actions on matters discussed in the Treadway Commission report.

Enforcement Remedies—The SEC forwarded to Congress a legislative proposal entitled the "Securities Law Enforcement Remedies Act of 1988," which would permit assessment of civil money penalties in administrative and civil proceedings under the federal securities laws, would permit the SEC and the courts to suspend or bar violators of these laws from service as an officer or director of any company that files reports with the SEC, and would expand the scope of Section 15(c)(4) of the Exchange Act to cover violations of the proposed Act.[98]

Reexamination of Audit Committee Requirements by Exchanges—The Commission voted to communicate with self-regulatory organizations (other than the New York Stock Exchange, which already imposes a requirement for an audit committee comprised of members independent of management) to encourage them to consider upgrading and expanding the scope of their audit committee standards.

Oversight of Private Sector Standard-Setting

Through active oversight, the Commission monitors the structure, activity, and decisions of the private sector standard-setting organizations.

FASB—Financial statements filed with the Commission are presumed to be misleading unless they are prepared in accordance with accounting principles that have substantial authoritative support. In this regard, the Commission's approach has been to look to the FASB to establish and improve accounting principles, and the FASB's performance continues to be generally satisfactory.

Oversight of the process involves not only Commission review of the standards established by the FASB, but also the direct participation of staff members and, in some instances, the Commission itself in the initial setting of standards. The Commission and its staff monitor the progress of FASB projects and developments closely, maintain frequent contact with the FASB to discuss topical issues, and participate in meetings, public hearings, and task forces.

During fiscal year 1988, some constituents expressed concern about the nature and extent of FASB standards. While the Commission recognizes the right of all parties to express their concerns, criticisms and suggestions for change (and indeed encourages such expressions), it believes that the FASB's independence and the openness of its processes are vital to the FASB's ability to serve the public interest and perform its tasks well. The Commission staff

is working with the FASB and the Financial Accounting Foundation to consider practical ways to improve the FASB's procedures while maintaining its independence and openness.

A brief discussion of FASB activities follows.

Postemployment Benefits Other Than Pensions—Subsequent to fiscal year end, the FASB issued an exposure draft of a standard on employers' accounting for postemployment benefits other than pensions.[99] Research has indicated that the cost of these benefits is significant for some companies and the FASB has tentatively concluded that postretirement health care benefits represent a form of deferred compensation and that an obligation should be recognized as services are rendered. A public hearing is planned on this subject for 1989.

Income Taxes—In December 1987 the FASB issued a statement on accounting for income taxes.[100] The statement changes the method of accounting for income taxes by adopting a liability approach resulting in, among other things, the recognition in current earnings of the impact of an enacted change in corporate income tax rates. Subsequent to fiscal year end, the FASB decided to defer the effective date of this statement for one year to allow companies and their auditors more time to effect compliance with the statement.[101] Also, the FASB will publish interpretive guidance to assist companies and accountants in implementing the new standard.

Financial Instruments—The FASB continues to work on its major long-term project to address financial instruments and off-balance sheet financing issues. An exposure draft was issued in November 1987 that would require certain disclosures about financial assets, liabilities and instruments not now recognized in the financial statements.[102] Subsequent parts of the project will include issues related to: (a) accounting for risk-transfer instruments such as guarantees and interest rate hedging instruments; (b) off-balance sheet financing arrangements; (c) the appropriate measurement basis for financial instruments; and (d) accounting for securities with both debt and equity characteristics, including the impact on stock compensation.

Other Activity—The FASB also issued statements during the fiscal year dealing with: accounting and reporting by insurance enterprises for long duration contracts; and sales and leasebacks involving real estate.[103] Other significant projects on the FASB's agenda include: (a) consolidations and the reporting entity; (b) discounting; and (c) impairment of long lived assets.

Timely Financial Reporting Guidance—The FASB's efforts to provide more timely guidance on emerging issues resulted in the issuance during fiscal year 1988 of a technical bulletin concerning accounting for mortgage servicing fees and rights.[104] Subsequent to fiscal year end, technical bulletins dealing with the right of setoff and accounting for leases were issued.[105]

The FASB's Emerging Issues Task Force (EITF), in which the Commission's Chief Accountant participates, continues to perform an important and useful role in identifying and resolving accounting issues. Since its inception in 1984, the EITF has discussed over 190 issues covering a broad range of topics including financial instruments, business combinations, accounting for leveraged buyouts (LBOs), and income taxes. Registrants are expected to follow the

positions agreed upon by the EITF. Those that do not follow these positions will be asked to justify departure from any consensus reached.

AICPA—In addition to oversight of the private sector process for setting accounting standards, the Commission also oversees various activities of the accounting profession conducted primarily through the AICPA. These include: the Auditing Standards Board (ASB) which establishes generally accepted auditing standards; the Accounting Standards Executive Committee (AcSEC) which provides guidance on specific industry practices through its issuance of statements of position and practice bulletins and prepares issue papers on accounting topics for consideration by the FASB; and the SEC Practice Section of the Division for CPA Firms (SECPS) which seeks to improve the quality of audit practice by member accounting firms that audit public companies through various requirements, including peer review.

ASB—During fiscal year 1988, the ASB adopted nine auditing standards in connection with its so-called "expectation gap" project.[106] The standards were developed in close cooperation with the Commission's staff. The new standards should enhance and clarify auditors' responsibilities and thus promote better audits.

AcSEC—AcSEC has a key role in the identification of accounting practices, including those in specialized industries not sufficiently addressed by existing authoritative literature. During fiscal year 1988, the Commission staff worked with AcSEC to provide guidance in a number of areas, including accounting for past due interest received in connection with the Brazilian debt restructuring, accounting for the airline industry (including frequent flyer awards), accounting for revenues relating to computer software, and various issues relating to government contractors. Also, the Commission's Chief Accountant sent a letter during fiscal year 1988 requesting AcSEC to address accounting issues related to the recognition of interest received in connection with various kinds of lending activities by financial institutions and others. AcSEC responded by undertaking a project in this area.

SECPS—The membership requirements of the SECPS are designed to strengthen the quality control systems of member firms, thus enhancing the consistency and quality of practice before the Commission. According to the 1988 SECPS annual report, 87 percent of public companies are audited by SECPS member firms, and the revenues of those companies constitute 99 percent of the total revenues of all public companies.[107] Member firms are committed to a tri-annual peer review under the close scrutiny of the Public Oversight Board (POB). The SECPS also reviews and makes inquiries regarding the quality control implications of alleged audit failures involving public clients by SECPS member firms.

The Commission exercises oversight of the SECPS through frequent contact with the POB and members of the executive and peer review committees of the SECPS. In addition, the staff reviews POB files and selected working papers of the peer reviewers. This oversight has shown that the peer review process contributes significantly to improving the quality control systems of member firms and, therefore, that it should enhance the consistency and quality of practice before the Commission.

International Accounting and Auditing Standards

Significant differences currently exist between countries in accounting and auditing standards. These differences serve as an impediment to multinational offerings of securities. The Commission, in cooperation with other members of the International Organization of Securities Commissions (IOSC), has participated in initiatives by international bodies of professional accountants to establish appropriate international standards which might be considered for use in multinational offerings. For example, the Commission staff has worked with the International Accounting Standards Committee (IASC), an international body with membership in 71 countries, to revise international accounting standards. In fiscal year 1988, an IOSC/IASC working group proposed significant changes in the international accounting standards to reduce accounting alternatives as an initial movement toward appropriate international accounting standards. Subsequent to fiscal year end, the IASC published the proposals for a nine month comment period. Issues of completeness and lack of specificity in international accounting standards still need to be addressed.

The Commission staff also began to work with the International Federation of Accountants (IFAC) to revise international auditing guidelines. Auditors in different countries are subject to different independence standards, perform different procedures, gather varying amounts of evidence to support their conclusions, and report the results of their work differently. The Commission staff, as part of an IOSC working group, began participating this year in a project by IFAC to expand and revise international auditing guidelines to narrow these differences. The Commission staff will continue to participate in these initiatives.

The EDGAR Project

Introduction

The primary purpose of EDGAR is to increase the efficiency and fairness of the securities markets for the benefit of investors, securities issuers, and the economy. Through EDGAR, information will be filed electronically for acceptance and review by the Commission staff. Once accepted, public information also will be rapidly available to investors, the media and others via computer screens in the Commission's public reference rooms and through various subscription services. When fully operational, EDGAR will accelerate dramatically the filing, processing, dissemination and analysis of time-sensitive corporate information filed with the Commission.

The EDGAR Pilot system completed its fourth full year of successful operation on September 24, 1988. It has demonstrated clearly the feasibility of electronic filing and review procedures. As of the end of fiscal year 1988, over 40,000 electronic filings had been made since September 1984.

The Commission also continued to move ahead with its plan to develop a fully operational EDGAR system. Offers were received initially on April 29, 1987 in response to the Commission's Request for Proposals. The Operational contract was awarded on January 3, 1989 to The BDM Corporation, bidding with Mead Data Central, Sorg Incorporated, and Bechtel Information Services.

Pilot System

The Pilot system serves a group of volunteer companies whose filings are processed by the Corporation Finance Division and the Investment Management Division. At the end of fiscal year 1988, there were over 500 registrants fully participating in the Pilot. In addition, over 900 other registrants were participating in the Pilot on a partial basis by electronically submitting filings of specific form type. The latter group includes investment companies submitting annual and semi-annual reports on Form N-SAR, registered public utility holding company systems or subsidiaries submitting forms required under the Public Utility Holding Company Act, and institutional investment managers submitting Form 13 F-E to report securities held in their managed accounts.

During fiscal year 1988, several enhancements were added to the Pilot to make electronic filing more convenient and to test potential features of the Operational system. For example, a multiple registrant filing procedure was added on April 23, 1988. This enhancement enables up to ten co-registrant companies to be named when submitting one filing. Prior to the change, the Pilot procedures required each registrant to submit a separate filing. One of the registrants (the "primary" filer) submitted the text of the entire filing and each of the other registrants (the "non-primary" filers) submitted a filing

consisting of a statement incorporating by reference the primary filer's filing. The new, streamlined procedures allow a single filing to be submitted on behalf of all registrants involved. The filing is stored only once on the system, but is keyed to each registrant listed in the submission header so that it can be displayed on an EDGAR terminal as a filing by each registrant. In addition, a complete microfiche copy of the filing is made for each registrant and the filing is entered in the Commission's workload system for each registrant.

Another Pilot enhancement involves the acceptance of special characters by the Pilot. The Pilot was designed to accept electronic text only in the American Standard Code for Information Interchange (ASCII). The ASCII character set includes letters, numbers and a few special characters such as spaces, periods, commas and dollar signs. However, the ASCII set excludes many common control characters such as vertical tab (VT), line feed (LF), and form feed (FF). These characters were considered invalid for direct Pilot transmissions. Consequently, when a filer workstation inadvertently transmitted such characters to the Pilot, the filing was either rejected or the invalid characters appeared in the text of the filing. To avoid these difficulties, filers had to ensure that these special characters were removed from their filings before transmission. As of June 30, 1988, the Pilot system was enhanced to recognize and accept specific control characters in direct transmissions. This change has simplified direct transmission of electronic filings since it permits more effective use of popular word processing and communications software on filer workstations.

In April 1988, an updated version of IBM's operating system software was successfully installed on the Pilot mainframe. As a result of this change, the Pilot operates more efficiently and is easier to maintain.

During fiscal year 1988, an independent validation and verification test procedure for Pilot enhancements was developed and implemented. It is designed to test new system features in a user/filer environment before they are incorporated in the Pilot production system. These tests are in addition to the normal program and system tests that have always been performed by the Pilot contractor. The effectiveness of this test procedure will be monitored with a view toward adopting it for use in the development of the Operational system.

Operational System

During the past fiscal year, plans for Operational EDGAR continued to move forward. The EDGAR RFP was originally released on May 7, 1986 and bids were received on February 27, 1987. However, prior to awarding the contract, the Commission announced its intention to reopen competition because of a change in the funding strategy for the Operational contract.

On October 23, 1987 an amended RFP was issued, with proposals due in late January 1988. After two extensions, the Commission received initial proposals for the Operational EDGAR system on April 29, 1988. Preliminary evaluation of those proposals was completed in October 1988. Following face-to-face discussions with the offerors, best and final proposals were

received on December 2, 1988. The Operational contract was awarded on January 3, 1989 to the BDM Corporation bidding with Mead Data Central, Sorg Incorporated, and Bechtel Information Services.

Benefit Analysis

In fiscal year 1988, the Commission contracted with the MITRE Corporation to perform an independent study of the external (non-SEC) benefits and costs of the EDGAR Operational system, including one-stop filing. One-stop filing would occur if a filing made with the Commission also could be utilized to fulfill filing requirements with state regulatory agencies and self-regulatory organizations (SROs) such as the New York Stock Exchange. The study took several months to complete, and the two final reports were delivered to the Commission in late December, 1988 and early January, 1989. A previous Commission study had documented the expected SEC internal benefits and costs of Operational EDGAR.

In doing the external benefit/cost study, MITRE analyzed three possible scenarios. First, MITRE analyzed the external benefits and costs attributable to the EDGAR Operational system assuming it will be developed as defined by the EDGAR RFP. The RFP provides for the transmittal of designated electronic filings from EDGAR to the SROs or their agent, and to the states through their agent, the North American Securities Administrators Association (NASAA). Based on the MITRE analysis, the EDGAR system, as defined by the RFP, would have net external benefits in excess of $200 million over the eight year life of the EDGAR contract. Based on the earlier SEC study, the net internal benefits of EDGAR would exceed $20 million over the same period. Thus, the total net benefits over eight years are calculated to exceed $220 million. These benefits are more than double the estimated cumulative cost of the Pilot and Operational systems combined including the contractor-funded cost of disseminating the electronic filings under a regulated fee schedule.

Second, MITRE analyzed the incremental benefits and costs that would be attributable to one-stop filing if the EDGAR system were enlarged to accommodate direct, interactive access to the EDGAR database by the states through its agent, NASAA, and the self-regulatory organizations. Based on the MITRE analysis, the EDGAR system with direct, interactive access by NASAA and the SROs would realize a significant fraction of $150 million as net external benefits over the life of the EDGAR contract. These incremental benefits would exceed the estimated $20 million in additional costs that would be required to expand the EDGAR system to permit direct, interactive access by NASAA and SROs representatives.

Finally, MITRE analyzed the incremental benefits and costs attributable to one-stop filing if the EDGAR system were augmented with "satellite" EDGAR-compatible systems at NASAA and two major SROs. Based on the MITRE analysis, the estimated incremental cost of this approach would be $30 million for establishing and operating satellite EDGAR system to NASAA only or $75 million for establishing and operating satellite EDGAR systems at NASAA and two major SROs.

Office of EDGAR Management

The Commission has enhanced its managerial and technical expertise in preparation for the Operational system by creating a separate Office of EDGAR Management.

The Director reports to the Chairman of the Commission and has overall responsibility for the procurement, implementation and operation of the EDGAR system. In addition to overseeing the Office of EDGAR Management, the Director is the Contracting Officer for the project with responsibility for maintaining liaison within the Commission and with filers and users of the filed information. The Director will be assisted in these tasks by a professional staff consisting of a Deputy Director and a counsel, as well as three branch chiefs. Staffing for fiscal 1988 included approximately 15 positions.

Conclusion

Although there have been several delays in the award of the contract for Operational EDGAR, the Commission is firmly committed to proceeding with it. Following the award of the EDGAR contract in January 1989, work will focus on the design of the Operational system and the associated rulemaking.

Regulation of the Securities Markets

Key 1988 Results

The Division of Market Regulation, with the assistance of the regional offices, is charged with the responsibility of overseeing the operations of the nation's securities markets and market professionals. In fiscal year 1988 over 11,000 broker-dealers and nine active exchanges, as well as the over-the-counter markets, were subject to the Commission's oversight.

Market Value of Equity and Options Sales on U.S. Exchanges
in billions

FY'84	FY'85	FY'86	FY'87	FY'88
$1,025	$1,147	$1,735	$2,367	$1,907

B/D Oversight Examinations

FY'84	FY'85	FY'86	FY'87	FY'88
389	447	481	452	421

Surveillance and Regulatory Compliance Inspections of SROs

FY'84	FY'85	FY'86	FY'87	FY'88
20	21	22	23	21

SRO Final Disciplinary Actions

FY'84	FY'85	FY'86	FY'87	FY'88
1,123	971	845	991	1,336

The October 19, 1987 market break generated several analyses and studies, including an 850-page report by the Division. After the market break the Commission responded to Congressional inquiries, provided testimony, developed legislative proposals, processed rule proposals from the various self-regulatory organizations (SROs), and conducted inspections of SRO activities related to the markets' volatility.

Fiscal year 1988 was also an active year in the international arena. Additional multinational market linkages were completed and memoranda of understanding were concluded with other countries to share needed regulatory and surveillance information.

The broker-dealer field examination program was enhanced through the use of portable computers to review firms' net capital and mark-up compliance. Further enhancement to the program is underway through the development of software that focuses on sales practice activities.

The October 1987 Market Break [108]

During October 1987, the nation's securities markets experienced an extraordinary surge of volume and price volatility. The most widely followed indicator of the United States stock market, the Dow Jones Industrial Average index of 30 New York Stock Exchange (NYSE) stocks, had reached an intra-day record high of 2746.65 on August 25, 1987. On October 2, the DJIA closed at 2640.99. During the week of October 5, the index declined by 158.78 points and, during the week of October 12, by 235.47 points. On October 19, the DJIA declined 508.32 points, and by its low point mid-day on October 20 it had declined to 1708.70, or over 1,000 points (37 percent) below its August 25 high. Even with its erratic but substantial recovery over the next few trading sessions, by October 30, the DJIA stood at 1,994, down over 26 percent from its August high.

Broader indexes also declined sharply for the month of October. For example, the Standard & Poors index of 500 stocks declined 21.8 percent, and the composite indexes for the nation's three principal equities markets, the NYSE, the American Stock Exchange (Amex), and the National Association of Securities Dealers' automated quotations system (NASDAQ) for over-the-counter stock trading, experienced declines in October of 21.9 percent, 27 percent, and 27.2 percent, respectively. Similarly, record-breaking trading volume was experienced on each market. On the NYSE, projections that trading volume would increase steadily from daily averages of less than 200 million shares to daily averages of more than 300 million shares were shattered by consecutive 600 million share trading sessions on October 19 and 20. The American Stock Exchange and NASDAQ markets were similarly tested by record trading with average daily volume for the week of October 19 of 31.7 and 244.4 million shares, respectively, compared to average daily volume in September of 12.4 and 148.3 million shares, respectively.

In light of these extraordinary events, the Division conducted a comprehensive study of the causes, effects, and regulatory ramifications of this market activity. The purpose of the resulting report was to provide an independent factual basis to enable the Commission to determine appropriate regulatory responses to help ensure the soundness of the nation's securities markets and the protection of investors.[109]

The primary focus of the Division's report was the effect of derivative products upon the securities markets in general, and on the October market in particular. The Division found that although no single factor caused the market break, the existence of various trading strategies involving derivative stock indexes accelerated or exacerbated the decline. The Division concluded that the market break left a legacy of continued high volatility and decreased market quality. Further, these factors were believed to have potentially long-term negative effects on the participation of individual investors in the stock market. Finally, while citing its continued belief that the derivative index markets perform valuable hedging and market timing functions, the Division made a large number of

recommendations for corrective action, including the introduction of trading in market baskets of stocks, increased margins and modified price limits for futures transactions, and improved reporting requirements.

The Division also reviewed the responsibilities and performance of exchange specialists. It concluded that, despite questionable practices on the part of some firms, on the whole specialists met their market making obligations. The Division did stress, however, that the NYSE and the Amex should review carefully individual specialist performance and commence reallocation proceedings or disciplinary action where appropriate. The Division also reviewed the capital requirements of specialists in light of the changing market environment. Similar analyses were conducted for market makers in the over-the-counter market, and specialists and market makers in the options markets. The report also included comprehensive reviews of the financial responsibility rules, clearance and settlement systems, exchange and NASDAQ operational performance, and issuer repurchase activity.

In addition, the Commission devoted considerable resources to the preparation of Congressional testimony regarding the October 1987 market break. In particular, the Chairman testified at various times before the Senate Committee on Banking, Housing and Urban Affairs; the Senate Committee on Agriculture, Nutrition, and Forestry; the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce; and the House Committee on Agriculture. In general, the testimony focused on descriptions of the Commission's actions during and after the market break and outlined numerous financial market reforms designed to lessen the likelihood of another serious market decline.

In late June and early July 1988, the Commission transmitted to Congress a series of legislative proposals designed to enhance the efficiency and fairness of the United States capital markets and to help avoid future market declines.[110] The Commission's proposed legislation, if enacted, would have (1) granted the Commission emergency authority regarding trading hours, position limits, and clearance and settlement; (2) allowed the Commission to suspend securities trading during emergencies; (3) permitted the Commission to require enhanced reporting of large securities positions and of the activities of holding company systems; (4) required coordination of clearance and settlement; (5) modified the margin-setting structure for stocks and stock index derivative products and required that margin be set at "prudential" levels; and (6) transferred to the Commission jurisdiction over equity index futures and options on such futures.

The Commission also responded to a significant number of Congressional inquiries during fiscal year 1988 pertaining to the Commission's actions and recommendations regarding the October 1987 market break.[111] These letters discussed, for example, contingency planning and information-sharing during market emergencies, upgrading of securities exchanges' order handling and execution systems, and international cooperation regarding the securities markets.

The Commission participated in the President's Working Group on Financial Markets, which was appointed by President Reagan to consider the major

issues and recommendations included in the various studies of the October 1987 market break and possible actions to carry out those recommendations.[112] The Working Group, which, in addition to Chairman Ruder, included top officials of the Treasury Department, the Federal Reserve Board, and the Commodity Futures Trading Commission, submitted a report to the President in May 1988.[113] The Working Group's report contains recommendations regarding trading halts, margin levels for securities and derivative products, coordination of clearance and settlement systems, and contingency planning for market emergencies.

The Commission also participated actively in the formulation and implementation of various actions taken by the SROs to address the problems associated with the October 1987 market break. Market reforms were undertaken by the SROs in a wide range of areas, including trading systems' capacity; individual investor access to markets; market maker performance and capital; market information, coordination, and contingency planning; clearance and settlement; portfolio trading; and circuit breakers.[114] Further information on these actions will be set out in the following sections.

The National Market System

Rule 11Aa2-1 under the Exchange Act provides procedures for designating certain securities as National Market System (NMS) securities and Rule 11Aa3-1 requires that transactions in NMS securities be reported on a real-time basis, increasing market efficiency and improving execution of orders. Under these rules, all securities—whether traded on exchanges or over-the-counter (OTC)—for which transaction reports are required to be submitted pursuant to an effective transaction reporting plan are designated as NMS securities. As a result of the October market break, the number of OTC securities designated as NMS securities decreased to 2,900, about 200 less than in fiscal year 1987.

During fiscal year 1988, the Commission approved a number of NASD proposals relating to market structure issues. The Commission approved a proposal that authorizes the NASD to halt OTC trading in exchange-listed securities when the primary market for the securities halts trading pending the dissemination of material news.[115] The Commission also approved a proposal by the NASD to develop a new service consisting of a low-speed ticker signal through which subscribers could obtain a moving display of last sale reports for all NASDAQ/NMS securities from any of a number of vendors.[116]

In addition, the Commission adopted an amendment to its rule governing transaction fees, to continue to exempt exchange transactions in OTC/NMS securities from the imposition of Section 31 transaction fees for one year.[117]

The Amex and NASD submitted rule proposals to establish systems to facilitate trading of unregistered securities. Amex's proposed system, called SITUS (System for Institutional Trading of Unregistered Securities), would be available only to institutions, and would include only the securities of non-reporting companies.[118] On the other hand, the NASD's proposal, PORTAL (Private Offerings, Resale and Trading through Automated Linkages),

would be open to both institutions and highly capitalized individuals and would include the securities of any foreign or domestic "world-class" company.[119] The Division has requested that the Amex and NASD provide, prior to publication of the proposals for comment, specific information regarding the clearing and trading facilities of their systems and the Commission's access to trading information.

The Commission published for comment an NASD proposal to establish a permanent subscriber fee of $50.75 per month for each interrogation or display device receiving NASDAQ transaction and quotation data disseminated through the National Quotation Data Service (NQDS), and to request that the Commission approve the retroactive application of the fee to all subscribers currently receiving the NQDS from vendors.[120]

Finally, the Commission issued a release endorsing the North American Securities Administrators' Association (NASAA) development of "Blue Sky" exemptive standards for NASDAQ/NMS securities that are comparable to the States' exemptive standards for exchange-listed securities.[121]

National System for Clearance and Settlement of Securities Transactions

During fiscal year 1988, the National Clearance and Settlement System (National System) was tested by high trading volume and price volatility. As reported in the Commission's testimony before Congress and as described in the Division of Market Regulation's Report on the October 1987 Market Break, all components of the National System performed well despite the pressures of unprecedented volume and price volatility.[122] Nevertheless, the Commission's testimony and the Division's Report contain many recommendations for enhancements to all components of the National System.[123]

As reported above, the Commission participated actively in the President's Working Group on Financial Markets. The Interim Report of the Working Group details many initiatives for consideration and implementation to improve intermarket clearing, credit and payment systems.[124] During fiscal year 1988, the Commission worked actively with clearing agencies, banks, broker-dealers and other federal regulators to consider and implement those changes. For example, the Commission granted the Intermarket Clearing Corporation (ICC) temporary registration as a clearing agency[125] and approved proposals by ICC and the Options Clearing Corporation (OCC) to establish mechanisms for maintaining and margining portfolios of options and futures contracts on related underlying foreign currency and stock index products.[126] The Commission also submitted to Congress proposed legislation that would, among other things, authorize the Commission and the Commodity Futures Trading Commission (CFTC) to facilitate the development of coordinated clearing facilities for securities, options and related futures transactions.

During fiscal year 1988, the Commission approved clearing agency proposals that continued expansion of the services of the National System to mortgage-backed, U.S. Government, mutual fund, and municipal securities. For example, the Commission approved, as a permanent service, the National Securities Clearing Corporation's (NSCC) Mutual Fund Settlement, Entry, and

Registration Verification Service, which provides centralized automated handling of mutual fund orders.[127] The Commission also approved the temporary registration of the Government Securities Clearing Corporation, to provide comparison services for inter-dealer and brokers' brokers' trades in U.S. Treasury securities.[128] The Commission also extended the temporary registration of MBS Clearing Corporation (MBSCC), which provides clearing and certificate depository services for mortgage-backed securities.[129]

Securities Immobilization

The October 1987 market break tested securities industry processing systems with unprecedented high volume. As discussed in the Division of Market Regulation's report on the market break, efforts during the last decade to immobilize securities certificates and to automate, to the extent possible, transfer agent and securities depository recordkeeping and transfer tasks facilitated smooth processing of record numbers of transfers and deliveries.[130]

In fiscal year 1988, the Commission continued to make progress in its efforts to facilitate the immobilization of securities certificates. For example, the Commission approved changes to NYSE and NASD rules to require that members use securities depositories to confirm, affirm and settle institutional trades in corporate equity securities for delivery against payment or receipt against payment.[131] Also, the Commission approved, as a permanent system, the Depository Trust Company's (DTC) same-day funds settlement system, which expands DTC's certificate immobilization and book-entry delivery services to certain securities settling in same-day funds, such as municipal notes and auction-rate preferred stock.[132]

Internationalization

As part of its secondary market internationalization program, the Commission continued to foster the development of international linkages between clearing agencies and to foster foreign participation in the National Clearance and Settlement System. For example, the Commission issued two no-action letters concerning links that will facilitate settlement of international securities transactions through centralized clearing entities. International Securities Clearing Corporation (ISCC) entered into a link agreement with Centrale de Livraison de Valeurs Mobilieres (CEDEL) whereby ISCC members who also are members of CEDEL may request ISCC to transmit instructions to CEDEL concerning custody, clearance and settlement within the CEDEL system.[133] ISCC also entered into a link agreement with Central Depository (Pte) Ltd. (CDP), a subsidiary of the Stock Exchange of Singapore, whereby ISCC would maintain a sponsored account at DTC for the custody of U.S. securities held by members of CDP.[134] The Commission also approved OCC rule changes that permit members to deposit certain Canadian government securities to meet OCC margin requirements.[135]

During fiscal year 1988, the Commission took several actions with respect to the application of Rules 10b-6, 10b-7, and 10b-8 under the Exchange Act to offerings involving concurrent United States and foreign distributions. Rule

10b–6 proscribes certain conduct by persons participating in a distribution to prevent such persons from artificially conditioning the market for a security to facilitate the distribution. Rule 10b–7 governs market stabilization activities during distributions. Rule 10b–8 governs the market activities of participants in a rights offering. The Commission continued to review and grant requests for relief under these anti-manipulation rules for multinational offerings on a case-by-case basis. The Commission's actions permitted non-United States distribution participants to continue certain customary market activities in foreign jurisdictions, subject to certain conditions designed to prevent a manipulative impact on the United States market. For example, letters were issued which permitted Spanish,[136] United Kingdom,[137] and Norwegian [138] distribution participants to bid for and purchase securities in their respective domestic markets during multinational rights distributions in accordance with certain "passive market making" conditions.[139]

As a result of the enactment of the Financial Services Act of 1986 (FSA) in the United Kingdom (U.K.), United States (U.S.) broker-dealers doing business in the U.K. require authorization by U.K. regulators and, among other things, those firms become subject to U.K. net capital standards. The U.K. regulators are authorized by the FSA to disapply U.K. net capital standards where waiver would not result in undue risk to investors. In August 1988, U.K. regulators (*i.e.*, the Securities and Investments Board (SIB), the Bank of England (BoE) and four U.K. self-regulatory organizations [140]) entered into an information sharing agreement with the Commission and four U.S. self-regulatory organizations (SROs) [141] permitting the U.K. regulators to rely on U.S. SROs and the Commission to monitor the capital adequacy under U.S. capital requirements of U.S. brokerage firms that have branches in the U.K.

The terms of the agreement provide that the SIB, the BoE and U.K. SROs will waive their capital adequacy rules as to particular broker-dealers where the U.S. SROs provide to the U.K. regulators copies of quarterly reports filed with them and certain other non-routine information of a material nature related to the financial or operational condition of the broker-dealers. The Commission agreed to notify the SIB or BoE where it becomes aware that a particular broker-dealer's financial or operational condition is materially impaired. The U.K. regulators agreed to notify the Commission where they become aware that a U.K. branch of a U.S. broker-dealer has a substantial financial, operational or other problem.

In response to the increasing cross-border activities of securities firms, the Commission issued a release clarifying the United States broker-dealer registration requirements under the Exchange Act for foreign broker-dealers.[142] The release included a staff interpretive statement regarding the applicability of United States broker-dealer registration requirements to foreign entities engaged in securities activities involving United States investors, and sought comments prior to adopting a Commission interpretive statement on this subject. In the release, the Commission also proposed for comment Rule 15a–6, developed from previous staff interpretive positions, which would exempt from broker-dealer registration foreign entities that deal with certain non-United States persons or with specified United States

institutional investors under limited conditions. Subsequently, the Commission published a comment letter presenting an alternative formulation of proposed Rule 15a–6 that would broaden the scope of Rule 15a–6 to include, in rule form, the substance of the staff's interpretive statement.[143]

Options and Other Derivative Products

During fiscal year 1988, the Commission reviewed several rule changes that were intended to address market volatility concerns, including the problems disclosed in the staff's study of the October 1987 market break. First, the Commission reviewed rule changes submitted by the NYSE, Chicago Board Options Exchange (CBOE), Amex, NASD, and Midwest Stock Exchange (MSE) that established, on a one-year pilot basis, coordinated circuit breaker procedures. The new rules provide for a one-hour halt in the trading of all equity and options securities after a 250-point decline in the Dow Jones Industrial Average (DJIA) and a two-hour trading halt after a 400-point decline.[144] The Commission also reviewed an NYSE proposal to apply certain limitations on program trading when the price of the Standard and Poor's 500 Stock Index futures contract traded on the Chicago Mercantile Exchange (CME) falls 12 points below the previous day's closing value. Also examined was an NYSE proposal to provide priority delivery to the specialist's post, via the NYSE's Designated Order Turnaround System (DOT), to individual investors' market orders of 2,099 or fewer shares on any trading day on which the DJIA moves 25 points from the previous day's close. These three proposals ultimately were approved early in fiscal year 1989.[145] These procedures replaced a six-month NYSE pilot program that had prohibited index arbitrage-related stock transactions through DOT on days when the DJIA had moved 50 or more points from the previous day's close.[146]

Second, the Commission approved an NYSE rule change that adopted, on a permanent basis, certain auxiliary market opening procedures to accommodate increased order flow experienced on quarterly expirations of stock index derivative products.[147] These procedures permit the NYSE to handle in a more orderly and efficient manner the large volume of stock trading that often occurs on quarterly expirations.

Third, in the wake of the October 1987 market break, the Commission approved rule changes by the options exchanges in November 1987 and May 1988, to amend their rules to increase customer margin requirements for equity and index options.[148]

In fiscal year 1988, the Commission worked on new derivative product proposals in several different areas. First, the CBOE submitted to the Commission a proposed rule change containing procedures that will be applicable to participants in the CBOE's joint venture with the Chicago Board of Trade (CBT).[149]

Second, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, the Commission sent to the CFTC several comment letters concerning proposed new stock index futures contracts. Among these was a letter not objecting to the designation of the CBT as a contract market to trade futures contracts on the CBOE 50 and 250 Stock Indexes.[150] The CBOE 50 and 250 both are

capitalization-weighted indexes. The CBOE 50 is comprised of the 50 highest-capitalization stocks traded on the NYSE that are eligible for options trading on the CBOE, while the CBOE 250 includes the highest market value United States equities listed on the NYSE. The futures contracts will trade on the CBOE floor pursuant to the CBOE/CBT joint venture agreement.

The Commission's comment letters also dealt with a variety of proposals evidencing the growing internationalization of markets. The Commission sent to the CFTC a letter not objecting to designation of the CBT as a contract market to trade futures contracts based on the CBT Japanese Stock Index (TOPIX).[151] The TOPIX is a capitalization-weighted stock index based on the prices of all of the approximately 1,110 stocks traded in the first section of the Tokyo Stock Exchange (TSE).

In addition, the Commission sent a letter to the CFTC not objecting to the designation of the CME as a contract market to trade futures contracts on the Nikkei Stock Average (Nikkei).[152] The Nikkei is a price-weighted stock index based on the prices of 225 stocks traded in the first section of the TSE. The Commission also sent a letter to the CFTC not objecting to designation of the CME as a contract market to trade options on its Nikkei futures contracts.[153]

Further, the Commission sent a letter to the CFTC not objecting to the designation of the CME as a contract market to trade futures contracts based on the Europe, Australia, and Far East (EAFE) Index.[154] The EAFE is a capitalization-weighted stock index and consists of 981 stocks from 19 nations. It is designed to be a barometer of the securities markets of Europe, Australia, and the Far East, which represent over half of the capitalization and trading volume of the world's stock exchanges.

The Commission also issued a comment letter to the CFTC not objecting to designation of the Coffee, Sugar, and Cocoa Exchange as a contract market to trade futures contracts on the International Market Index (IMI).[155] The IMI is a capitalization-weighted index based on the prices of 50 foreign stocks traded in the European Community, Japan, and Australia. The IMI component stocks are traded either directly or as American Depositary Receipts on the Amex or the NYSE, or through NASDAQ.

In response to a CFTC request, the Commission sent a letter to the CFTC not objecting to a CFTC no-action position concerning a Toronto Stock Exchange proposal to offer and sell stock index futures contracts based on the Toronto Stock Exchange "35" Index and on the Toronto Stock Exchange "35" Spot Index to United States citizens.[156] Each index is composed of 35 Canadian "blue chip" stocks included in the top 50 Toronto Stock Exchange-listed companies in terms of market value.

Third, the Commission approved two separate amendments to Rule 3a12-8 under the Exchange Act, again reflecting internationalization trends. The first amendment designated government debt securities issued by Australia, France, and New Zealand as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those securities.[157] The most recent amendment, adopted early in fiscal year 1989, added Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany to Rule 3a12-8's list of eligible sovereign issuers.[158] The rule

previously had exempted the debt securities of Great Britain, Canada, and Japan for purposes of futures trading.

Fourth, the Commission sent to the CFTC a comment letter on the CFTC's advance notice of proposed rulemaking regarding the regulation of hybrid and related instruments.[159] Hybrid instruments combine a commodity or option component with a traditional debt or equity security. The CFTC had proposed a regulatory framework to determine the legal status of these instruments, provide certain exemptions from CFTC regulation, and establish a no-action position concerning certain hybrid products. The Commission's letter detailed concerns about the proposal and recommended that the CFTC rescind the notice of proposed rulemaking because many of the hybrid instruments were already adequately regulated under other laws.

In fiscal year 1988, the Commission also took several actions relating to the options exchanges' automated order routing and execution systems. In particular, the Commission approved a proposed rule change filed by the Amex to expand its automatic execution system, known as Auto-Ex, to all equity options on a permanent basis.[160] The expansion is designed to afford public customers a more efficient method of executing small market and marketable limit orders in such options. The Commission also approved a rule change by the CBOE to make the CBOE's Retail Automatic Execution System (RAES) a permanent facility for classes of equity options designated by the CBOE.[161] Finally, the Commission approved a rule change by the Philadelphia Stock Exchange (Phlx) that established as a pilot program a small order options routing system called the Automated Options Market (AUTOM) system.[162]

In other significant actions, the Commission approved a rule change modifying the hours that trading in foreign currency options may be conducted on the Phlx.[163] The rule change provides Phlx with the flexibility to conform its trading hours to coincide with trading hours in the European and Far East foreign exchange markets.

The Commission approved a proposed rule change filed by the CBOE to speed up the opening rotation process for Standard & Poor's 100 Stock Index options (OEX), especially during extreme market conditions such as those encountered during the October 1987 market break.[164] The Commission also approved a CBOE rule change to list long-term index and equity option series that expire 12 to 24 months from the time they are listed.[165]

In addition, the Commission approved CBOE and Amex rule changes that provide for a one-year pilot program during which public customers may apply for a "hedge exemption" from broad-based index option position limits.[166] The Commission also approved rule changes from the CBOE, the Amex, the Phlx, and the PSE that provide for a two-year pilot program during which certain hedged positions will be exempt, without application, from equity option position limits.[167]

In fiscal year 1988, the securities self-regulatory organizations published revised policy statements concerning their respective prohibitions of index options frontrunning.[168] Frontrunning generally refers to trading a stock, option or future while in possession of material non-public information

regarding an imminent block transaction that is likely to affect the price of the stock, option, or future.

Finally, in a proceeding under Section 19(c) of the Exchange Act, the Commission held public hearings regarding whether to adopt Rule 19c-5, which would establish a policy permitting the trading in more than one market of the same options on exchange-listed stocks and direct the options exchanges to remove their current regulatory restrictions on such "multiple trading." [169] The proposed rule was under consideration at year-end.

Regulation of Brokers, Dealers, Municipal Securities Dealers, and Transfer Agents

Broker-Dealer Examinations

During fiscal year 1988, the Commission staff expanded its use of portable computers to conduct broker-dealer examinations. Regional office examiners were provided with computers as well as with training in the use of net capital and mark-up software programs developed during 1987. Also, the Commission fostered coordination among various SROs regarding the practical use of computers in their own examination programs and continued its development of additional software programs.

The broker-dealer oversight program continued to emphasize reviews of sales practice activities at large, national firms. On-site sales practice and operations reviews were performed at both the headquarters and branch offices of such firms. In addition, numerous oversight examinations of newly-registered government securities firms were conducted. In preparation for examining these firms, regional office examiners were provided with special training, as well as a checklist and a manual tailored for examinations of government securities broker-dealers.

The number of enforcement referrals continued to increase from previous years. As a result of a broad range of violations found during examinations, there was a 23 percent increase in these referrals in fiscal year 1988. For instance, a special sweep of examinations at a large number of "penny stock" broker-dealers resulted in referrals to enforcement for numerous sales practice violations, including undisclosed, excessive mark-ups on principal trades.

The Commission staff completed 510 examinations, of which 421 were oversight and 89 were cause examinations. The number of oversight examinations completed represents an eight percent decrease from the prior year, whereas the number of cause examinations represents a 37 percent increase. The decrease in oversight examinations and the increase in cause examinations resulted from the need for the Commission to respond to crisis situations growing out of the October 1987 market break and to an increased incidence of sales practices abuses by penny stock broker-dealers.

Municipal Securities Underwriters

The Commission issued a release proposing for comment Rule 15c2-12 under the Exchange Act, which would require municipal underwriters partic-

ipating in offerings exceeding $10 million to (a) obtain and review copies of nearly final official statements prior to bidding for or purchasing the offerings; (b) contract with issuers or their agents to obtain final official statements in sufficient quantities to make them available in accordance with rules established by the Municipal Securities Rulemaking Board (MSRB); and (c) make available copies of preliminary and final official statements to investors and other interested persons on request.[170] In the release, the Commission also emphasized the responsibility of municipal underwriters to have a reasonable basis for believing in the accuracy of key representations concerning the securities that they underwrite, and requested comment on a proposal by the MSRB to establish a central repository to collect information concerning municipal securities.[171]

The Commission took these steps in conjunction with the release of its report concerning municipal securities regulation [172] and the staff's report concerning the Washington Public Power Supply System (WPPSS) default.[173] The staff report examined the circumstances surrounding the default on $2.25 billion of municipal revenue bonds issued by WPPSS to finance the construction of two nuclear power plants, and discussed significant areas in which disclosures made to investors were deficient. The Commission report set forth a four-part approach to developments related to municipal securities disclosure, including (a) proposing for public comment Rule 15c2–12; (b) emphasizing the responsibility of municipal securities underwriters, under the antifraud provisions of the federal securities laws, to have a reasonable basis for recommending the securities that they underwrite in both negotiated and competitive offerings; (c) commenting favorably on other initiatives, such as the Government Finance Officers Association Disclosure Guidelines and the development of the Government Accounting Standards Board, and seeking comment on the MSRB's proposal to establish a central repository for municipal securities disclosure documents; and (d) issuing a supplemental staff memorandum concerning unit investment trusts, which are a substantial component of the municipal securities market, and which will undergo special inspections by the Commission's Division of Investment Management and its regional offices to determine whether regulatory changes are needed.

Government Securities Brokers and Dealers

Several government securities brokers that are registered with the Commission under Section 15C of the Exchange Act (Applicants) requested an exemption from the registration requirements of Section 15(a) regarding the offering of securities by those firms to the public in connection with a federal program to reduce foreign military debt to the United States.[174] The promissory notes underlying the securities were guaranteed only 90 percent as to principal and interest by the Defense Security Assistance Agency of the Department of Defense, and the remaining 10 percent was secured by United States Government securities or derivatives thereof. Without deciding whether the securities were government securities within the meaning of Section 3(a)(42) of the Exchange Act, the Commission exempted the Applicants from the requirements of Section 15(a), based on Applicants' represen-

tations that they would (a) effect transactions in these securities exclusively with broker-dealers or government securities broker-dealers registered with the Commission pursuant to Section 15(a); (b) comply with all rules adopted by the Secretary of the Treasury under Section 15C, including applicable net capital regulations; and (c) publish quotations and effect transactions in these securities solely in connection with their normal activities as interdealer brokers in the government securities markets.[175]

Bank Securities Activities

In conjunction with the federal banking regulators, the Commission submitted to Congress proposed amendments to S. 1886, the Financial Modernization Act of 1987. The amendments included various provisions relating to the status of banks under the Exchange Act registration requirements for securities "brokers" and "dealers." The definition of "broker" in the Exchange Act would have been amended to exclude a bank unless it publicly solicited brokerage business or received incentive compensation for brokerage. Brokerage for trust accounts would not have been included, however, unless the bank received incentive compensation and publicly solicited brokerage business other than by advertising, in conjunction with advertising its other trust activities, that it effected securities transactions. This exemption for trust accounts would not have applied to securities safekeeping, self-directed Individual Retirement Accounts, or managed agency or other functionally equivalent accounts of the bank, unless the bank did not publicly solicit this business and did not receive incentive compensation for these activities.

Also, exemptions from the "broker" definition would have been created for so-called bank "networking" arrangements, where a bank contracted with an independent broker-dealer to provide brokerage services on the premises of the bank; transactions for employee benefit accounts; bank "sweeps" of depositors' funds into money market accounts; transactions in certain exempt securities, commercial paper, bankers' acceptances, or commercial bills; banks' transactions for their affiliates' accounts; and primary offerings of securities by an issuer, not involving a public offering, to certain purchasers.

Banks that limited their brokerage activities to fewer than 1,000 transactions per year (other than transactions exempted from the amended "broker" definition), and that did not have a subsidiary or affiliate registered with the Commission as a broker-dealer, also would have been excluded from the "broker" definition. Further, a bank without a securities affiliate could have effected transactions in municipal securities without being deemed a "broker;" where the affiliate existed, however, the bank would have been required to spin out all its municipal securities dealing business into the affiliate.

The proposed amendments would have amended the "dealer" definition in the Exchange Act in a complementary fashion, by excluding banks that engaged in certain purchases and sales for their own account. A bank would not have been deemed a "dealer" by engaging in transactions involving exempted securities other than municipal securities, or commercial paper, bankers' acceptances, or commercial bills. Similarly, trust and other fiduciary

activities would not have brought a bank within the amended "dealer" definition. A bank that engaged in the issuance or sale of securities backed by or representing an interest in obligations originated or purchased by the bank or its affiliates or subsidiaries also would not have been a "dealer," provided that the underlying obligations were not third-party securities. In addition, a bank without a securities affiliate could have bought and sold municipal securities without being deemed a "dealer."

Moreover, the proposed amendments would have conferred on the Commission the authority to exempt, by rule, regulation, or order, any person or class of persons from the amended "broker" and "dealer" definitions consistent with the public interest, the protection of investors, or the purposes of the Exchange Act. The broker-dealer registration requirements in Section 15 of the Exchange Act would have been amended to require banks that came under the amended "broker" or "dealer" definitions to create a separate subsidiary or affiliate to perform these activities, unless they engaged in these activities on an exclusively intrastate basis. This change would not have restricted, however, the substantive authority of any bank or bank holding company, under the national banking laws or any provision of state banking law, to offer any permitted securities brokerage or dealing services through an affiliate or subsidiary.

Congress did not enact the proposed amendments before adjourning.

Broker-Dealer Registration Application

The Commission adopted revisions to Form BD, the uniform broker-dealer registration application, to provide that the applicant's consent to service of process would apply to actions or proceedings brought by the Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities,[176] and to an application for a protective decree filed by the Securities Investor Protection Corporation (SIPC).[177]

Short Sales

In August 1988, the Commission adopted Rule 10b–21(T) under the Exchange Act to address manipulative short selling prior to underwritten public offerings.[178] The rule prohibits a person who effects short sales of an equity security during the period beginning at the time that a registration statement under the Securities Act of 1933 relating to the same class of equity securities is filed and ending at the time that sales may be made in the offering, from covering such short sales with offered securities purchased from an underwriter or other broker or dealer participating in the offering. The Commission adopted Rule 10b–21(T) on a temporary basis to consider, at a later date, whether the rule is achieving its intended purpose.

Lost and Stolen Securities

During fiscal year 1988, the Commission adopted changes to Rule 17f–1 under the Exchange Act, which sets forth participation, reporting, and inquiry requirements for the Lost and Stolen Securities Program (Program). Among

other things, the amendments to Rule 17f–1 require government securities brokers and dealers to participate in the Program.[179]

Statistics for the calendar year 1987 (the most recent year available) reflect the Program's continuing effectiveness. As of December 31, 1987, 21,356 institutions were registered in the Program. During the year, registered institutions reported as lost, stolen, missing or counterfeit 643,648 certificates valued at $2,765,976,343. Those institutions also reported the recovery of 192,611 certificates valued at $685,518,298. At the end of 1987, the value of securities contained in the Program's data base was $12,837,687,098. Registered institutions made inquiry concerning 2,195,967 certificates. Inquiries concerning 2,564 certificates valued at $9,230,307 matched reports of lost, stolen or missing securities on file in the data base.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 1988, nine active exchanges were registered with the Commission as national securities exchanges. During the fiscal year, the Commission granted exchange applications to delist 71 debt and equity issues and 15 options issues and granted applications by issuers requesting withdrawal from listing and registration for 31 issues. In addition, during the fiscal year, the Commission granted 1,142 applications by exchanges for unlisted trading privileges.

During fiscal year 1988, the Commission adopted Rule 19c–4 under the Exchange Act (commonly called the "one share-one vote" rule). This new rule amends exchange and association (i.e., NASD) rules to prohibit the listing on an exchange, or the authorization for quotation on an inter-dealer quotation system, the common stock or other equity securities of a company, if it issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of its existing common stock shareholders.[180] The Commission adopted the rule after holding public hearings on the issue in December 1986, and again in July 1987.

During fiscal year 1988, the Commission received 180 proposed rule changes from the stock exchanges. The Commission approved several significant rule filings, including proposals of the NYSE to revise Rule 103A, the Exchange's Specialist Performance Evaluation and Improvement Process. The revisions, among other things, incorporate newly developed objective performance measures into the Rule 103A process, codify Exchange reallocation procedures, and establish minimum standards for specialist performance. The revised Rule is being implemented on a two-year pilot basis. The Commission also approved a NYSE proposal that amends both the minimum standards for listing on the Exchange and for continued listing, particularly to take into account the special trading characteristics of very high-priced stock issues.[181]

The Commission approved an NYSE rule proposal that significantly strengthens the requirements for internal trade review, reporting, and other

compliance procedures for NYSE members.[182] Under the rule, NYSE member firms are now required to establish procedures for the review of member, employee, and proprietary trades for violations of securities laws and Exchange rules prohibiting insider trading and the use of manipulative or deceptive devices. NYSE members also would have to prepare an annual report for internal review by management detailing compliance efforts and problems during the previous year. The Commission also approved proposed rule changes from the Amex and NYSE that eliminate the maximum limit on the amount of fines that may be imposed in connection with an exchange disciplinary action.[183]

An NYSE proposal to regulate off-floor telephone access to members on the floor of the Exchange was approved by the Commission during fiscal year 1988.[184] The rule specifically prohibits the use by members of portable telephones on the floor, but permits telephone wire linkages to members' off-floor offices. While the rule also allows a specialist unit to establish a telephone link to its off-floor offices, it prohibits using such telephones to transmit to the trading floor any orders for the purchase or sale of securities.

In addition, the Commission approved proposed rule changes from the NYSE, Amex, and CBOE that require member firms to submit certain customer and proprietary trading information in an automated format.[185] The exchanges routinely request this information in connection with their market surveillance inquiries. Automating such submission should facilitate the Exchanges' efforts in this area.

The Commission also approved proposed rule changes of the NYSE and Amex that raise capital requirements from $100,000 to $600,000 for Amex specialists and from $100,000 to $1 million for NYSE specialists.[186] In addition, early in fiscal year 1989, the Commission approved a proposed rule change of the NYSE that raises capital requirements for other members who execute transactions on the floor from $50,000 to $100,000.[187]

The Commission approved a proposed rule change by the PSE that permits the addition of up to five specialist posts each for its Los Angeles and San Francisco equities trading floors, for a total of up to 10 new specialist posts.[188] It also approved, for a six month trial period, a proposed rule change by the Boston Stock Exchange (BSE) that permits the Exchange to establish an automated, small order communication, order routing and execution system for member organizations to be known as BEACON.[189]

Finally, the Commission approved a proposed rule change from the NYSE that, among other provisions, requires the registration of securities lending representatives, securities traders and their direct supervisors; expands the definition of the term "registered representative" to include employees involved in the handling of accounts or orders for the purchase or sale of securities or handling of business in connection with investment advisory or investment management services; and requires that securities lending representatives and their direct supervisors sign a "code of ethics" agreement as an addendum to their Forms U-4, the uniform SRO application form for the registration of members' associated persons.[190]

Other significant Commission activities relating to its oversight of exchange and NASD rulemaking, including developments in the options markets, are discussed in the section of this chapter, above, entitled "Securities Markets, Facilities, and Trading."

National Association of Securities Dealers, Inc.

The NASD, the only national securities association registered with the Commission, has over 6,500 member firms. In fiscal year 1988, the NASD reported a total of 712 final disciplinary actions, which consisted of 542 formal and summary disciplinary actions by its District Committees and 170 formal and summary actions by its NASDAQ and Market Surveillance Committees.

In addition, the Commission received 64 filings of proposed rule changes from the NASD and approved 54 proposed rule changes in fiscal year 1988. Among the important changes approved by the Commission [191] were proposals to create a link for the transmission of end-of-day quotations in certain NASDAQ securities to the Stock Exchange of Singapore,[192] and to establish the Order Confirmation Transaction (OCT) service allowing eligible firms to negotiate trades and confirm order executions of all sizes through computer terminals.[193] The Commission also approved an NASD proposal, based in large part on the October 1987 market break experience, requiring participation in the NASD's Small Order Execution System (SOES) for all market makers in NASDAQ/NMS securities.[194] This rule further provides that SOES will continue to operate when the inside quote is locked or crossed and prohibits those who voluntarily withdraw as market makers in NASDAQ securities from re-entering quotes in NASDAQ for 20 business days. The Commission also reviewed NASD proposals which, in general, prohibit the use of non-cash compensation in connection with the sale of direct participation programs and in public offerings of other securities.[195]

The Commission also examined an NASD proposal, approved in early fiscal year 1989, that is designed to improve the regulatory environment with respect to OTC securities that are not part of the NASDAQ system (so-called "pink sheet" stocks).[196] Under the proposal the NASD established an electronic system for mandatory price and volume reporting by members for these securities and amended its Best Execution Interpretation relating to retail transactions in these stocks. In addition, the Commission published for comment an NASD proposal to establish a six-month pilot program for the electronic display of current market-maker quotations and expressions of interest in pink sheet stocks.[197]

Municipal Securities Rulemaking Board

In fiscal year 1988, the Commission received seven proposed rule changes from the Municipal Securities Rulemaking Board and approved 11 MSRB rule filings, some of which were received during fiscal year 1987. Of particular note was the approval of an amendment concerning the delivery of interchangeable municipal securities and the confirmation of transactions for these securities that would permit a delivery of municipal securities to be either in registered

or bearer form unless the parties to the transaction specifically agree to a particular form.[198]

The Division also evaluated a request from the MSRB concerning whether stripped coupon municipal securities should be regarded as municipal securities for purposes of the MSRB's regulatory jurisdiction. The request raised a number of difficult legal and policy issues. The Division's response, dated January 19, 1989, states that under certain conditions stripped coupon municipal securities should be regarded as municipal securities for purposes of the MSRB's regulatory jurisdiction.

Clearing Agencies

During fiscal year 1988, the Commission received 89 proposed rule changes from registered clearing agencies and approved 86 rule changes. For example, the Commission approved NSCC's proposal to establish comparison services for member transactions in foreign securities,[199] MBSCC changes to its depository division rules concerning default assessments,[200] and OCC changes to its by-laws and rules concerning cross-margin of closely-related options and futures [201] and, based largely on the October 1987 market break experience, the waiver of margin requirements in extreme market conditions.[202]

Inspections of SRO Surveillance And Regulatory Compliance

The inspections staff devoted considerable resources in fiscal year 1988 to gathering and analyzing trading information for the Division's October 1987 Market Break Report. This effort was closely coordinated with similar studies of the Presidential Task Force on Market Mechanisms (known as the Brady Commission) and the Commodity Futures Trading Commission and included the assistance of the Commission's regional offices and Division of Investment Management. It encompassed collecting data directly from a wide range of market participants, including firms active in futures-related program trading, other broker-dealers, futures commission merchants, mutual funds, investment advisers, and others. Further, a special purpose inspection was conducted that involved field work at each of the major self-regulatory organizations in January and February 1988 to evaluate the impact of the market break on their operations and the adequacy of the SROs' proposed remedial actions.

Also, a comprehensive inspection of the New York Stock Exchange regulatory programs for specialist trading was conducted between July and September 1987. While the inspection staff found that the Exchange's surveillance, investigatory and disciplinary programs for specialists functioned adequately, in early fiscal year 1988, the Division recommended improvements in a number of specific areas, including increased use of minor fines in lieu of informal discipline, remedial actions for investor complaints involving executions of stop orders, and enhancements to file management and documentation. In addition, recommendations were made to coordinate better specialist disciplinary actions with the process of allocating newly-listed

securities to specialists. In addition to the comprehensive inspection, two special purpose post-market break inspections were conducted in March and April 1988. The first inspection reviewed the Exchange's final determinations concerning inquiries into poor market-making performance by some specialists during the October 1987 market break. The inspection found that, overall, the Exchange adequately addressed those instances of specialist performance that generated staff investigations. The second post-break inspection reviewed specialist financial surveillance programs. The inspection found that, while necessary data collection enhancements still are being developed, recent improvements to this program have responded adequately to the concerns raised in the October 1987 Market Break Report.

An inspection of the Boston Stock Exchange found that, while interim surveillance procedures which the Commission recommended earlier are in place, the project to develop surveillance capabilities from the Exchange's Automated Communications Order-Routing Network is approximately two years behind schedule in its full implementation. The Commission recommended that this project be completed as soon as practicable.

Inspections of the Philadelphia Stock Exchange surveillance, investigatory, and disciplinary programs for equities and options trading found that the Exchange had addressed most of the concerns raised in the previous inspection in 1986. While these programs now are functioning adequately, with increased automation of equities and options market surveillance, the Commission recommended that the Exchange review its procedures for detecting prearranged trading in options and compare its procedures to those of other exchanges to determine if further enhancements in this area are warranted.

The Commission conducted an inspection of the NASD's surveillance program for trading in NASDAQ securities. The inspection found that while market surveillance for NASDAQ issues is functioning adequately, there remain certain areas where continued progress is needed, especially in the acquisition of accurate daily audit trail data. Some of these deficiencies also were identified by the NASD's own Regulatory Review Task Force and consultants hired to perform an overall review of its compliance programs. The Commission encouraged the NASD to commit resources to implement these recommendations promptly.

The inspections staff also completed several reviews of program trading and its effects in periods of extreme market volatility. One such study analyzed trading on January 8, 1988, when the Dow Jones Industrial Average fell 140.58 points. This review found that while program trading was not the cause of the market decline, it may have accelerated this price movement. Additional reviews conducted for April 6, 1988 (when the DJIA rose 64.16 points) and April 14, 1988 (when the DJIA fell 101.46 points) found a similar relationship between program trading and these instances of price volatility. The reviews for April 6 and 14, 1988 also raised significant questions regarding the effectiveness of the New York Stock Exchange's attempts to minimize market volatility by placing restrictions on the use of automated order-routing systems for index arbitrage programs when the DJIA moved 50 points from the previous closing value. Analyses of trading on April 6 and 14,

1988 indicated, however, that program orders could be routed easily without the use of automated systems. Accordingly, revised restrictions on trading during periods of extreme market volatility were proposed by the Exchange as Rule 80A, and were approved by the Commission on October 19, 1988, after the close of the fiscal year.[203]

The inspections staff also participated with other Commission staff and respresentatives of the NYSE and several broker-dealers in a review of the regulatory issues raised by trades designed to capture dividend payments. This trading strategy has attracted considerable media and Congressional interest because on some days trading volume associated with these strategies accounts for unusually large percentages of daily volume in individual stocks as well as of consolidated volume in all NYSE-listed issues. A memorandum concerning the staff's findings was sent to Congress after the year-end.[204]

In addition, the inspections staff worked closely with the self-regulatory organizations (SROs) constituting the Intermarket Surveillance Group. Two areas were of particular concern for the Commission and the ISG in 1988. First, efforts continued to monitor improvements in surveillance and investigatory programs to address insider trading, with particular emphasis on reducing the average time required for the SROs to refer suspicious trading to the Commission's enforcement staff. In this regard, progress was made in implementing a system to have the SROs and the Commission obtain selected trading data from broker-dealers in a standardized, electronic format as part of the "Electronic Blue Sheeting Project." Second, the Commission, together with the CFTC and the ISG, addressed cross-market surveillance, and related regulatory issues, between the securities and index futures markets.

The staff conducted inspections of the advertising review programs at the CBOE, Amex and NYSE. At the CBOE and Amex the inspections focused on the exchanges' review of options communications submitted prior to use by member firms and the review of member options communications during the exchanges' routine options sales practices examinations. At the NYSE, the inspection focused on the NYSE's review of options and equities communications submitted by members prior to use, the periodic review or "spot checks" of a sample of all members' advertising, educational material and sales literature conducted by the NYSE on a biennial cycle, and the review of communications during the routine broker-dealer examination program. Although minor deficiencies were noted in each inspection, the staff concluded that all programs were satisfactory. The staff offered recommendations to each exchange where appropriate and concluded that some regulatory issues requiring improved coordination among the exchanges should be referred to the Options Self-Regulatory Council to help assure that all exchanges use uniform standards when reviewing options communications of broker-dealers belonging to multiple self-regulatory organizations.

The staff conducted inspections of the formal disciplinary programs at the NASD District Offices in Atlanta, Chicago and New York. Those inspections focused on delays in processing disciplinary matters occurring during the earliest stages of case development (i.e., anticipated actions) and in presenting potential cases to the appropriate District Committee for initial consider-

ation. The staff found minor delays in the District Offices in Atlanta and New York and major delays in the District Office in Chicago. The staff noted that significant improvements had occurred in the formal disciplinary program in New York since the last inspection of that office.

Also, the regional office staff conducted inspections of seven of the fourteen NASD District Offices, including the Association's offices in Seattle, San Francisco, Los Angeles, Kansas City, Chicago, Cleveland, and Philadelphia. As in prior years, the staff noted isolated deficiencies in the Districts' financial surveillance, cause investigation, formal disciplinary and broker-dealer examination programs. However, the staff concluded that, overall, the NASD was successfully meeting its statutory responsibility at the District level.

The staff conducted an inspection of the CBOE to assess implementation of changes initiated by the CBOE as the result of previous inspections of the Departments of Compliance and Enforcement. The staff found that the Department of Compliance conducts thorough and well-documented options sales practice examinations and cause investigations and that the Department of Enforcement prosecutes violations aggressively and in a timely manner. All three programs were found to be substantially improved since the previous inspection.

The staff conducted an inspection of the NYSE Division of Enforcement to assess implementation of the changes arising out of four previous inspections of the NYSE. The inspection disclosed that the NYSE had implemented many of the staff's previous recommendations. The staff also found that the NYSE had developed a number of management and procedural initiatives and had made a significant commitment of additional staffing resources. The staff is continuing to monitor the NYSE's progress in addressing deficiencies noted in the previous inspections.

In addition, the staff continued to meet on a quarterly basis with the NYSE and NASD to discuss current regulatory issues affecting the Commission's examination and inspection programs.

Applications for Re-entry

During fiscal year 1988, the Commission received 100 SRO applications to permit persons subject to statutory disqualifications, as defined in Section 3(a)(39) of the Exchange Act, to become or remain associated with broker-dealers. The distribution of filings among the SROs was the following: NASD (78); NYSE (20); and MSE (2). Of the total filings processed, 5 were subsequently withdrawn, 95 were completed and 5 were pending at year-end.

SRO Final Disciplinary Actions

Section 19(d)(1) of the Exchange Act and Rule 19d-1 require all self-regulatory organizations to file reports with the Commission of all final disciplinary actions.

A Rule 19d-1 filing reports a completed action that may have been initiated at any time during the previous years. The duration of a SRO action frequently reflects the severity of the violation(s) charged, the number of respondents

involved, and the complexity of the underlying facts. SROs generally conclude cases involving minor or technical violations with a single respondent in less than a year. Cases involving serious trading violations (e.g., price manipulation, prearranged trading, front-running, etc.) require more time to complete because of the necessity of demonstrating specific intent to the disciplinary panel that acts as a trier of fact. Consequently, the volume of Rule 19d-1 notices submitted by a SRO in a given year is not a precise measure of its proficiency in market surveillance and compliance. Nevertheless, the number of actions reported can be useful in assessing the regulatory effectiveness of different SROs over similar time periods, and this information has proved useful in focusing inspections of SRO regulatory programs.

In fiscal year 1988 the Amex filed 47 Rule 19d-1 reports, the CBOE filed 168; the NYSE filed 134; the PHLX filed 205; the PSE filed 70; the registered clearing agencies, the BSE and the MSE filed none; and the NASD filed 712.[205]

SRO Final Disciplinary Actions

	1984	1985	1986	1987	1988
Exchanges	394	530	419	382	624
NASD:					
District Committees	667	348	252	415	542
NASDAQ and Market Surveillance Committees	62	93	174	194	170
TOTALS	1123	971	845	991	1336

Securities Investor Protection Corporation

The SIPC Fund amounted to $390.5 million on September 30, 1988, an increase of $1.3 million from September 30, 1987. Further financial support for the SIPC program is available through a $500 million confirmed line of credit established by SIPC with a consortium of banks. In addition, SIPC may borrow up to $1 billion from the United States Treasury Department through the Commission.

During fiscal year 1988, the Commission acted favorably on a number of SIPC actions providing for the reimposition, beginning January 1, 1989, of revenue based assessments on its member broker-dealers at the rate of 3/16 of 1 percent of each member's annual gross revenues from the securities business, with minimum assessments of $150 per year for each member.[206]

Investment Companies and Advisers

Key 1988 Results

The Division of Investment Management oversees the regulation of investment companies and investment advisers under two companion statutes, the Investment Company Act of 1940 (Investment Company Act) and the Investment Advisers Act of 1940 (Investment Advisers Act), and administers the *Public Utility Holding Company Act of 1935 (Holding Company Act).*

Number of Active Registered Investment Companies and Investment Advisers

	FY'84	FY'85	FY'86	FY'87	FY'88	84–88 % Increase
Investment Companies	2,210	2,458	2,912	3,305	3,530	72%
Investment Advisers	9,083	10,908	11,707	12,690	14,300	103%

Investment Company and Adviser Assets Under Management *(in billions)*

	FY'84	FY'85	FY'86	FY'87	FY'88	84–88 % Increase
Investment Companies	$370	$525	$742	$1,200	$1,200	233%
Investment Advisers	$850	$1,170	$1,400	$3,500	$4,500	477%

Inspections/Examinations of Investment Companies and Advisers

	FY' 84	FY'85	FY'86	FY'87	FY'88	84–88 % Increase
Investment Companies	497	567	643	739	750	116%
Investment Advisers	837	1,039	1,263	1,294	1,400	90%
Total Examinations	1,334	1,606	1,906	2,033	2,150	98%

During fiscal year 1988 the number of registered investment companies increased by 7 percent. The number of registered investment advisers increased by 13 percent, and the assets they manage increased by 29 percent. The number of investment company and investment adviser examinations increased by 6 percent during fiscal year 1988.

During fiscal year 1988 the Division and the regional offices continued efforts to coordinate their regulatory activities with state authorities that share the Commission's jurisdiction over investment advisers by conducting joint examinations and routinely sharing examination results. Training was also provided for state examiners.

Significant Legislative Developments

In February 1988, the Commission sent a staff report, *Financial Planners: Report of the Staff of the United States Securities and Exchange Commission to the House Committee on Energy and Commerce's Subcommittee on Telecommunications and Finance*, to the House Subcommittee in response to its July 1986 request that the Commission study investment advisers (advisers) and financial planners. The staff report provided statistical information on financial planners and their clients and reviewed recent Commission inspections of registered advisers that are financial planners. The staff found that: (a) the types and significance of the violations found in inspections of financial planner registrants generally were not materially different from those found in inspections of other types of advisers, although the percentage of financial planners cited for deficiencies was higher than for other advisers; (b) there is potential for self-interested behavior when financial planners both provide advice and sell financial products; and (c) demonstrated abuses by investment advisers and financial planners involve only a very small portion of the advisory industry.

Disclosure Requirements

In November 1987, the Commission adopted an amendment to the disclosure requirements of Form N-SAR, the semi-annual report form for registered investment companies, to require the change of accountant disclosures currently required of other types of issuers on Form 8-K.[207]

In February 1988, the Commission adopted revisions to Form N-1A, the mutual fund registration statement form, to require a fee table at the front of each fund prospectus that: (a) lists all transactional expenses, such as sales loads; (b) lists all annual fund expenses, such as management expenses; and (c) includes an "Example" which illustrates the amount of expenses that would be incurred by an investor at the end of one, three, five, and ten years. The Commission also adopted amendments to Form N-1A that improve the narrative prospectus disclosure of fees deducted under, and the nature of, Rule 12b-1 distribution plans. The revisions of Form N-1A allow investors to more easily compare expense structures of different funds.[208]

In February 1988, the Commission adopted a package of new rules and rule amendments that standardize the computation of mutual fund performance in advertisements and sales literature to enhance investors' ability to compare performance claims.[209]

In June 1988, the Commission proposed Rule 30b1-3 under the Investment Company Act to require registered investment companies to file specified reports covering a defined transition period. The new rule, if adopted, would require investment companies that change their fiscal year end to file a Form N-SAR report within 60 days of either the close of the period between the end of their old fiscal year and start of the new fiscal year, or the date they determine to change their fiscal year.[210]

In August 1988, the Commission proposed three new forms, Forms N-17f-1, N-17f-2, and ADV-E, to be used by accountants when meeting

current filing requirements under the Investment Company Act and the Investment Advisers Act. The proposed forms would, if adopted, facilitate the required filing of accountant examination certificates with the Commission, which should increase for both investors and the Commission's staff accessibility to the information on those certificates.[211]

EDGAR Filings

In July 1985, the Office of Public Utility Regulation began accepting electronic filings from registered public utility holding company systems and their member companies. An EDGAR Pilot Branch was formed in October 1985, which began processing electronic filings for a volunteer group of investment company registrants in November 1985. The volunteers include a representative group of 199 management investment companies and 78 unit investment trusts with over 3300 separate series. Electronic filings of semi-annual reports on Form N-SAR also were made by 848 registered management investment companies not participating full-time in the EDGAR Pilot. As of September 30, 1988, the Commission received 29,752 investment company filings through the EDGAR Pilot Branch.

Over one-third of all active registered management investment companies are now making electronic filings on Form N-SAR. The Division of Investment Management has asked the Commission's Office of Information Systems Management to continue work on the Commission's N-SAR database to provide an efficient means to transfer the information contained in these filings to the database, and permit the automated manipulation of that information. The number of filers filing their N-SARs electronically has reached a point where the Commission's N-SAR database, using data extracted from reports filed through EDGAR, can be a useful resource in the investment company inspection program and other Commission activities.

Regulatory Policy

Significant Investment Company Act Developments—In July 1988, the Commission proposed revised Rule 11a-3 under the Investment Company Act, which, if adopted, would permit a mutual fund or its principal underwriter, under certain conditions, to make an exchange offer to the fund's own shareholders or to shareholders of another fund in the same family of funds.[212] At the same time, the Commission requested additional comment on proposed Rule 11c-1 under the Investment Company Act, which, if adopted, would conditionally permit a unit investment trust or its sponsor to make exchange offers to certain unit holders.

In June 1988, the Commission proposed amendments to Rule 12b-1 under the Investment Company Act.[213] Rule 12b-1 permits, subject to specified conditions, a mutual fund to adopt a plan to use fund assets to pay costs associated with the distribution of fund shares. The proposed amendments, if adopted, would: (a) clarify and enhance standards for approval or continuation of distribution plans; (b) ensure that payments under a distribution plan are made on a current basis and for specific distribution services actually provided

to the fund; and (c) prohibit funds that adopt or continue distribution plans from being held out to the public as "no-load" funds or from being otherwise offered in a misleading manner using similar terminology. At the same time, the Commission proposed amendments to Rule 17d–3 under the Investment Company Act, which exempts from the requirement of prior Commission approval certain distribution agreements between funds and their affiliated persons. The proposed amendments, if adopted, would expand the ability of affiliated funds to finance distribution efforts jointly. The Commission also proposed to amend Form N–1A, the registration statement form for mutual funds. The proposed amendments, if adopted, would require additional disclosure regarding the amount of payments under distribution plans.

In November 1988, the Commission proposed Rule 6c–10 under the Investment Company Act, which, if adopted, would permit under specified conditions mutual funds and certain related to impose sales loads that are payable on a deferred basis.[214] At the same time, the Commission proposed amendments to Form N–1A, which would accommodate the deferred sales loads that would be permitted if Rule 6c–10 is adopted.

Significant Investment Advisers Act Developments—In November 1987, the Commission proposed, and in August 1988, adopted, amendments to Rule 204–2, the recordkeeping rule under the Investment Advisers Act, to require registered investment advisers to keep for Commission inspection all of their advertisements and to make and keep all records necessary to form the basis for performance information in their advertisements. The rule amendments permit Commission inspectors to examine advertisements and the basis for performance information in advertisements for compliance with the antifraud provisions of the Investment Advisers Act.[215]

In September 1988, the Commission proposed two rules under the Investment Advisers Act, Rules 203(b)(1)–1 and 203(b)(3)–2, that, if adopted, would exempt certain small advisers from federal registration as advisers if they register in each state in which they do business. The Commission also proposed amendments to relieve advisers that would be exempt under the proposed rules from the Investment Advisers Act's recordkeeping rule, advertising rule, cash solicitation rule, disciplinary disclosure rule, and restrictions on principal and agency cross transactions. These exemptions would significantly reduce federal regulation for certain small advisory businesses that are regulated at the state level.[216]

Significant Insurance Products Developments—In July 1988, the Commission proposed for comment revisions to Forms N–3 and N–4, the registration statement forms used by insurance company separate accounts issuing variable annuity contracts under the Investment Company Act and the Securities Act of 1933.[217] The proposed amendments would, if adopted, consolidate prescribed expense data in a tabular presentation (fee table) near the front of the prospectus.

Significant Public Utility Holding Company Developments—There are 13 registered public utility holding company systems with aggregate assets, as of June 30, 1988, of $89.3 billion, an increase of $2.0 billion, or 2.3 percent over June 30, 1987. Total operating revenues for the twelve months ended June 30,

1988, were $32.7 billion, an $800 million increase from the twelve months ended June 30, 1987. There are 70 electric or gas utility subsidiaries, 84 non-utility subsidiaries, and 22 inactive companies in the 13 registered systems, a total of 189 companies operating in 24 states (excluding six power supply subsidiary companies).

During fiscal year 1988 the Commission authorized $5.9 billion of senior securities and common stock financing for the 13 registered systems: $4.6 billion in long-term debt financing and $1.3 billion in common and preferred stock. Long-term debt financing decreased by 8.0 percent from fiscal year 1987, primarily due to the volume of refinancings undertaken in prior years. In addition, $624 million in pollution control financing and $4.9 billion in short-term debt financing were approved. The pollution control financing was a 45.1 percent increase from amounts authorized in fiscal year 1987. Short-term debt decreased by 10.1 percent from the previous year. Total authorizations in fiscal year 1988 of $11.5 billion were less than financings authorized in fiscal year 1987 by $800 million, a decrease of 6.5 percent. The Commission also authorized the expenditure of $575 million for nuclear fuel and oil and gas development and exploration expenditures of $34 million. The Commission's continuing review of holding company fuel procurement activities, accounting policies, audits of service companies, as well as its review of annual reports of holding company subsidiary service companies and fuel procurement subsidiaries and quarterly reports by holding company non-utility subsidiaries, resulted in savings to consumers during fiscal year 1988 of approximately $36.6 million. These savings came about primarily as a result of requiring electric utility subsidiaries of registered public-utility holding companies to credit revenues from their sale of excess oil and gas ($14.2 million) and from subleasing coal and oil barges ($22.1 million) to the cost of fuel billed to customers, and through the audits of service companies ($.3 million).

Significant Institutional Disclosure Program Developments—Securities Exchange Act Section 13(f)(1) and Rule 13f-1 require specified "institutional investment managers" to file quarterly reports on Form 13F. Under Rule 13f-2(T), these managers may file the report on Form 13F-E through magnetic tape by using the Commission's pilot electronic disclosure system, EDGAR. Managers filing these reports disclose specified equity holdings of the accounts over which they exercise investment discretion. As of June 30, 1988, Form 13F reports had been filed by 1,691 managers for holdings totaling $1.199 trillion. Through September 1, 1988, 50 managers electronically filed Form 13F-E reports for the quarter ended June 30, 1988, reporting almost 17,000 securities holdings totaling over $61 billion.

Form 13F reports are available to the public at the Commission's Public Reference Room promptly after filing. Two tabulations of the information contained in these reports are available for inspection: (1) an alphabetical list of the individual securities, showing the number of shares held by the managers reporting the holding; and (2) a list with the total number of shares of a security reported by all reporting managers. Both tabulations normally are available two weeks after the date on which the reports must be filed.

Significant Applications and Interpretations

Investment Company Act Matters—In August 1988, the Commission authorized Merrill Lynch & Co. to offer a dual distribution system for its group of mutual funds that will give investors a choice in how to pay distribution and sales fees.[218] The system gives investors the option of either paying a conventional front-end sales load or paying an annual distribution fee and a deferred sales load that decreases each year until eliminated. Although these alternatives have been available in the form of separate funds, the Merrill Lynch plan allows individual funds to offer two separate classes of shares: one class with the front-end sales load; the other with the annual distribution fee and deferred sales load. The two classes of shares represent interests in one securities portfolio within a particular fund. Investors may also switch between funds in the Merrill Lynch group of funds so long as they stay with their class of shares.

Two banks filed applications as trustees on behalf of separate trusts established to acquire loans from the Department of Education and the Department of Housing and Urban Development, and to issue bonds and certificates of beneficial interests in the trusts collateralized by such loans. The non-recourse loans would be sold as part of the federal government's loan asset sales program. The Commission issued exemptive orders under the Investment Company Act for the trusts on May 3 [219] and July 28, 1988.[220]

On January 12, 1988, the Commission ordered an administrative hearing on an application filed by the Teachers' Insurance and Annuity Association and the College Retirement Equities Fund (TIAA-CREF) for exemptive relief from certain provisions of the Investment Company Act concerning variable annuity separate accounts.[221] The hearing was originally scheduled to begin on June 6, 1988. However, in light of proposed changes in TIAA-CREF's operations and in order to allow settlement discussions between TIAA-CREF and the Commission staff and the entities and individuals who requested the hearing to proceed, the hearing was postponed on several occasions.

On August 17, 1988, the staff granted no-action relief with respect to certain trusts to be created by the State of Israel, which would issue securities to the public without registering as investment companies.[222] The net proceeds of each offering would be loaned to Israel in order to prepay all or a portion of foreign military sales loans made by the Federal Financing Bank to Israel for purchase of defense articles, defense services, design and construction services, and related expenses.

On August 2, 1988, the staff granted no-action relief to a foreign investment company operating abroad where it proposed to make a private placement offering of securities under Rule 506 of Regulation D in the United States coincident with a public offering of its securities outside the United States, and where, upon completion of the offerings, no more than 100 persons that were nationals or residents of the United States would be beneficial owners of the foreign investment company's securities.[223]

On June 7, 1988,[224] and again on July 15, 1988,[225] the staff granted no-action relief to separate New York State agencies of foreign banks that

proposed to issue commercial paper in the United States without registering as investment companies. Although it ordinarily takes the position that foreign banks and branches of foreign banks are not banks for purposes of the Investment Company Act, the staff granted narrow relief here to permit the New York State agencies to rely on their counsel's opinion that the nature and extent of federal and state regulation and supervision of these New York agencies, established under New York State banking laws, was substantially equivalent to the regulation of New York state-chartered banks.

Investment Advisers Act Matters—On September 23, 1988, the staff advised the Investment Company Institute that it would not recommend any enforcement action to the Commission with respect to investment advisers who advertise performance without deducting clients' advisory fees from the gross returns derived from those accounts if the performance results are provided to prospective clients only in one-on-one, private transactions.[226] This position modifies the staff's earlier position that, in all circumstances, advisers advertising performance results must deduct advisory expenses.

Holding Company Act Matters—The Commission authorized WPL Holdings, Inc. (Holdings) to acquire all of the common stock of Wisconsin Power and Light Company (WPL), and exempted it from all provisions of the Holding Company Act except Section 9(a)(2).[227] WPL holds all of the capital stock of Beloit Water, Gas and Electric Company and 33.1 percent of the capital stock of Wisconsin River Power Company. Holdings stated that the principal reason for the reorganization was to facilitate diversification and to provide additional financing flexibility for the holding company system. Separate requests for a hearing and for permission to intervene as a full party were denied. The matter has been appealed by the intervenors to the District of Columbia Circuit Court of Appeals. The Commission authorized The Southern Company (Southern), a registered holding company, to acquire all of the outstanding common stock of Savannah Electric and Power Company (Savannah).[228] Holders of Savannah common stock received 1.05 shares of Southern common stock for each Savannah share owned. At the time of the acquisition, Savannah had total assets in excess of $400 million and annual revenues of about $180 million. Southern estimated that efficiencies created by the combination could result in annual savings of approximately $50 million.

The Commission authorized Sierra Pacific Resources (Resources) to acquire a 14.5 percent common stock interest in a new electric generating company, Enterprise, which will construct and operate a coal-fired generating unit estimated to cost $600 million and to be located at the Thousand Springs Project (Project) in Nevada.[229] While the Project may ultimately include seven additional generating units, any acquisition by Resources of any securities of Enterprise to construct any additional units will be subject to further Commission authorization. Requests for a hearing were denied. The matter has been appealed by the intervenors to the U.S. Court of Appeals for the Ninth Circuit.

The Commission authorized EUA Power Corporation (EUA Power), a wholly-owned subsidiary of Eastern Utilities Associates (EUA), a registered holding company, to reorganize its existing debt through an exchange of

securities and the issuance of additional shares of preferred stock to EUA.[230] The reorganization was necessitated by the delay in the licensing of Unit 1 of the Seabrook Nuclear Power Project in which EUA Power is a 12.13 percent owner. The transaction allows EUA Power, at its option, to pay interest in cash or "in-kind" by issuing additional debt securities. Jurisdiction was reserved over transactions to be effected with regard to EUA Power on or after May 15, 1989.

The Commission authorized EUA and New England Electric System (NEES), both registered holding companies, to form new wholly-owned subsidiaries and to participate as general partners, through the new subsidiaries, in Ocean State Power (OSP), a partnership formed to construct, own, and operate a combined cycle electric generating facility in Rhode Island.[231] Capital provided to the new subsidiaries by EUA and NEES will not exceed $30 million and $25 million, respectively. Blackstone Valley Electric Company, a wholly-owned subsidiary of EUA, will sell the property for the facility to OSP for approximately $1.6 million.

By prior Commission order, Central and South West Corporation (CSW), a registered holding company, was authorized to organize and acquire CSW Credit, Inc. (CSW Credit), a corporation created to factor accounts receivable of the CSW electric utility companies. Subsequent orders authorized CSW Credit to expand its factoring activities to include the purchase of receivables of electric and gas utilities not associated with the CSW system. The amount of nonassociate receivables acquired, however, was not permitted to exceed the amount of receivables acquired from CSW associate companies. CSW and CSW Credit have requested removal of the limitation on the factoring of receivables of nonassociate utilities.[232] The Commission determined that it was appropriate in the public interest that a hearing be held with respect to the proposed transaction. The hearing began on September 16, 1988, and testimony concluded on October 27, 1988. The parties and participants will be submitting proposed findings of fact and conclusions of law and briefs to the administrative law judge.

Other Litigation and Legal Activities

Key 1988 Results

	FY'84			FY'85			FY'86			FY'87			FY'88		
	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*
Supreme Court and Appellate Courts	37	8	5	36	4	5	32	3	2	31	3	2	24	3	0
District Court	26	2	2	23	3	2	21	0	1	14	3	0	16	2	5
Bankruptcy Court	13	3	2	20	5	0	13	3	1	4	7	1	8	3	1
Other**	4	0	0	7	0	0	4	1	0	3	0	0	2	1	1

* Issue not reached, split decision, etc.

** State Courts and Administrative Tribunals.

The General Counsel represents the Commission in all litigation in the United States Supreme Court and the courts of appeals. This litigation includes appeals of district court decisions in Commission injunctive actions and petitions for review of Commission orders. The General Counsel also defends the Commission and its employees when sued, prosecutes administrative disciplinary proceedings against securities professionals, and appears *amicus curiae* on behalf of the Commission in significant private litigation involving the federal securities laws. In addition, under the supervision and direction of the General Counsel, the regional offices represent the Commission in corporate reorganization cases under the Bankruptcy Code that have a substantial public investor interest. The General Counsel also analyzes legislation that would amend the federal securities laws or otherwise affect the Commission's work and prepares legislative comments and congressional testimony. In addition, the General Counsel reviews proposed Commission action to ensure that enforcement and regulatory programs are consistent with the Commission's statutory authority.

The General Counsel represented the Commission in 314 litigation matters in fiscal year 1988. During the year, 27 court of appeals and Supreme Court cases were concluded, all but three favorably to the Commission. There were 26 appeals in Commission injunctive actions, three of which were concluded, with no outcomes unfavorable to the Commission. By comparison, the General Counsel handled 304 litigation matters in fiscal year 1987 and 285 litigation matters in fiscal year 1986. In fiscal year 1987, there were 16 appeals in injunctive actions, six of which were concluded, with only one outcome unfavorable to the Commission.

In fiscal year 1988, there also were 29 appellate and district court actions seeking to overturn Commission orders in administrative proceedings or affirming self-regulatory organization (SRO) disciplinary proceedings against securities professionals. Of these appeals, six were concluded, with only one adverse result. Ten such actions were concluded in fiscal year 1987, with only one adverse result.

The federal securities laws provide for private remedies as well as government enforcement actions. Because decisions in private cases may have precedential effect on its own regulatory activities, the Commission's participation in such cases is an important supplement to its enforcement program. The Commission participated as *amicus curiae* (friend of the court) in 50 cases during the year, compared to 46 cases in fiscal year 1987 and 42 cases in fiscal year 1986. It participated in 17 private cases that were decided, only three of which resulted in a decision adverse to the Commission.

The General Counsel also handled more than 209 other proceedings before the Commission or in the federal district courts. These included 61 suits brought against the Commission or its staff and 95 suits seeking access to Commission documents, including actions under various public information statutes. Of the latter, 89 suits involved discovery subpoenas in private actions where the Commission is not a party. In fiscal year 1987, there were 56 suits brought against the Commission or its staff and 86 suits (including 78 third-party subpoenas) under the various public information statutes.

During fiscal year 1988, 108 debtors with publicly-held securities registered under the Securities Exchange Act of 1934 (Exchange Act) commenced Chapter 11 reorganizations. The Commission entered its appearance in 50 of these cases, which, together with four non-registered companies, involved assets of about $10 billion and nearly 230,000 public investors. A list of pending Chapter 11 cases in which the Commission has filed a notice of appearance is set forth in Table 38 of the Appendix to this report.

In addition to litigation, the General Counsel is involved in significant legislative and regulatory work. For example, the office assisted the Chairman and the Commissioners in preparing testimony on issues such as the structure of the financial services industry and proposals to amend laws governing the securities activities of banks; proposed legislation defining insider trading; tender offer reform; and the Report of the National Commission on Fraudulent Financial Reporting. The Office also assisted the Commission in preparing legislative proposals concerning, among other things, the sanctions and remedies available to the Commission; the definition of insider trading; and the authority of the Commission to conduct investigations on behalf of a foreign securities authority.

Litigation

Insider Trading—In *Lombardfin, S.p.A. v. SEC* and *Trasatlantic Financial Co. v. SEC*,[233] the Commission successfully urged that the Supreme Court deny review of a decision by the United States Court of Appeals for the Second Circuit [234] affirming a judgment in favor of the Commission against defendants who traded on nonpublic information that had been misappropriated from the bidder in a corporate takeover. The defendants' petitions to the Supreme Court raised three issues: (1) whether notice by publication in a European newspaper was adequate under the Constitution (the primary issue addressed by the Second Circuit); (2) whether trading on misappropriated nonpublic information is a violation of antifraud rules; and (3) whether

disgorgement is available as a remedy when allegedly no private investors have a valid action for restitution. The Commission argued that review was unnecessary because the lower courts correctly decided that under the circumstances of this case—including efforts by the Italian defendants to deceive the Commission about their involvement in the illegal trades and difficulties posed by foreign bank secrecy laws—the published notice was adequate and did not violate constitutional due process guarantees. The Commission further argued that petitioners' conduct clearly fell within the proscriptions of the federal securities laws, and that disgorgement is a well-established remedy to prevent the unjust enrichment of wrongdoers.

In the insider trading cases of *SEC v. Levine* and *SEC v. Wilkis*,[235] the United States District Court for the Southern District of New York agreed with the Commission that the defendants had acquired no more than bare legal title to trading profits obtained illegally and that a constructive trust had attached to the profits in favor of the victimized investors. The court therefore concluded that the disgorged funds were not available to satisfy claims against the defendants by the Internal Revenue Service and other tax authorities, because at no time did the defendants have the kind of property interest in the funds to which tax liens could have attached. The court subsequently approved a distribution plan designed to return all disgorged trading profits to investors who traded contemporaneously with the defendants.[236]

Constitutional Challenges To Commission Enforcement Actions—In a number of recent Commission enforcement actions, the defendants have argued that the Commission, as an independent agency whose members are not removable at will by the President, is barred by Article II of the Constitution from bringing enforcement actions. The Commission has argued that the President's substantial authority over the Commission, including "for cause" removal power, satisfies the constitutional requirement that the President "take care that the Laws be faithfully executed." In *SEC v. Blinder, Robinson & Co.*,[237] the United States Court of Appeals for the Tenth Circuit adopted the Commission's position on this issue. In so ruling, the Court relied heavily on the Supreme Court's recent decision upholding the constitutionality of the independent counsel statute [238] and the Supreme Court's decision in *Humphrey's Executor v. United States*.[239]

In a case related to the Tenth Circuit action, *Blinder, Robinson & Co. and Meyer Blinder v. SEC*,[240] the Blinder defendants challenged the constitutionality of the Commission's actions and sought review of a Commission order in an administrative proceeding in the United States Court of Appeals for the District of Columbia Circuit. The District of Columbia Circuit agreed with the Commission that it should not reach the Article II issue because that issue was on appeal to the Tenth Circuit. Subsequently, as described below under litigation concerning broker-dealers and market professionals, the Commission successfully opposed Supreme Court review of the District of Columbia Circuit decision on a different issue.

In fiscal year 1988, two federal district courts also rejected constitutional challenges to the Commission's enforcement authority. In *SEC v. Moskowitz*,[241] the court denied the constitutional challenge. In *SEC v.*

Davis,[242] the court denied a motion to dismiss and concluded that the SEC's exercise of civil enforcement responsibilities does not constitute an unconstitutional delegation of enforcement authority.

Broker-Dealers And Market Professionals—In *Blinder, Robinson, Co. and Meyer Blinder v. SEC*,[243] as urged by the Commission, the Supreme Court denied certiorari. Petitioners argued that it is a violation of due process for the Commission to litigate an injunctive action in district court and then initiate an administrative proceeding to impose sanctions for the same conduct. In opposition to the grant of certiorari, the Commission argued that the Exchange Act gives it the authority both to seek injunctions and to determine whether administrative remedies are in the public interest, and does not require the Commission to elect between the two types of proceedings. Further, the Commission noted, as established by the Supreme Court in *Withrow v. Larkin*,[244] an administrative agency may combine adversarial and adjudicative functions without offending due process.

During fiscal year 1988, the Commission also defended two Commission orders in *Antoniu v. SEC*.[245] Petitioner, a securities professional convicted of insider trading, seeks review of a Commission order directing the National Association of Securities Dealers (NASD) to disapprove his proposed employment with a Minneapolis broker-dealer and a subsequent Commission order barring him from association with any broker-dealer. Concerning the first order, the Commission's brief argues, among other things, that the Commission has broad discretion to review determinations by the NASD and other self-regulatory organizations concerning the proposed employment of persons who are disqualified under the Exchange Act from association with an NASD member firm. The brief also refutes the petitioner's argument that the procedure employed by the Commission in issuing its order violated Section 15A(g)(2) of the Exchange Act and his right to due process, explaining that the statute provides for such a Commission veto of an NASD determination to allow proposed employment. The procedural protections provided in the NASD hearing satisfy due process concerns.

In *The Stuart-James Co., Inc. and Marc N. Geman v. SEC*,[246] the United States Court of Appeals for the District of Columbia Circuit affirmed a Commission decision interpreting the Commission's net capital rule and upholding the NASD's imposition of sanctions against a broker-dealer and its executive vice-president. The court agreed with the Commission that the company had erred in calculating its net capital in connection with a firm-commitment underwriting, giving deference to the Commission's interpretation of its net capital rule. At the commencement of such an underwriting, a broker-dealer is committed to purchasing the securities at a discount from the offering price but does not know whether it will be able to sell those securities at the offering price. At that time the broker-dealer must calculate net capital, taking a "haircut" or deduction from the face amount of the offering to reflect the risk of loss that the broker-dealer bears. Under the net capital rule, this "haircut" may be diminished, and net capital in effect increased, by the amount of "unrealized profit" from the offering. The firm in this case argued that a non-accountable expense allowance should be treated

as "unrealized profit." The Commission interprets the term "unrealized profit" to exclude such an expense allowance and to include only the "concession" received by the broker-dealer from the issuer, which is the discount from the offering price. The court rejected the petitioners' contention that the Commission had violated the Administrative Procedure Act and the Freedom of Information Act in not publishing its interpretation of the rule prior to any adjudicatory proceeding, reasoning that the Commission's interpretation simply explained an already existing regulation. In contrast, if the Commission had adopted a new rule or substantially modified an existing rule, publication might have been required.

The United States Court of Appeals for the Eighth Circuit affirmed a Commission order imposing sanctions on a broker-dealer's registered representative in *Kane v. SEC*.[247] The Commission had suspended the representative from association with any broker-dealer for six months because of his participation in the sale of unregistered securities. The Commission took the position that the representative was responsible for determining whether the securities could be lawfully sold without registration, and that he had willfully failed to make the "searching inquiry" necessary for this determination. The court agreed with the Commission that the six-month sanction imposed on the representative was justified, rejecting the representative's contention that the illegal sale of unregistered securities to the public was merely a "technical" violation of the federal securities laws.

The United States Court of Appeals for the Tenth Circuit also affirmed the Commission's decision in *C.E. Carlson, Inc. and Charles E. Carlson v. SEC*,[248] suspending C. E. Carlson, Inc.'s broker-dealer registration for two months, barring Mr. Carlson's association with any broker or dealer for eight months, and prohibiting both of them from participating in any securities offering. The court held that: (1) the Commission's findings that respondents violated antifraud provisions of the securities laws were supported by substantial evidence; (2) the Commission did not abuse its discretion in denying certain discovery motions that were intended to produce evidence relevant to a selective prosecution defense; and (3) the Commission did not abuse its discretion in its selection of sanctions.

In *Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*,[249] a suit between a brokerage firm and its customer, the Commission participated as *amicus curiae*, arguing that it is a fraud under Exchange Act Rule 10b-5 for a broker-dealer to charge undisclosed excessive mark-ups. Agreeing with the position urged by the Commission, the United States Court of Appeals for the Third Circuit reversed the district court's decision that a broker-dealer's compliance with routine disclosure requirements set forth in Exchange Act Rule 10b-10 precludes fraud liability. The Third Circuit recognized that the Commission, in adopting Rule 10b-10, had set a minimum standard for customer confirmation disclosure and did not intend that compliance with that rule would provide a broker-dealer with a safe harbor for fraud.

The Commission filed *amicus curiae* briefs, both in district court and on appeal, in *McLaughlin, Piven, Vogel, Inc. v. Gross*,[250] concerning arbitration under rules adopted by the various self-regulatory organizations and approved

by the Commission. The United States Court of Appeals for the Third Circuit agreed with the Commission that the hearing provision in the small claims arbitration rule adopted by the Municipal Securities Rulemaking Board (and other SROs) does not deny broker-dealers either due process or equal protection. In this case, a broker-dealer challenged an arbitration decision awarding the brokerage firm's customers $2,500. The decision was based on written submissions. The brokerage firm argued that the procedure was constitutionally defective because, although the firm could submit whatever it wanted in writing, the firm could obtain an oral hearing only if the arbitrator decided that one would be appropriate or necessary or if the customer had consented. The customer, however, could obtain an oral hearing upon request. The Commission argued that the rule gives broker-dealers an ample opportunity to present their cases, which is all that due process requires, and that the difference in the treatment of broker-dealers and public customers under the rule has a rational basis.

Finally, in *SEC v. Suter*,[251] the Seventh Circuit rejected Suter's appeal from a district court order that denied reconsideration of the court's prior decision not to vacate a permanent injunction entered against him. In this appeal, Suter argued unsuccessfully for the third time that his publication of an investment newsletter rendered him immune from any Commission regulation. The court characterized his arguments on the merits as frivolous, and *sua sponte* awarded the Commission costs incurred in defending the suit.

Definition of a Security—The Commission has participated as a friend of the court in selected private lawsuits involving the question of whether a particular instrument is a security. In fiscal year 1987, the Commission filed such an *amicus* brief in *Sanderson v. Rothenmund*.[252] In fiscal year 1988, the district court in that case adopted the Commission's position, holding that certain debt instruments called International Certificates of Deposit, which were issued by a corporation that was not subject to bank regulation, were "notes" within the definition of "security" in the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934. The court concluded that: (1) the instruments were indistinguishable from standardized notes of small denomination sold to the public, which have been consistently held to be securities; and (2) because these instruments were "notes" within the statutory definition of security, the court did not need to determine whether the instruments constituted "investment contracts"—also defined by the Securities Act as securities—within the meaning of *SEC v. W.J. Howey Co.* [253]

In response to the United States Supreme Court's request for the views of the United States, and in accord with the Commission's position, in *Variable Annuity Life Insurance Co., et al. v. Otto* [254] the Solicitor General filed a brief urging that the Court grant certiorari. The United States Court of Appeals for the Seventh Circuit had held that a fixed-annuity contract with a variable component was a security subject to the federal securities laws, rather than an "annuity contract" exempt from regulation under Securities Act Section 3(a)(8). The brief took the position that review was appropriate because the Section 3(a)(8) exemption for annuity contracts might be applicable and many similar instruments have been marketed in reliance on this exemption. The

brief discussed several factors that are significant in determining the applicability of the exemption, including: (1) whether the insurance company assumes substantial investment risk; (2) the manner in which the contract is marketed and whether the appeal to customers is made on the basis of stability and security; and (3) whether the insurance company assumes a meaningful mortality risk under the contract. The brief contended that the annuity contract at issue met the investment-risk criterion because the issuer assumed all risk with respect to principal paid and an adequate minimum fixed rate of interest. The Supreme Court declined review.

At the invitation of the United States Court of Appeals for the Fifth Circuit, the Commission filed an *amicus* brief in *Adena Exploration, Inc. v. Sylvan*,[255] urging that certain interests in oil and gas rights are securities under the federal securities laws. The Commission's brief argues that the Supreme Court's analysis in *Landreth Timber Co. v. Landreth* [256] is applicable to these interests. Like "stock"—the interest at issue in *Landreth*—these oil and gas rights lend themselves to consistent definition and are plainly within the Securities Act definition of a security. The Securities Act lists "fractional undivided interest in oil, gas, or other mineral rights" as one category of "security." Thus, the Commission explains, in determining whether the oil and gas interest at issue is a security, a court should examine only whether the interest has the characteristics typically associated with a "fractional undivided interest in oil, gas, or other mineral rights." The Commission's brief also states that the degree of sophistication of the parties and the extent of the investor's participation in exploration of the oil and gas leasehold have no relevance to the determination of whether these interests are securities under the federal securities laws.

In *Arthur Young & Co. v. Reves*,[257] the Commission filed a friend-of-the-court memorandum in the United States Court of Appeals for the Eighth Circuit in support of a petition for rehearing and suggestion for rehearing *en banc*. The court of appeals panel had concluded that certain demand notes that were widely offered and sold to the public by an Arkansas farmers' cooperative are not securities. The panel reasoned that: (1) the demand feature of the notes took them out of the definition of security; and (2) interest on a note does not constitute "profit" under the *SEC v. W.J. Howey Co.* [258] test for "investment contract." The Commission contends that the demand feature of the notes is not determinative of their status under the federal securities laws; that the "investment contract" test is inapplicable where an instrument is a security under any of the tests for "notes;" and that, in any event, "profit" under *Howey* includes any type of return on an investment, including interest.

Liability Under Section 12 of the Securities Act—Substantially agreeing with the Commission's arguments as *amicus curiae*, and reversing the United States Court of Appeals for the Fifth Circuit, the Supreme Court held in *Pinter v. Dahl* [259] that the *in pari delicto*, or equal fault, defense is available in a private action under Section 12(1) of the Securities Act, which affords a private remedy of rescission for sales of unregistered securities in violation of the Act. Under the *in pari delicto* doctrine, judicial relief may be denied because of a plaintiff's own culpability. As the Commission had urged, the Court applied a

two-pronged test for application of the defense in a Section 12 action: (1) the plaintiff must be at least equally responsible for the issuer's illegal failure to register the securities or its failure to conduct the sale in a manner that satisfies the Act's registration exemption provisions; and (2) the plaintiff must be primarily a promoter of the securities offering, rather than an investor. The Court also held that only persons who either pass title to a security or solicit a purchase may be liable as sellers under Section 12(1). Further, the Court endorsed the Commission's position that one does not "solicit" unless he is "motivated at least in part by a desire to serve his own financial interests or those of the securities owner." The Court declined to take a position on whether its decision as to the scope of "seller" liability under Section 12(1) applies to Section 12(2) of the Securities Act, a provision which imposes liability on persons who offer or sell a security by means of a material misstatement or omission. The case law, however, generally holds that the term "seller" has the same meaning in Section 12(1) as it does in Section 12(2). The Court also did not reach the question whether aiding and abetting liability is available in actions under Section 12.

Shortly after the close of the fiscal year, at the invitation of the United States Court of Appeals for the Second Circuit, the Commission addressed the scope of "seller" liability under Section 12(2) of the Securities Act, an issue left open by the Supreme Court in *Pinter v. Dahl*.[260] In *Wilson v. Ruffa & Hanover, P.C.*,[261] the Commission argued as *amicus curiae* that a law firm cannot be held liable under Section 12(2) as a statutory "seller" where the law firm did no more than prepare allegedly false offering materials and send the materials to several prospective buyers, including the plaintiff, at the issuer-client's request. The Commission stated that the *Pinter* reasoning, while addressed to actions under Section 12(1), also governs actions under Section 12(2). Thus, the Commission contended, the law firm can be held primarily liable under Section 12(2) only if it passed title to the securities—which it plainly did not do—or "solicited" the plaintiff's purchase. The Commission reasoned that a person cannot be deemed to have solicited a purchase unless he contacts the buyer, either personally or through an agent, in a meaningful manner, and that the merely ministerial act of sending the buyer offering materials at the request of the client-issuer is not such an action. The Commission also stated that there is no aiding and abetting liability under Section 12(2) of the Securities Act, because, just as the Supreme Court in *Pinter* found no indication that Congress intended in Section 12 to impose primary liability on collateral participants, there is no indication that Congress intended to impose liability on such persons through secondary liability concepts. The Commission pointed out that while the language of Section 12(2) requires this narrow construction, a plaintiff may be able to proceed under Exchange Act Rule 10b-5, as to which courts have permitted aider and abettor liability, assuming the requirements of an action under that Rule are met, including scienter and causation.

Tender Offer and Merger Litigation—In the past fiscal year, the Commission has participated in several cases raising significant federal securities law issues in the context of mergers and tender offers. In *Basic, Inc. v. Levinson, Inc.*,[262]

the Supreme Court adopted the Commission's view on the proper standard under Rule 10b-5 for determining materiality of preliminary merger negotiations. In that case, a company had issued statements effectively denying that it was involved in merger discussions, when in fact it was involved in discussions that ultimately led to its being acquired at a premium. As the Commission urged, the Supreme Court concluded that materiality is to be determined by whether a reasonable investor would consider the information important to his investment decision. The Court, again agreeing with the Commission, held that in merger cases this determination requires balancing the significance of the proposed merger against the likelihood of its occurrence. The Court also endorsed the Commission's view that the failure to disclose such material information could constitute fraud on the market. Under that view, where an active secondary market such as the New York Stock Exchange is involved, reliance on corporate statements can be established by a rebuttable presumption that investors relied on the integrity of a market price that reflected those corporate statements.

In *Nationwide Corp. v. Howing Co.*,[263] the Supreme Court requested the views of the United States as to whether to grant certiorari to review a decision of the United States Court of Appeals for the Sixth Circuit that there is an implied private right of action under Section 13(e) of the Exchange Act. That provision governs going-private transactions, including mergers that involve the issuance of proxy statements. The violation involved in the case concerned a failure to make disclosures required by Rule 13e-3 to appear in a proxy statement relating to a going-private transaction. This rule requires an issuer to state in a proxy statement soliciting approval of a going-private merger whether the issuer believes that the transaction is fair to shareholders and to explain in reasonable detail why it holds this belief. This information must be prominently displayed and must contain more than mere conclusory statements. The Solicitor General filed a brief arguing, in accord with the Commission's position, that Supreme Court review was unnecessary because shareholders have a well-established cause of action under Section 14(a) of the Act to redress violations of the Commission's proxy rules, and the plaintiffs in this case therefore had a cause of action regardless of whether there is an implied cause of action under Section 13(e). The Court denied certiorari.

In two separate cases in the federal courts of appeals, *Newmont Mining Corp. v. Pickens*[264] and *IU International Corp. v. NX Acquisitions Corp.*,[265] the Commission participated as *amicus curiae*, stating its view as to the Williams Act's disclosure requirements with respect to financing for a tender offer. In both cases, the courts adopted the Commission's position that neither the Williams Act nor Commission rules promulgated thereunder require a tender offeror to have firm financing in place before it begins its offer. The courts noted, in accord with the Commission's view, that the Act and rules do require the offeror to fully and accurately disclose whatever financing has been arranged or planned. The courts agreed with the Commission that, if and when a tender offeror acquires firm financing during the offer, the offeror must amend its disclosure statement accordingly and may have to extend the

period of the offer to give shareholders an adequate opportunity to consider the new information before deciding whether to tender their shares.

The Commission further explained its view of Williams Act requirements in connection with financing in *R.H. Macy & Co. v. Campeau Corp.* [266] Responding to the court's request, the Commission participated as *amicus curiae*, advising the district court that if a tender offeror does not have firm financing commitments at the outset of a tender offer, then, when the offeror obtains substantially all the necessary firm financing commitments, the terms and conditions of that financing would have to be disclosed. Commission rules require that investors be provided at least five business days to consider such a change in the offer, and, if fewer than five business days remained in the offer, the offer would have to be extended to provide shareholders at least five days to consider it. The Commission further advised the court that "expressions of willingness" to commit to purchase $1.8 billion in notes from a tender offeror made in letters by three banks did not amount to firm financing, since the "expressions of willingness" were not legally binding commitments. Before the district court could rule on the issue, the target company accepted one of the tender offers and the suit terminated.

In *Koppers v. American Express Co.*,[267] the Commission responded by letter to a district court request for its view on whether the Williams Act is violated if an investment banker both acts as a dealer-manager for a tender offeror and proposes taking an equity interest in the offeror and fails to point out this alleged conflict of interest in disclosure documents. The Commission acknowledged that conflicts could arise where a multi-service firm proposes to act in both capacities. However, conflicts of interest can be avoided by using preventive policies and procedures commonly used in the industry such as Chinese Walls, restricted lists, and watch lists. The Commission noted that the Williams Act would not ordinarily require disclosure of apparent conflicts or preventive measures because the information would not ordinarily be deemed material to the target company's shareholders as they decide whether to tender their shares. However, disclosure of apparent conflicts and preventive measures would be required if a failure to follow proper procedures resulted in contingent liabilities materially affecting a firm's ability to provide or obtain financing for the tender offer. The court agreed with the Commission that the tender offer should not be enjoined on this basis.

The Commission filed an *amicus curiae* brief in *American Carriers, Inc. v. Baytree Investors, Inc.*,[268] a case raising the issue of when a tender offer commences for purposes of triggering the Williams Act's disclosure requirements. In that case, the offeror challenges a district court's finding that it commenced a tender offer when it sent to the press a letter stating an intention to make a tender offer for 51 percent of the target's stock, subject to approval by the target's board of directors. The offeror failed to file disclosure documents or withdraw the offer within five days after its announcement, which the Commission argues violated the Williams Act and Commission Rule 14d-2(b). The Commission asserts that its releases proposing and adopting the rule make clear that an announcement of a

prospective conditional offer that includes the specific terms of the offer triggers the Williams Act disclosure requirements. The Commission also points out that such an offer can, and in this case did, have a significant impact on market activity, and this impact triggers shareholder need for information about the offeror and its plans for the target company.

Constitutional Challenges to State Takeover Statutes—In fiscal year 1988, the Commission participated, as *amicus curiae*, in three federal district court cases challenging the validity of state takeover statutes under the Supremacy and Commerce Clauses of the United States Constitution. *RP Acquisition Corp. v. Staley Continental, Inc.*[269] involved Delaware's takeover statute, which bars for three years mergers and other combination transactions between a Delaware corporation and a person (including any entity) acquiring 15 percent or more of the company's stock, unless: (1) the company's board of directors approves the transaction prior to the acquirer's acquisition of 15 percent of the company's shares; (2) the acquisition results in the acquirer holding 85 percent or more of the target company's stock (exclusive of inside directors' and employee stock plans' shares); (3) the transaction is approved by the target company's board and two-thirds of its shareholders, exclusive of the acquirer, after the 15 percent acquisition; or (4) the pre-acquisition board members continuing in office approve certain tender offers by the issuer or a third party, or mergers with or asset sales to third parties. The Commission's brief argued that the statute vests incumbent management with broad power in determining whether a change-in-control transaction will go forward, thus frustrating the fundamental purpose of the Williams Act, which is to foster shareholder, rather than management, choice with respect to tender offers. Thus, the Commission concluded that the Delaware statute was preempted under the Supremacy Clause of the Constitution. The Commission also argued that the Delaware statute was invalid under the Commerce Clause because it impedes, and may in fact prevent, the interstate commerce in securities incident to a tender offer. This burden on commerce significantly outweighs any legitimate state interest promoted by the statute. The district court rejected these arguments and upheld the constitutionality of the statute. The case became moot, however, when the parties settled their dispute.

The United States District Court for the Eastern District of Wisconsin accepted the Commission's Supremacy Clause argument without reaching the Commerce Clause issue in *RTE Corp. v. Mark IV Industries, Inc.*,[270] and thus held Wisconsin's takeover statute unconstitutional. That statute barred for three years any business combination between Wisconsin corporations that have their principal executive offices in, or certain other contacts with, Wisconsin and persons who acquire 10 percent or more of the company's stock, unless the company's board approves the combination prior to the 10 percent acquisition. Unlike the Delaware statute in *RP Acquisition Corp.*, the Wisconsin statute contained no other exceptions. This case too became moot because the parties reached a settlement.

The Commission advanced the same arguments in *Salant Acquisition Corp. v. Manhattan Industries, Inc.*[271] to challenge a New York takeover statute. That statute prohibited for five years combination transactions between certain New

York corporations and persons acquiring 20 percent of such a company's stock, unless the company's board of directors approves the transaction before the acquirer crosses the 20 percent threshold. The court did not reach the constitutional issues.

First Amendment Challenge—The United States Court of Appeals for the District of Columbia Circuit this year affirmed the Commission's power to assure that publications concerning securities are not misleading or deceptive. In *SEC v. Wall Street Publishing Institute, Inc.*,[272] the Court of Appeals reversed in part a district court order denying, on First Amendment grounds, an injunction sought by the Commission pursuant to the anti-touting provisions of the Securities Act. The injunction would have required a magazine publisher to disclose that it had received consideration from a securities issuer for touting that company's stock. The District of Columbia Circuit held that regulation of the exchange of information regarding securities is subject to only limited First Amendment scrutiny. Applying that standard, the court held that the disclosure injunction sought by the Commission was not an impermissible prior restraint on publication, because the injunction was imposed only after full judicial review and was a narrowly-crafted injunction against a continued practice of publishing articles without disclosure of consideration. Nevertheless, the court refused to consider the provision of free text by a company for use in the magazine to be a form of consideration, because that would result in a constitutionally impermissible intrusion into the editorial processes protected by the First Amendment.

Motions to Vacate Injunctions—In *SEC v. Blinder, Robinson & Co., Inc.*,[273] the United States Court of Appeals for the Tenth Circuit affirmed a district court order denying a motion brought under Federal Rule of Civil Procedure 60(b) to vacate injunctions entered against a broker-dealer firm and its principal. In denying the motion, the district court pointed out that the firm's principal, who remains in control of the firm, had orchestrated a program of disseminating "deliberately deceptive misinformation" and had acted with an "intent to deceive" investors. As the Commission urged on appeal, the Tenth Circuit held that the correct standard for determining whether a party is entitled to Rule 60(b) relief from an injunction is the strict standard set forth in *United States v. Swift & Co*,[274] and that in order to obtain such relief a party is required to make a "clear showing of a grievous wrong evoked by new and unforeseen circumstances." Agreeing with the Commission, the Tenth Circuit ruled that petitioners had failed to make the requisite showing.

The Commission successfully opposed a motion to vacate a permanent injunction in *SEC v. Allison*.[275] The injunction had been entered in 1982 upon a district court finding that petitioner had sold securities in violation of the registration provisions of the Securities Act and had that same year been enjoined by another federal court from fraudulently manipulating the securities market. The motion to vacate was grounded on petitioner's claims that disclosure of the injunction would hinder a potential business opportunity to serve as a corporate officer and that the injunction was causing him "psychological stress." Shortly after the close of the fiscal year, the district court denied the motion.

Discovery Matters In Commission Enforcement Actions—In *SEC v. First Jersey Securities, Inc.*,[276] the United States Court of Appeals for the Second Circuit affirmed a district court order finding a branch manager of First Jersey in contempt for failing to produce subpoenaed corporate documents. The court of appeals thus rejected the manager's assertion of the Fifth Amendment's privilege against self-incrimination. The manager had contended that the act of production itself would incriminate him, relying on cases upholding the privilege if the act of production would reveal incriminating information previously unknown to the government, such as the existence, authenticity or possession of the documents. The Second Circuit agreed with the district court that the testimonial effect of production would be negligible because the existence, possession, and authenticity of the documents were foregone conclusions. The court found it unnecessary to rule on the Commission's contention that the act-of-production privilege, like the general Fifth Amendment privilege, does not apply to a custodian of corporate records.

Litigation Involving Requests For Access To Commission Records—Although the Commission received more than 5,500 Freedom of Information Act (FOIA) and confidential treatment requests in fiscal year 1988, only three of those requests resulted in the filing of court actions against the Commission, all of which are awaiting resolution. The Commission received 2,362 requests under the FOIA for access to Commission records and 3,295 requests for confidential treatment from persons who submitted information. In fiscal year 1988, there were 70 appeals of denials of FOIA requests to the Commission's General Counsel and six appeals of denials of confidential treatment requests.

In fiscal year 1988, the Commission filed its brief in *Occidental Petroleum Corp. v. SEC*,[277] an appeal in which the Commission seeks to overturn a district court order requiring the Commission to take additional procedural steps in determining Occidental's claim for confidential treatment of documents requested by a third party under FOIA. The documents had been obtained by the staff during its investigation of questionable foreign payments. The Commission's brief argues that the Commission's procedures give a confidential treatment requestor adequate notice and opportunity to submit evidence to the FOIA officer and the General Counsel, who conducts a *de novo* review. The brief also argues that the additional procedures proposed by the district court are either contrary to law or would establish bad policy. Shortly after the beginning of the new fiscal year, the United States Court of Appeals for the District of Columbia heard oral argument in this appeal.

In *In re Sealed Case*,[278] plaintiffs in a private securities law civil action sought to overturn a district court order upholding the Commission's claims that information the plaintiffs were seeking through discovery was protected from discovery by the attorney work product doctrine and the law enforcement investigatory files privileges. The plaintiffs had sought testimony from Commission staff concerning information that the Commission had gathered in an enforcement investigation. The Court of Appeals for the District of Columbia Circuit agreed that both the law enforcement investigatory privilege and attorney work product immunity applied to the information sought, and had been properly asserted by the Commission. Because both privileges are

qualified, however, the court remanded the case to allow the district court to balance competing public and private interests.

Actions Under the Equal Access To Justice Act (EAJA)—In *SEC v. Fox*,[279] the United States Court of Appeals for the Fifth Circuit affirmed the district court's denial of attorneys' fees under the EAJA to the prevailing party in a Commission insider trading action. The court held that the district court had not abused its discretion in determining that the Commission was substantially justified in bringing the action, even though Fox won the case on the merits. In the court's view, the facts established by the Commission could have supported a finding that the information possessed by defendants when they traded was material and that the defendants acted with scienter.

Actions Against the Commission—The United States District Court for the District of Columbia granted a Commission request for attorneys' fees as a sanction under Federal Rule Civil Procedure 11 in *Awkard v. SEC*.[280] The district court adopted the Commission's method of using market rates for private attorneys of commensurate experience in calculating the amount of fees, and indicated that the government may similarly seek attorneys' fees as a sanction under Federal Rule of Civil Procedure 37 against private litigants who violate federal discovery rules.

In *Panaro v. von Stein*,[281] the court dismissed an action which alleged that the Commission and several employees had violated the plaintiff's constitutional rights during a Commission investigation. Plaintiff had repeatedly failed to appear for her deposition and had subsequently moved for a voluntary dismissal of the lawsuit which would enable her to reinstate it at a later date. The court dismissed the lawsuit with prejudice as to certain defendants and without prejudice as to the remaining defendants. To date, plaintiff has not reinstated her allegations.

In *SEC v. The Electronic Warehouse, Inc.*,[282] a Commission injunctive action, defendant William A. Calvo filed a counterclaim alleging that the staff had engaged in misconduct. The United States District Court for the District of Connecticut held that defendant Calvo's counterclaim was barred by Section 21(g) of the Exchange Act, which prohibits consolidating Commission injunctive actions with other actions absent Commission consent. The court also struck Calvo's affirmative defenses based on alleged staff misconduct, and permanently enjoined Calvo from violating antifraud provisions of the federal securities laws. The violations stemmed from Calvo's role as the underwriter's attorney in the public offering of stock of The Electronics Warehouse, Inc.

In *SEC v. The Royale Group, Ltd.*,[283] the United States District Court for the District of Columbia denied a motion by defendants, The Royale Group, Ltd., and entered an order against them imposing sanctions. The court had entered the contempt order based on defendants' failure to file annual and quarterly reports as required by an injunction to which they consented in 1982. The court rejected defendants' arguments that they had mistakenly consented to the injunction without realizing that contempt could be imposed "without further notice."

Actions Against Professionals Under Commission Rule 2(e) The staff is litigating against a number of professionals under Commission Rule 2(e).

During the last fiscal year, two such actions were concluded. In *In re Bill R. Thomas*,[284] the Commission found that a partner in a national accounting firm had engaged in improper professional conduct, had violated antifraud provisions of the federal securities laws and had aided and abetted violations of the reporting provisions when he audited the financial statements of a publicly-owned corporation in which he owned stock. The Commission permanently denied the respondent the privilege of appearing or practicing before it. Shortly after the end of the fiscal year, the United States Court of Appeals for the Fifth Circuit affirmed the Commission in all respects.[285]

In *In re Schultzenberg*,[286] after two weeks of trial, a partner in the national accounting firm of Touche, Ross & Co. consented to a Commission order that censured him and ordered him not to practice before the Commission for one year, subject to certain conditions. The staff had alleged that the partner engaged in improper professional conduct by issuing an "unqualified" audit report when he lacked a reasonable basis for expressing an opinion on the adequacy of the allowances reserved for certain potential losses, and failed to address inaccuracies with respect to aging accounts information that was contained in the client's public filings.

Actions Under the Right to Financial Privacy Act—The district courts dismissed two actions filed under the Right to Financial Privacy Act seeking to block Commission subpoenas of customer financial information from their banks.[287] In each of these cases, the Court found that the Commission was seeking the records for a legitimate law enforcement purpose, and that the records were relevant to the investigation. The courts therefore ordered compliance with the Commission's subpoenas.

Actions Raising Equal Employment Issues—In *Broderick v. Ruder*,[288] the United States District Court for the District of Columbia found that Title VII of the Civil Rights Act of 1964 was violated when the management of the Commission's former Washington Regional Office created and left unremedied a sexually hostile work environment which impaired the plaintiff's ability to perform her job. The court also found that the plaintiff had been retaliated against because of her complaints regarding the environment. The Commission subsequently settled the case, and retained an Equal Employment Opportunity (EEO) expert to review the Commission's EEO process and policies and make recommendations for improvement.

Significant Legislative Developments

Insider Trading—At the conclusion of the session, the 100th Congress passed The Insider Trading and Securities Fraud Enforcement Act of 1988. That Act included a variety of provisions designed to enhance the effectiveness of Commission enforcement efforts and increase the penalties for insider trading. The Act amended the Insider Trading Sanctions Act to provide actions for civil penalties against controlling persons who fail to take appropriate steps to prevent or detect insider trading violations by their employees or controlled persons. Provisions of the Act also require broker-dealers and investment advisers to establish, maintain, and enforce written policies and procedures

that are reasonably designed to prevent the misuse of material, nonpublic information. The Act increased the criminal penalties for securities law violations, expressly granted private rights of action for damages to contemporaneous traders in insider trading cases, and authorized the Commission to award payments to persons who provide information in insider trading cases. As discussed below, the Act also included a provision designed to enhance cooperation in international enforcement efforts. Finally, it authorized a special study of the securities laws to be conducted by the Commission, contingent upon the subsequent appropriation of funds. The Insider Trading and Securities Fraud Enforcement Act of 1988 was signed by President Reagan on November 19, 1988.

During the second session of the 100th Congress, the Senate continued its consideration of a statutory definition of insider trading. Following a series of hearings before the Subcommittee on Securities of the Senate Banking, Housing and Urban Affairs Committee, which included consideration of a Commission legislative proposal, the Commission submitted a revised proposal to define insider trading on November 18, 1987. Chairman Ruder testified concerning this revised definition at a hearing before the Subcommittee on December 15, 1987. On February 8, 1988, the Commission proposed language for inclusion in the legislative history to accompany the revised insider trading definition.

International Enforcement—On June 3, 1988, the Commission sent to Congress the International Securities Enforcement Cooperation Act of 1988. The legislation, in an attempt to facilitate greater international cooperation among securities authorities, proposed an amendment to Section 21(a) of the Exchange Act to provide the Commission with discretion to conduct investigations for the purpose of assisting a foreign securities authority. It specified that, in exercising this discretion, the Commission shall consider whether the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission, and whether compliance with the request would prejudice the public interest of the United States. This provision was included in the Insider Trading and Securities Fraud Enforcement Act of 1988.

Other provisions of the proposed bill would permit the Commission to maintain the confidentiality of certain records obtained from foreign authorities under reciprocal agreements, and would make explicit the Commission's rulemaking authority to grant both domestic and foreign persons access to the Commission's investigative files. Finally, the proposed legislation would amend the Exchange Act, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to permit the Commission to impose sanctions on securities professionals found by a foreign tribunal to have engaged in misconduct abroad that, had the same misconduct taken place in the United States, would have subjected the professional to a Commission disciplinary proceeding. Chairman Ruder testified in support of the proposed legislation before the Subcommittee on Securities of the Senate Banking, Housing and Urban Affairs Committee on June 29, 1988, and before the Subcommittee on Telecommunications and Finance of the House Energy and Commerce Committee on August 3, 1988.

Securities and Exchange Commission Authorization Act of 1987—In November 1987, Congress passed the Securities and Exchange Commission Authorization Act of 1987, which included budget authorizations for fiscal years 1988 and 1989 and a number of technical amendments to the federal securities laws previously proposed by the Commission. President Reagan signed this legislation into law on November 4, 1987.

The Act authorizes appropriations of $158 6 million and $172.2 million for fiscal years 1988 and 1989, respectively, including expenditures of $15 million and $20 million in those years for the development of the Commission's proposed electronic data gathering, analysis and retrieval project (EDGAR). The most significant of the Act's technical amendments enhanced the enforcement authority of the Commission and the bank regulatory agencies over transfer agents and persons associated with them. This new authority is comparable to the Commission's authority over brokers and dealers, municipal securities dealers, government securities brokers and dealers, and persons associated with those entities.

Foreign Corrupt Practices Act—On August 23, 1988, President Reagan signed into law the Omnibus Trade and Competitiveness Act of 1988. Title V of the Trade Act amended the accounting and anti-bribery provisions of the Foreign Corrupt Practices Act of 1977. The Commission had previously testified before the 100th Congress in favor of a bill that proposed similar amendments.

The amendments modified the accounting provisions of Section 13(b) of the Exchange Act in several ways. They added a new subparagraph (5) that prohibits any person from knowingly circumventing or failing to implement a system of internal accounting controls, or knowingly falsifying any required book, record, or account. The amendments also provided that criminal liability may be imposed only for violations of new subsection (b)(5). In addition, they specify that an issuer's books and records need contain only the level of detail and degree of assurance that would satisfy prudent officials in the conduct of their own affairs.

With respect to the anti-bribery provisions of Section 30A, Title V changed the standard of liability for payments made through third parties from the prior "knowing or having reason to know" standard to a "knowing" standard. The amendments also established an affirmative defense to liability based on a showing that the payment was lawful under the *written* laws and regulations of the foreign official's country or that it was for certain reasonable and bona fide expenditures incurred by or on behalf of a foreign official. Finally, Title V raised the maximum criminal fine for violations of Section 30A to $2 million for issuers and $100,000 for individuals, and authorized the Commission to seek a civil penalty of up to $10,000 for a violation.

Financial Services—During the 100th Congress, Chairman Ruder testified four times before Congressional committees that studied the structure and regulation of the financial services industry and considered proposed legislation to repeal or modify the Glass-Steagall Act.[289] Chairman Ruder expressed the Commission's support for its own legislative proposal, the proposed Bank Broker-Dealer Act, which was introduced in the House as H.R.

2557 and in the Senate as S. 1175. That proposed legislation would generally subject banks engaged in securities activities to the same regulations, enforced by the Commission, that apply to all other entities engaged in those activities. In February 1988, the Commission's staff, in conjunction with the staffs of the bank regulatory agencies, drafted proposed amendments to the federal securities laws to address investor protection concerns raised by the expansion of bank securities activities. Those amendments would bring most bank securities activities within the broker-dealer regulatory framework designed by Congress for the protection of investors, and would also address investor protection issues raised by bank entry into investment company activities.

At the request of Chairman Edward J. Markey, the Commission prepared a report on issues raised by Glass-Steagall Act repeal for the Subcommittee on Telecommunications and Finance of the House Energy and Commerce Committee. The Commission's report, as well as Chairman Ruder's testimony before the Subcommittee on April 13, 1988, expressed support for modification or repeal of the Glass-Steagall Act, provided that such modification or repeal is accompanied by the amendments to the federal securities laws drafted by the staffs of the Commission and the banking regulators.

Securities Law Enforcement Remedies Act—On September 28, 1988, the Commission sent to Congress the "Securities Law Enforcement Remedies Act of 1988," a legislative proposal which would amend the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act to provide the Commission with new enforcement remedies. The proposed legislation would provide that civil money penalties could be imposed by the Commission in administrative proceedings, and by courts in civil actions brought by the Commission. It would also provide the Commission with administrative authority to bar or suspend corporate officers and directors from service in that capacity with a public company, and affirms the authority of courts to impose such remedies in Commission civil actions. Finally, the proposed legislation would expand the scope of Section 15(c)(4) of the Exchange Act to permit sanctions to be imposed under that section for violations of Section 16(a) of the Act.

The proposed legislation was based, in part, on recommendations of the National Commission on Fraudulent Financial Reporting (the Treadway Commission). The Treadway Commission Report, which was issued in October 1987, made forty-nine recommendations to reduce the incidence of fraudulent financial reporting. The recommendations were directed to public companies, the accounting profession, the Commission and other regulatory authorities, and the academic community. On May 2, 1988, Chairman Ruder presented the Commission's views before the House Subcommittee on Oversight and Investigations concerning the thirteen recommendations that were addressed to, or that would have a direct impact on, the Commission. Chairman Ruder stated that the Commission would, in addition to drafting the legislation described above, consider implementing certain other Treadway Commission recommendations through rulemaking.

Market Break Proposals—During the fiscal year, Chairman Ruder testified at a series of hearings held by various Congressional committees on issues raised by the October 1987 market break.[290] In particular, on June 14, 1988, Chairman Ruder testified before the House Committee on Agriculture concerning legislative proposals that were endorsed by the Commission at an open meeting on May 26, 1988. Subsequently, the Commission transmitted specific legislative recommendations to Congress on June 23, July 6, and July 7, 1988. Congress did not take action on these proposals before it adjourned.

The legislative proposals sent to Congress on June 23, 1988, consist of four separate recommendations. First, the Commission proposed that it be provided with authority to take a variety of actions to respond to a market emergency. Such authority, which would be roughly equivalent to current Commodity Futures Trading Commission (CFTC) emergency authority, would include the authority to implement delayed openings and early closings of the securities markets as well as temporary trading halts.[291] Second, the Commission recommended amendments to the Exchange Act and the Commodity Exchange Act to add certain findings to those Acts expressing the need for an enhanced clearing system and directing the Commission and the CFTC to facilitate the establishment of integrated, cross-market clearance and settlement systems. Third, the Commission proposed amending the Exchange Act to include a holding company risk assessment provision that would expressly authorize the Commission to require certain entities registered with the Commission, including brokers and dealers, to report information relating to their associated persons that may have a material impact on the financial or operational condition of the registered entity. Fourth, the Commission sought authority to adopt reporting rules regarding large securities transactions and certain transactions in futures markets that are related to transactions in the securities markets. The Commission expressed the view that such authority would enhance its ability to identify and monitor activities that are likely to affect the equities markets. The Commission also recognized that confidentiality and privacy protections must be an essential part of such legislation.

On July 6, 1988, the Commission sent to Congress another portion of the proposed legislation endorsed by the Commission at the May 26 meeting. That proposal would amend the Exchange Act and the Commodity Exchange Act to establish a new regulatory scheme for setting initial and maintenance margin levels on securities (other than exempted securities) and equity index futures (and options on such futures). The proposal would allocate responsibility for setting margins to the securities and commodities self-regulatory organizations, and provide for regulatory oversight by the Commission and the CFTC of "prudential" margins, *i.e.*, the margin levels deemed necessary to protect securities and commodities futures firms and clearing corporations from margin defaults. The Board of Governors of the Federal Reserve System would have residual authority to regulate margins as it deems necessary or appropriate to accommodate commerce and industry, to maintain fair and orderly financial markets, or to govern the use of credit to finance securities transactions, having due regard for general credit conditions of the economy.

On July 7, 1988, the Commission transmitted to Congress the final portion of its legislative package. That proposal, which was designed to create a more consolidated regulatory structure for the securities and stock index futures markets, would amend the federal securities laws and the Commodity Exchange Act to provide the Commission with regulatory authority over equity and derivative equity instruments—stocks, options, stock index futures, and options on stock index futures.

Municipal Securities—On September 22, 1988, the Commission authorized the release of a 376-page report prepared by its staff (Staff Report) containing a comprehensive discussion of the facts and circumstances that led to the largest default of publicly-issued securities in the history of the capital markets: *In the Matter of Transactions in Washington Public Power Supply System (WPPSS) Securities*. The Staff Report described the participation of the parties involved in the WPPSS project and its financing, and discussed several areas in which the disclosures made to investors in WPPSS securities were deficient. In a separate letter transmitting the Staff Report to Congress, Chairman Ruder stated that the Commission had determined to close the investigation without initiating an enforcement action after considering the facts set forth in the Staff Report in the context of applicable legal standards and industry practices, the potential costs and benefits that would be associated with Commission enforcement action, and the extent to which the WPPSS matter reflected systematic characteristics of the regulatory framework for municipal securities that might be addressed more appropriately by regulatory or legislative initiatives.

In order to put into perspective certain of its decisions concerning the municipal securities markets, including the WPPSS matter, the Commission issued a *Report of the Securities and Exchange Commission on Regulation of Municipal Securities* (Report). That Report described the background against which the Commission's decisions in this area were made, including the existing regulatory framework applicable to municipal securities, the circumstances surrounding both the 1975 New York City fiscal crisis and the WPPSS matter, and the extent to which voluntary efforts by various entities had improved the degree of investor protection in the municipal securities market.

In addition, the Report discussed a Commission release requesting comment on a proposed rule that would require underwriters of issues of municipal securities having an aggregate offering price in excess of ten million dollars to obtain and review a nearly final official statement before bidding for or purchasing the securities. That release also requested comment on the Commission's interpretation of the legal standards applicable to municipal underwriters, based upon judicial decisions and previous administrative actions, which emphasized that underwriters must have a reasonable basis for believing the key representations concerning any municipal securities that they underwrite. Finally, the release requested comment on a proposal by the MSRB and members of the industry to establish a central repository to collect information concerning municipal securities. The Report also described the institution of a special inspection project to evaluate the

unit investment trust industry and determine whether any regulatory changes are needed.

Corporate Reorganizations

The Commission acts in a statutory advisor's role in reorganization cases under Chapter 11 of the Bankruptcy Code to see that the interests of public investors are adequately protected. In these cases a debtor generally is allowed to continue business operations under court protection while it negotiates a plan to rehabilitate the business and to pay the company's debts. Reorganization plans often provide for the issuance of new securities to creditors and shareholders in exchange for part or all of their claims or interests in the debtor, under an exemption in the Bankruptcy Code from registration under the Securities Act.

In its capacity as special advisor, the Commission may raise or present its views on any issue in a Chapter 11 case. Although the Commission may not initiate an appeal, it frequently participates in appeals taken by others. While Chapter 11 relief is available to businesses of all sizes, the Commission generally limits its participation to cases involving debtors that have publicly traded securities registered under the Exchange Act. In fiscal year 1988, the Commission presented its views on a variety of issues.

Committees—Official committees are empowered to negotiate with a debtor in possession on the administration of a case and to participate in all aspects of the case, including formulation of a reorganization plan. With court approval, an official committee is permitted to employ, as a cost of administration, one or more attorneys, accountants, or other professionals to assist the committee in performing its duties. In addition to a committee representing creditors holding unsecured claims, the Code allows the court or a United States Trustee to appoint additional committees for stockholders and others where necessary to assure adequate representation of their interests. During fiscal year 1988, the Commission moved or supported motions for the appointment of committees to represent investors in three Chapter 11 cases.[292]

In two cases—*In re Global Marine, Inc., et al.*[293] and *In re Allegheny International, Inc., et al.*[294]—the Commission supported efforts by certain indenture trustees to form separate official committees to represent public holders of subordinated debentures. In both cases, the mandatory unsecured creditors' committee had represented not only the general unsecured creditors (senior creditors) but also the subordinated debentureholders. In *Global Marine* the committee consisted of four holders of general unsecured claims and four representatives of holders of public subordinated debentures. In *Allegheny*, the sole representative for debentureholders on the committee was the indenture trustee. In both cases, the debtors' proposed plans of reorganization—which provided for disparate treatment for holders of senior unsecured debt and subordinated debt—created a conflict of interest between the members of the committee which prevented the committee from effectively representing the interests of the subordinated debentureholders. Consequently, negotiations of the plan of reorganization were stymied.

The Commission argued in both cases that the conflict of interest impeded the existing committee from providing holders of the public debt with adequate representation at a critical juncture of the case—the negotiation of the terms of plan of reorganization. The Commission therefore urged that it was critical that public investors be represented by a separate committee able to advocate their interests. The Commission pointed out that since the proceedings were in the latter stages the increased administrative costs of an additional committee should not be a significant burden to the estate. In *Global Marine*, the bankruptcy court agreed with the Commission that a separate committee should be appointed but limited the scope of the duties of the new committee to negotiation of a reorganization plan. In *Allegheny*, the bankruptcy court denied the motion to appoint a separate committee of debentureholders but ordered the United States trustee to appoint two additional members to the unsecured committee to represent debentureholders.

The Commission addressed another important issue relating to committees in *In re Melridge, Inc.*[295] In this case, objections were filed by creditors and an indenture trustee raising the issue of the proper standard to be applied to the review of an interim fee application of counsel for an official equity security-holders' committee where the estate proves to be insolvent. The Commission argued that: (1) the statutory language and the policy underlying the Bankruptcy Code required that official committee counsel be compensated for services reasonably related to the performance of the committee's official responsibilities; and (2) whether the debtor is, or may be, insolvent is irrelevant to whether compensation should be awarded to official equity committee counsel pursuant to Section 330 of the Bankruptcy Code. After a hearing, the bankruptcy court, without deciding the question of whether the debtor's insolvency was relevant to an award of compensation under Section 330 of the Code, granted counsel's interim fee application.

Estate Administration—The Commission acts to protect the interests of public investors in reorganization cases by participating on selected issues involving administration of the debtor's estate that have a significant impact upon the rights of public investors.

In *In re Baldwin-United Corp. et al.*,[296] the Commission, in an appeal to the district court, addressed the question of the proper legal standard for determining whether an indenture trustee is entitled to compensation from the estate as an administrative expense for its activities on behalf of the bondholders during the course of the reorganization. The bankruptcy court had denied almost all of an indenture trustee's request for reimbursement as an administrative expense under Section 503(b) of the Bankruptcy Code, which authorizes reimbursement for services that make "a substantial contribution in a case." The court found that, for the most part, the indenture trustee's activities and those of its counsel benefitted only the bondholders and thus did not constitute a demonstrable benefit to the estate as a whole. In the Commission's view, the bankruptcy court applied too stringent a test in requiring a direct benefit to the estate stemming from the indenture trustee's participation in the reorganization process.

The Commission urged in its brief that an indenture trustee should be entitled to compensation pursuant to the "substantial contribution" standard if:

(1) the indenture trustee has, through its representation of the interests of bondholders, made demonstrable efforts towards furthering the reorganization process; and

(2) the indenture trustee's services or those of its counsel do not duplicate the services of official participants or other indenture trustees.

This test strikes a proper balance between the purposes of the administrative expenses provision of Section 503(b)—encouraging participation of parties in interest in reorganization proceedings—and preserving the assets of the estate for rehabilitation of the debtor and ultimate distribution to creditors. This matter is still pending.

In *In re Allegheny International, Inc.*,[297] the Commission participated in litigation on the issue of whether an annual meeting of stockholders can be held during the pendency of a Chapter 11 case. The regular annual meeting had been scheduled by Allegheny's board of directors after the company filed its Chapter 11 petitions. Creditors of Allegheny had sought unsuccessfully to enjoin the annual meeting and a proxy contest for control of the board of directors conducted under the direction of the official equity securityholders' committee. The Commission urged that: (1) the correct legal standard in deciding whether or not to enjoin an annual shareholder meeting, consistent with the position urged by the Commission in *In re Johns-Manville Corp.*, 801 F.2d 60 (2d Cir. 1986), is that an annual meeting that is sought during the plan negotiation phase of a Chapter 11 reorganization case should not be enjoined absent a showing of "clear abuse" of the shareholders' corporate governance rights, such that holding the meeting would jeopardize any possibility of reorganization; and (2) the district court correctly held that the record in this case did not support a finding of clear abuse. The annual meeting took place pursuant to a district court order and management retained control of the board. The pending appeal before the Third Circuit was thereafter terminated by stipulation.

With regard to a question of adequacy of notice for the filing of claims, in *In re Standard Metals*,[298] the United States Court of Appeals for the Tenth Circuit, in a decision on rehearing, agreed with the Commission's position that both the debtor and the bankruptcy court have a duty to assure that adequate notice is given to unscheduled creditors of the date by which claims against the debtor must be filed (claims bar date), at least when their existence becomes known prior to the filing of a plan of reorganization. In this case, the bankruptcy court and the district court had dismissed as untimely a class claim filed on behalf of industrial revenue bond purchasers who had securities fraud claims against the debtor. The claims were not listed on the debtor's schedules, and no notice was given to unscheduled creditors of the claims bar date. The bankruptcy court, in a opinion upheld by the district court, ruled that neither the debtor nor the bankruptcy court has a duty to assure notice of the claims bar date to unscheduled creditors.

The Tenth Circuit ruled, on rehearing, as the Commission had urged, that

where no notice of the claims bar date was directed to holders of the bonds and an individual bondholder filed a late claim on behalf of the bondholder class, notice to the bondholders was required once the existence of their claims became known. Observing that the bondholder claimants in the case became known to the debtor and to the bankruptcy court early in the reorganization proceeding, the court ordered that notice now be directed to the bondholders and that they be given an opportunity to file claims in the reorganization case. The Tenth Circuit left standing, however, its earlier ruling that class claims are not permissible in bankruptcy.[299]

During the fiscal year, the Commission reiterated in a number of bankruptcy cases its position taken in several cases last year (53rd Annual Report at 73), that class claims are permissible in bankruptcy. The Commission believes that, under principles of statutory construction, the well-recognized right to file class claims outside of bankruptcy is equally available in bankruptcy cases. Further, the Commission concludes that there are sound policy reasons for allowing class claims in bankruptcy. The class action is a particularly suitable device for the assertion of multiple small claims where, although no one individual has a stake in the outcome sufficient to support the costs of filing and pursuing the claim, the litigation may be conducted economically if the claims are aggregated. Finally, allowing class claims in bankruptcy fosters the bankruptcy policy of resolving all legal obligations of the debtor in one proceeding.

In *In re American Reserve*,[300] the Commission won an important victory when the Seventh Circuit, agreeing with the statutory and policy arguments made by the Commission, ruled that class proofs of claim are permissible in bankruptcy. In *In re Standard Metals Corporation* [301] the Solicitor General of the United States filed a brief on behalf of the Commission in the Supreme Court on a petition for a writ of certiorari in that case. The brief reiterated the Commission arguments that, under the Bankruptcy Code and Rules, class proofs of claim are permissible in bankruptcy proceedings. For several reasons unique to this case, however, the brief concluded that certiorari should not be granted. Subsequently, the petition for a writ of certiorari was dismissed after the parties had reached a settlement providing for most of the relief they sought before the Supreme Court.

The Commission has participated in several other cases urging that class claims are permissible in bankruptcy. In *In re Charter Co.*[302] an appeal is pending in the Court of Appeals for the Eleventh Circuit. Appeals are also pending before the district courts in *In re LTV Corporation* [303] (class claim denied) and in *In re Allegheny International, Inc. et al.*[304] (class claim denied). Finally in a case of note, in *In re Allis-Chalmers Corporation, et al.*[305] the bankruptcy court, in a ruling that was not appealed, disagreed with the Commission and ruled that class proofs of claim are not permissible in bankruptcy cases. Instead, it (1) directed the debtor to provide notice by publication or other means calculated to alert members of the class of the pendency of the class action, and (2) extended the claims bar date for a reasonable period to allow individual claims to be filed by such potential creditors.

In *In re Melridge, Inc.*[306] the Commission addressed the question of whether an indenture and debentures qualified under the Trust Indenture Act of 1939 were executory contracts. In this case the indenture trustee moved to require the debtor to assume the indenture, claiming it was an executory contract. The effect of assuming the indenture would be to automatically make the indenture trustee's services during the case an administrative expense. In response, the debtor moved to reject the indenture and debentures themselves, as burdensome executory contracts. The effect of such rejection would be to eliminate participation in the bankruptcy proceeding by the indenture trustee. The Commission argued in response that the indenture and debentures issued under it are not executory under the Code because nothing remains for the bondholder to do except receive payment. Moreover, the post-default duties of an indenture trustee are not obligations for the benefit of the debtor/issuer, which can be subject to rejection under Section 365, but rather are for the benefit of the bondholders. The Commission also pointed out that to allow rejection would contravene the policies of the Trust Indenture Act and the Bankruptcy Code which both contemplate an active role for the trustee. Finally, the Commission pointed out that assumption of the indenture as requested by the indenture trustee, which would automatically secure an administrative expense priority for its services, is contrary to the statutory scheme established in the Bankruptcy Code for compensating indenture trustees for services rendered in connection with reorganization proceedings. The bankruptcy court denied the debtor's motion but did not reach the question of whether the indenture or the debentures were executory contracts.

Disclosure Statements/Plans of Reorganization—A disclosure statement is a combination proxy and offering statement used in soliciting acceptances of a plan of reorganization. Such plans often provide for the exchange of new securities for claims and interests of creditors and shareholders of the debtor. The Bankruptcy Code provides that adequate disclosure is to be made without regard to whether or not the information provided would otherwise comply with the disclosure requirements of the federal securities laws. But, in recognition of the Commission's special expertise on disclosure questions, the Bankruptcy Code recognizes the Commission's right to be heard, distinct from its special advisory role, on the adequacy of disclosure. For this reason, the Bankruptcy Rules require service on the Commission of all disclosure statements.

During fiscal year 1988, the Commission received approximately 6,713 disclosure statements filed in Chapter 11 cases involving both privately-held and publicly-held corporations. The staff limits its review to those disclosure statements filed in cases involving a publicly-held company or a company likely to be publicly traded as a consequence of the reorganization. During 1988, the staff reviewed 151 disclosure statements.

In its review of disclosure statements, the staff seeks to determine whether the issuance of securities under a plan is consistent with the exemption from registration in the Bankruptcy Code and otherwise in compliance with the federal securities laws. The Commission also reviews statements to determine whether there is adequate disclosure concerning the proposed plan. Generally,

the Commission seeks to resolve questions concerning bankruptcy disclosure through staff comments to the plan proponent. If questions cannot be resolved through this process, the Commission may object to the disclosure statement in the bankruptcy court.

During fiscal year 1988, the Commission commented on disclosure statements in 83 cases, the vast majority of which were adopted by debtors. The Commission was compelled to object to disclosure statements in two cases. In *In re Vidalia Sweets Brand, Inc.*,[307] the Commission filed objections to the debtor's disclosure statement arguing that it did not contain adequate information because it failed to disclose: (1) the rationale or authority for substantively consolidating the debtor with another Chapter 11 debtor; (2) sufficient financial information, including a current and pro forma balance sheet and projections of future operations; (3) a liquidation analysis to support the debtor's conclusion that shareholders would receive nothing upon liquidation; (4) a basis on which to determine whether the proposed plan is feasible; (5) the debtor's intention with respect to meeting its reporting requirements under the Exchange Act; (6) the effect of dilution upon existing shareholders; and (7) tax consequences of the plan to creditors and stockholders. The disclosure statement also failed to disclose, accurately, the transactional exemption from registration of the securities proposed to be issued under the plan. The bankruptcy court agreed with the Commission's objections and declined to approve the disclosure statement. In *In re The Rolfite Company* [308] the Commission filed objections to the debtor's disclosure statement arguing that it did not contain adequate information because it failed to: (1) contain a required provision prohibiting the issuance of non-voting equity securities; (2) characterize existing equity securityholders, whose voting rights are to be substantially diluted under the proposed plan, as impaired, thus denying them the opportunity to review the disclosure statement and vote on the plan; and (3) provide additional or more complete financial information concerning the debtor. The debtor consented to amend the disclosure statement to meet the principal objections posed by the Commission.

Compliance with the Registration Requirements of the Securities Act—Section 1145 of the Bankruptcy Code contains a limited exemption from registration under the Securities Act for the distribution of securities by a debtor, or an affiliate or successor to the debtor, pursuant to a plan of reorganization and in exchange for claims against or securities of the debtor or such affiliate. The issuance of securities pursuant to a plan is deemed to be a "public offering," which means that there is no restriction on resale of such securities unless the seller is an "underwriter" as specifically defined in Section 1145(b).

In one case litigated this year, *In re Cordyne Corporation*,[309] the Commission filed objections to confirmation of the debtor's plan of reorganization for failure to comply with the registration provisions. The plan, if confirmed, would have resulted in a unrelated privately-held entity becoming a public company through the issuance of unregistered securities pursuant to a merger with the debtor, a publicly-held company with no assets. The plan also sought to raise new capital for the reorganized entity through the issuance of

certificates of indebtedness to certain lenders resulting, on conversion of the certificates, in the issuance of the debtor's unregistered securities. First, the Commission argued that the proposed merger transaction to issue stock to the shareholders of an unrelated entity did not qualify for the Section 1145 exemption. Those shareholders did not have a pre-petition or any other claim against or interest in the debtor. Nor could the shareholders of the unrelated entity, which had no preexisting relationship with the debtor, be considered as shareholders of affiliate of the debtor for purposes of Section 1145. Second, the Commission argued that the securities (common stock and warrants) to be issued to the lenders also did not qualify for the Section 1145 exemption. Since the funds to be raised were to be used solely after confirmation by the reorganized debtor, Section 364, the provision governing the issuance of certificates of indebtedness, was not applicable and the certificates issued to the lenders were not valid administrative claims. Section 364 authorizes a debtor to borrow funds as an administrative expense for the debtor's business operations during the case, not for post-confirmation purposes. Hence, the Commission argued that Section 1145, which exempts from registration the issuance of securities in exchange for administrative claims, could not be relied upon to exempt the issuance of debtor's securities in exchange for the lenders' certificate of indebtedness. Finally, the Commission objected to confirmation of the debtor's plan of reorganization pursuant to Section 1129(d) because, even if the court concluded that the foregoing transactions were within the Section 1145 exemption, the plan still could not be confirmed since its principal purpose was to avoid the application of Section 5 of the Securities Act. The Commission argued that the debtor's plan was a device by which a privately owned corporation would become publicly owned without complying with the registration provisions of Section 5 of the Securities Act of 1933. The bankruptcy court, accepting the Commission's arguments, denied confirmation.

Economic Research and Analysis

Key 1988 Results

The economic and statistical research program provides analysis and technical support designed to aid the evaluation of the economic aspects of Commission and self-regulatory regulation and its impacts on the rapidly changing global marketplace. This program is carried out by the Office of Economic Analysis (OEA).

The economic staff provides the Commission with economic advice and research sudies on rule proposals, established policy, and the capital markets. The staff assists the Commission in making decisions affecting the fairness, efficiency, and structure of our nation's securities industry and markets. In addition, the program encompasses statistical monitoring of major program initiatives impacting the securities industry and the preparation of monthly reports on developments in domestic and international capital markets.

Several developments have increased the volume and complexity of the work performed by the Economic and Statistical Program, including the October 1987 market break, the application of new technology within the industry, and the increasing use of economics and financial theory in enforcement cases. In addition, the growing internationalization of securities markets has increased the need to keep abreast of economic, regulatory, and institutional changes in foreign securities markets that could have an effect on the operation and competitiveness of the United States securities markets.

Internationalization presents both challenges and opportunities for the United States securities markets and its regulators. The events of October 1987 indicated once again the extent to which the world's securities markets have become interrelated. Further growth and integration of international securities markets is anticipated in the years ahead, presenting numerous regulatory and economic issues. This integration and growth of the global markets will require the development of a global regulatory perspective that preserves the efficiencies associated with international capital mobility, while maintaining the integrity and fairness of the United States market. The rapid maturation of foreign securities markets and the regulatory restructuring that is now occurring in the United Kingdom, Canada, Japan, and the European Community offer important regulatory challenges to the Commission. It is essential to maintain the fairness and integrity of our markets while leaving U.S. firms free to meet the challenges of increased international competition in the provision of financial services.

During fiscal year 1988, the economics staff reviewed 115 rules, encompassing the full range of the Commission's regulatory program. In addition, the economics staff reviewed 95 RFA analyses and certifications, and provided advice, technical assistance, and empirical analyses of 310 issues of concern to the Commission and its operating divisions. Twelve monitoring programs

were developed or maintained to study the implementation of major rules, new trading facilities, and developments in the domestic and international securities markets. The economics staff created or maintained approximately 75 computerized databases needed to analyze issues and prepared about 600 written responses to technical and data inquiries.

In the securities markets area, the staff prepared a monthly monitoring report on developments in domestic and international financial markets. The staff is completing a follow-up report to the Commission's July 1987 Report on the Internationalization of the Securities Markets which was submitted to Congress. Specifically, the staff is analyzing the extent and nature of international trading in securities, United States and foreign portfolio investment patterns, the growth of the international bond and equity markets, major regulatory restructuring in overseas markets, and the emergence of various international funds as vehicles to facilitate international capital flows. The staff continues to monitor and analyze major developments impacting financial markets, including the effects of changes in the macroeconomic environment on domestic and international securities markets. The staff helped develop a system to detect and analyze possible instances of market manipulation involving the use of options. The staff also assisted the Division of Market Regulation in responding to Congressional inquiries concerning the extent and impact of dividend capture programs of Japanese life insurance companies.

Following the October 1987 market break, the staff prepared a comprehensive analysis of the financial condition of securities firms. The staff also analyzed the impact of the market break on bid-ask spreads, quotation depth and intraday price volatility on a cross-section of stocks. This analysis was included in the Division of Market Regulation's report on the October 1987 market break.

In the full disclosure area, the staff responded to a request from the Chairman to examine the "blank check" phenomenon. The study profiled the principals and outside professionals associated with blank check offerings, periodic reporting compliance, post-effective acquisitions, and the market maker participation in these issues.

The staff assisted the Commission by providing technical assistance in litigation regarding the new Delaware takeover law. The analysis indicated the frequency with which various categories of firms would have been affected by the new law. The staff also examined the effect that the new law has had on reincorporations and on underlying stock prices.

Studies completed in the corporate control area covered such topics as leveraged buyouts, sources of tender offer financing, dual class recapitalizations, effects of defeating takeover attempts, and market anticipation of takeovers. These studies provided the Commission with comprehensive information identifying important trends in this area. The staff also prepared a study on the profitability of acquisitions made by target firms of hostile bids.

Management and Program Support

Key 1988 Results

The goals of program direction are to formulate and communicate policy and to manage agency resources, enabling the Commission to fulfill its statutory responsibilities. These goals are accomplished by performing two functions—policy management and administrative support. Policy management encompasses policy formulation, information dissemination, and management of the agency's resources. Administrative support entails services such as accounting, data processing, staffing and logistics to support Commission objectives.

Policy Management

In carrying out its mission, the Commission made special efforts to solicit a wide range of viewpoints on issues affecting investors and the securities industry. Chairman Ruder and the other Commissioners conferred with industry and investor representatives on such issues as market volatility, reform of the securities laws and internationalization. With respect to internationalization, the Commission negotiated cooperative memoranda of understanding with Canada and Brazil. Additionally, the Chairman visited regulatory officials in Japan, the United Kingdom and other countries to discuss the need for greater coordination among the international capital markets.

The Commission held 74 meetings in fiscal year 1988, during which it considered 380 matters including rule proposals, enforcement actions, and other matters that significantly affect the securities markets and the nation's economy. The Commission also considered 627 routine or emergency items seriatim.

The Commission's management staff maintained a comprehensive program of oversight, conducting a series of management studies and initiating special projects throughout the year. The Office of the Executive Director conducted a special study, requested by the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, into transforming the agency from appropriated to self-funded status. The study report will be provided to the Senate Committee early in fiscal year 1989. Among other projects conducted during fiscal year 1988 were evaluations of investor complaint processing and public reference room procedures and reviews of internal controls. In addition, internal audits were conducted of Commission organizations, programs, functions and activities.

Consumer Affairs and Information Services

Consumer affairs specialists responded to approximately 49,000 complaints and inquiries during fiscal year 1988. Of these, approximately 28,000

involved investor disputes with registered broker-dealers, 9,100 related to general investor inquiries, 6,100 concerned issuers of securities, and 2,500 pertained to mutual funds. The remaining 3,289 involved transfer agents, banks, investment advisers, or self-regulatory organizations (SROs).

The number of complaints and inquiries represents a 22 percent increase over the previous year. The primary factor contributing to the increase was the stock market break in October 1987. A secondary factor was the increased public awareness of the SEC due to publicity of recent insider trading cases.

During fiscal year 1988, the Office of Consumer Affairs participated with other SEC organizations in developing the staff report on the October 1987 market break. The office conducted an analysis of "market break complaints" received by the SEC and the SROs during October 14–30, 1987. Over 1,500 written complaints were directly attributable to the market break. An additional 9,300 telephone complaints and inquiries were received during a six-week period, beginning October 19. Findings resulting from the consumer complaint analysis are contained in Chapter 12 of the staff report entitled, *The October 1987 Market Break*.

The Office of Consumer Affairs and Information Services also responds to a variety of information requests. During fiscal year 1988, the office processed 2,308 Freedom of Information Act requests, 35 Privacy Act requests, and 3,295 requests for confidential treatment. In addition, the office coordinated 3,725 requests from the Congress for Commission records, an 87 percent increase over the previous year.

The Office of Consumer Affairs also assists the Commission's program areas by gathering specialized data from complaints in support of program objectives. For example, the office compiles data pertaining to broker-dealer sales practice abuses and overall complaint trends within the financial services industry. Investor complaints constitute a prime source of investigatory leads for the agency's enforcement program.

Public Reference

The Commission maintains public reference rooms in the Washington D.C., New York and Chicago offices. In response to the need to improve control over the Commission's resources, while at the same time enhancing services to the public, the SEC restructured the Public Reference Room in Washington, D.C. During fiscal year 1988, more than 43,700 visitors used the Commission's primary Public Reference Room in Washington D.C. At this facility, the public can view most corporate filings, broker-dealer and investment adviser registrations, Commission releases, and other public materials. Approximately 380,907 pieces of microfiche, containing 329,431 public documents, were made available to the public during the fiscal year.

Equal Employment Opportunity

During 1988, the EEO office conducted a national seminar focusing on EEO and Affirmative Action Programs. Among those attending were EEO Counselors, Federal Women's Program Coordinators, and Hispanic Employ-

ment Coordinators. In addition, the Commission continued to train agency staff members on the prevention of sexual harassment in the workplace.

At the same time, the Commission re-activated its Federal Women's Program. The program emphasized issues important to female employees, such as personal security and childcare. As in previous years, the Commission conducted special activities recognizing minority group achievements during Afro-American History Week, Asian-Pacific American Heritage Week, Hispanic Heritage Week, and Women's Week.

During fiscal year 1988, the Commission made gains in the employment of minority groups and women. By the end of fiscal year 1988, women constituted almost one-half of the total SEC workforce. In fiscal year 1988, the employment of black males increased from 5.6 percent to 7.0 percent, and black females rose from 20.9 percent to 22.0 percent. During the same period, the employment of Hispanic females increased from 1.4 percent to 2.0 percent, while employment percentages remained constant for Hispanic males and American Indian/Alaskan natives at 1.0 percent. Additionally, employment of Asian American/Pacific Islander men and women grew by 1.1 percent and 0.9 percent, respectively.

The SEC–Securities Industry Committee on Equal Employment Opportunity continued its financial support of minority students by awarding $11,100 in scholarships. In addition, through the committee, the Commission coordinated with industry in developing employment strategies to maintain a balanced workforce of minorities and women during the time of severe personnel cutbacks in the industry following the October 1987 market break.

Facilities Management

Fiscal year 1988 presented numerous space and logistical challenges for the Office of Administrative Services. The office acquired additional office space for the Denver Regional Office and for headquarters in Washington, D.C. The headquarters acquisition provided space for an increase in staff, as well as continuing consolidation of program staffs. Additionally, the office worked with General Services Administration (GSA) in locating new space for the forced relocation of the New York Regional Office.

The Office of Administrative Services exercised increased responsibility in contracting activities as well. Through authority acquired from GSA, the agency assumed contracting activities for lease arrangements and service contracts. The office awarded approximately $13 million in contracts in fiscal year 1988, an increase of approximately $4 million over fiscal year 1987. A significant portion of the increase is attributed to the purchase and installation of a new mainframe computer that replaced the Commission's obsolete unit.

Financial Management

Throughout fiscal year 1988, the Commission continued to modernize its automated financial systems. The Commission installed a new U.S. Treasury-approved accounting system, the Federal Financial System (FFS). FFS provides all accounting and financial reporting operations, and will permit the

SEC to decentralize the input of financial data by providing organizations with on-line access. The Commission continued to expand its use of microcomputers in the preparation of financial reports required by Congress, the Office of Management and Budget, and other executive oversight agencies.

The Commission also continued to enhance its internal financial operating procedures. The processing of employee travel claims was improved, thereby allowing the Commission to achieve a 16.5 percent reduction in its value of outstanding employee travel advances. The use of electronic funds transfer was expanded to pay two-thirds of all Commission employees, which greatly reduced "float" time and increased the amount of funds in U.S. Treasury interest-bearing accounts.

During fiscal year 1988, Commissioners participated in 59 meetings and conferences. To pay the cost of attendance, private entities reimbursed the Commission $41,991 while the government's portion amounted to $3,007. The Commission was reimbursed $117,953 for staff participation in 320 meetings and conferences, while the government's portion of these costs totaled $20,841.

Information Systems Management

During fiscal year 1988, the Office of Information Systems Management (ISM) made great strides towards modernizing the Commission's computer equipment and systems. First, replacement of the agency's outdated central processing unit was accomplished, responding to concerns expressed by Congress. Second, the Commission dramatically expanded its inventory of microcomputers, integrating more efficient computer applications into program activities. The Commission acquired over 600 desktop and laptop microcomputers. This equipment was systematically distributed to regional and headquarters offices, thereby enhancing staff activities in all program areas. Third, ISM upgraded communications capability of regional offices to headquarter's mainframe systems, and improved administrative systems.

To ensure efficient use of the new computer equipment, ISM provided enhanced user services and specialized programming assistance. ISM established a new training center and extended existing services offered by the User Support Information Center to encompass technical reference, user assistance, and traditional and self-paced instruction. A comprehensive training course was conducted for regional and headquarters staff assigned laptop computers for use in examination and investigatory programs.

In addition to general user support, ISM developed microcomputer applications capable of storing, retrieving, and analyzing large amounts of data for use in major enforcement actions. ISM also provided specialized computer services to Commission staff to support the market break study and increased staff access to external market databases.

Personnel Management

During fiscal year 1988, the Office of Personnel revised regulations on within-grade increases and quality step increases by linking pay raises more

closely with job performance, implemented new regulations that facilitate more timely resolution of employee grievances, and amended merit promotion announcement procedures to reduce lapse time in filling vacancies.

The personnel office responded to the Commission's automation initiatives with a priority computer training program. In fiscal year 1988, approximately 1,200 employees received training on computer systems or applications.

The Office of Personnel responded to increased emphasis on employee benefits and quality of worklife by creating a unit specializing in health benefits, retirement plans, injury compensation, and employee development. Additionally, the Commission developed regulations pertaining to employee drug testing, implemented smoking regulations, provided funds for shared federal day-care facilities, enhanced employee counselling activities, and instituted a program for leave sharing.

The Commission continued to be challenged in recruiting and retaining qualified staff. To meet this challenge, the personnel office implemented a continuing program for the recruitment of attorneys, accountants, securities compliance examiners, computer programmers, and secretaries. The SEC also successfully lobbied the Office of Personnel Management (OPM) for additional direct hiring authority and promptly implemented OPM delegations of authority. Finally, the Commission persuaded OPM to revise the qualification standards for securities compliance examiners in order to reach a greater number of qualified individuals.

During fiscal year 1988, the Commission administered a balanced personnel management program through appropriate recognition of employee performance. In fiscal year 1988, the SEC awarded more than $800,000 in incentive and performance awards. During the same time, the Commission brought disciplinary actions against 13 employees and allowed another 21 employees to resign in lieu of removal because of performance or conduct.

Commission Operations

For the sixth consecutive year, and the seventh time in its 54-year history, in fiscal year 1988 the SEC collected revenue in excess of its appropriation. The Congress appropriated $135,221,000 for the Commission in fiscal year 1988; the Commission delivered to the U.S. Treasury $250 million in fee collections and disgorgements. Fee revenue is collected from four basic sources: securities registrations under the Securities Act of 1933 (49 percent of the total fiscal year 1988 fee revenue), transactions on securities exchanges (35 percent), tender offer and merger filings (13 percent), and miscellaneous filings (3 percent).

Public Affairs

The Office of Public Affairs communicates information on Commission activities to those interested in or affected by Commission actions, including regulated entities, the press, employees of the Commission and the general public. Both on-going activities and special projects are undertaken by the office in support of the Commission's mission.

During fiscal year 1988, the October 1987 market break and its aftermath and increasing internationalization of the securities markets created new and intensive challenges for the office. Workload increased substantially, in almost all areas. These increases seem likely to continue into the present and future fiscal years.

All on-going programs of the office, designed to disseminate information to those affected by or interested in the Commission's work, were carried out during the year.

Public Affairs staff prepares the SEC News Digest every business day. The Digest provides information on virtually all SEC actions—rule changes, enforcement actions against individuals or corporate entities, acquisition reports, releases, decisions on requests for exemptions, upcoming Commission meetings, and other events of interest. Information on Commission activity is also disseminated through notices of administrative actions, litigation releases, and other materials. The News Digest is available in the Public Reference Room.

Press releases issued prior to Commission meetings and press briefings conducted after these meetings provide insight into proposed and adopted changes in policies and regulation. The office also issues press releases on upcoming events, on-going programs, and special projects. In all, 89 news releases were issued during the year. Special projects such as studies and reports on emerging issues in the financial markets are also publicized. Many Commission actions are of nationwide, and increasingly, international interest. When appropriate, these actions are drawn to the attention of regional, national and international press.

The office directs publication of the SEC Annual Report that provides information on Commission activities to Congress, the securities bar and other interested parties, and through the Depositary Library System, to selected colleges and universities throughout the country.

Speeches presented by Commissioners and senior staff and testimony are retained and disseminated in response to requests from the public. During the year, the staff responded to approximately 72,000 requests for information and coordinated programs for 275 foreign visitors. Also during the year, the staff updated and revised such publications as the "SEC Publications Guide", "SEC Concise Directory" and "Work of the SEC".

Public Affairs publishes a regular newsletter for employees, the Employee News, and prepares a daily summary of news clips for Commission employees.

Commissioners and Principal Staff Officers

(As of September 30, 1988)

Commissioners	Term Expires
David S. Ruder, *Chairman*	1991
Charles C. Cox	1988 (renominated)
Joseph A. Grundfest	1990
Edward H. Fleischman	1992
VACANT	

Secretary: **Jonathan G. Katz**
Executive Assistant to the Chairman: **Linda D. Fienberg**

Principal Staff Officers

George G. Kundahl, *Executive Director*
- **Kenneth A. Fogash,** *Deputy Executive Director*

Linda C. Quinn, *Director, Division of Corporation Finance*
- **Elisse B. Walter,** *Deputy Director*
- **Mary E. T. Beach,** *Associate Director*
- **Ernestine M. R. Zipoy,** *Associate Director*
- **Howard P. Hodges, Jr.,** *Associate Director*
- **Mauri L. Osheroff,** *Associate Director*
- **William E. Morley,** *Associate Director*

Gary G. Lynch, *Director, Division of Enforcement*
- **John H. Sturc,** *Associate Director*
- **William R. McLucas,** *Associate Director*
- **Joseph I. Goldstein,** *Associate Director*
- **Michael D. Mann,** *Associate Director*
- **Thomas A. Ferrigno,** *Chief Counsel*
- **Thomas C. Newkirk,** *Chief Litigation Counsel*

Richard G. Ketchum, *Director, Division of Market Regulation*
- **Mark D. Fitterman,** *Associate Director*
- **Brandon C. Becker,** *Associate Director*
- **Larry E. Bergmann,** *Associate Director*

Kathryn B. McGrath, *Director, Division of Investment Management*
- **Marianne K. Smythe,** *Associate Director*
- **Gene A. Gohlke,** *Associate Director*
- **Mary S. Podesta,** *Associate Director*
- **William C. Weeden,** *Assistant Director, Office of Public Utility Regulation*

Daniel L. Goelzer, *General Counsel*
Paul Gonson, *Solicitor*
Jacob H. Stillman, *Associate General Counsel*
Benjamin Greenspoon, *Associate General Counsel*
Phillip D. Parker, *Associate General Counsel*
Mary M. McCue, *Director, Office of Public Affairs*
Chiles T. A. Larson, *Deputy Director*
Edmund Coulson, *Chief Accountant*
Glen L. Davison, *Deputy Chief Accountant*
Kenneth Lehn, *Chief Economist, Office of Economic Analysis*
Jeffry L. Davis, *Deputy Chief Economist*
Terry M. Chuppe, *Associate Chief Economist*
David H. Malmquist, *Associate Chief Economist*
William S. Stern, *Director, Office of Opinions and Review*
Herbert V. Efron, *Associate Director*
R. Moshe Simon, *Associate Director*
Warren E. Blair, *Chief Administrative Law Judge*
Lawrence H. Haynes, *Comptroller*
Henry I. Hoffman, *Assistant Comptroller*
Richard J. Kanyan, *Director, Office of Administrative Services*
David L. Coman, *Deputy Director*
James C. Foster, *Director, Office of Personnel*
William E. Ford, II, *Assistant Director*
Wilson Butler, *Director, Office of Applications and Reports Services*
Bonnie Westbrook, *Director, Office of Consumer Affairs and Information Services*
Gregory Jones, Sr., *Director, Office of Information Systems Management*
VACANT, *Deputy Director*
Nina G. Gross, *Director of Legislative Affairs*
James A. Clarkson, III, *Director of Regional Office Operations*
Ernest B. Miller, *Manager, Equal Employment Opportunity*
John O. Penhollow, *Director, Office of EDGAR Management*

Biographies of Commissioners

David S. Ruder

David Sturtevant Ruder was sworn in as the 23rd Chairman of the Securities and Exchange Commission on August 7, 1987, by Associate Justice Antonin Scalia of the Supreme Court of the United States.

Recently he appointed a special Commission task force to deal with the increasingly prevelant problem of fraud and market manipulation in penny stock.

The October 1987 market break focused increased attention on the role of the Commission in addressing securities market problems. Since that time Chairman Ruder has taken an active role concerning market problems through Congressional testimony, Commission legislative proposals, oversight of the Commission's Division of Market Regulation, discussions with self-regulatory organizations and industry leaders, and participation in the President's Working Group on Financial Markets.

In addition to market matters, Chairman Ruder has addressed continuation of the Congressional policy of balance in the tender offer area; legislation to define insider trading; emerging issues in internationalization of the securities markets; increased disclosure in the municipal securities markets; and reform of the financial services industry. He has presided over Commission decisions on improving the arbitration process for investors, adopting advertising rules for mutual funds, and amending proxy and shareholder communications rules, among other matters.

Before his nomination to the Commission, Chairman Ruder was a member of the faculty of Northwestern University School of Law from 1961 to 1987, where he taught corporate and securities law. He was a visiting professor at the University of Pennsylvania Law School in 1971 and a faculty member at the Salzburg Seminar in American Studies in 1976. As Dean of Northwestern's Law School from 1977 to 1985, he conducted an extensive faculty recruitment program; actively participated in the successful completion of a $25 million Law School Campaign and in the construction of the School's Arthur Rubloff Building; and helped to persuade the American Bar Association to move its headquarters to the Rubloff Building.

Before coming to the Commission, Chairman Ruder authored many articles on corporate and securities law matters, was a speaker and participant in continuing legal education programs of numerous organizations, and was active in bar association activities in the corporate and securities law field. While at Northwestern, he played a primary role in the organization and on-going activities of the School's Corporate Counsel Institute, the Ray Garrett, Jr., Corporate and Securities Law Institute, and the Corporate Counsel Center, which sponsors legal research and provides continuing professional education programs for corporate lawyers.

A native of Wausau, Wisconsin, Chairman Ruder received a bachelor's degree, cum laude, in 1951 from Williams College, where he was a member of Phi Beta Kappa and Gargoyle, the senior honorary society. He was editor-in-chief of the Williams Record, the college newspaper.

He received his law degree with honors in 1957 from the University of Wisconsin, where he was a member of the Order of the Coif and the recipient of the Salmon W. Dalberg Prize as the outstanding graduating student. He was editor-in-chief of the Wisconsin Law Review. Mr. Ruder served in the U.S. Army from 1951 to 1954, attaining the rank of First Lieutenant.

From 1957 to 1961, he was an associate with the Milwaukee law firm of Quarles & Brady. While teaching at Northwestern, he was also of counsel to the Chicago law firm of Schiff, Hardin & Waite from 1971 to 1976.

Charles C. Cox

Charles C. Cox was sworn in as the 62nd Member of the Securities and Exchange Commission on December 2, 1983. His term expired in June 1988 and he was renominated.

Mr. Cox joined the Commission on September 1, 1982, as Chief Economist. He organized the Office of the Chief Economist to analyze the economic effects of proposed rules and legislation, evaluate established Commission policy, and study various capital market topics.

Previously, Mr. Cox was a professor of management at Texas A&M University from 1980 to 1982, and a professor of economics at Ohio State University from 1972 to 1980. He served as a National Fellow of the Hoover Institution at Stanford University from 1977 to 1978.

During his academic career, Mr. Cox focused his research on the economics of public regulation of economic activity. He has published various articles on this topic in scholarly journals. Mr. Cox is a member of the American Economic Association and the Mont Pelerin Society.

Mr. Cox was born in Missoula, Montana, on May 8, 1945. He received his undergraduate education at the University of Washington where he was elected to Phi Beta Kappa in 1966, and earned a B.A. degree, *magna cum laude*, with distinction in economics in 1967. He received A.M. and Ph.D. degrees in economics from the University of Chicago in 1970 and 1975, respectively.

Joseph A. Grundfest

Joseph A. Grundfest was sworn in as the 65th Member of the Securities and Exchange Commission on October 28, 1985. His term expires in June 1990.

Mr. Grundfest came to the Commission from the Council of Economic Advisers in the Executive Office of the President, where he was counsel and senior economist for legal and regulatory matters. While at the Council, he played an active role in the formulation of Administration policy regarding regulation of securities markets, financial institutions, international trade, and the antitrust laws. Mr. Grundfest is both an attorney and economist. He has

practiced law with Wilmer, Cutler & Pickering and has served as an economist with The Rand Corporation, and the Brookings Institution.

Mr. Grundfest is author or co-author of numerous publications dealing with topics such as contests for corporate control, insider trading, international securities regulation, regulation of markets subject to kickback schemes, the economics and regulation of markets for broadcast stations and television advertising, and the role of citizen participation in administrative proceedings. During his academic career, Mr. Grundfest served as a Brookings Institution Fellow, a Stanford University Fellow, and a California State Fellow for the Study of Law and Economics.

Mr. Grundfest was born in New York City on September 8, 1951. He received his undergraduate education at Yale University where he earned a B.A. degree in economics in 1973. During an undergraduate year abroad, Mr. Grundfest completed the M.Sc. Program in Mathematical Economics and Econometrics at the London School of Economics. Between 1974 and 1978, he earned his J.D. degree from Stanford University and completed all requirements, other than the dissertation, for a doctorate in economics.

Edward H. Fleischman

Edward H. Fleischman was sworn in as the 66th Member of the Securities and Exchange Commission on January 6, 1986. His term expires in June 1992.

He formerly practiced law with Gaston, Snow, Beekman & Bogue (previously Beekman & Bogue), where he specialized in securities and corporate law and related areas.

During his career, Mr. Fleischman has been elected a member of the American Law Institute, the American College of Investment Counsel and the American Society of Corporate Secretaries, and has served as an Adjunct Professor of Law teaching securities regulation at the New York University Law School. He has been a lecturer at seminars dealing with securities and futures law and practice. He was co-author of a series of articles relating to Commission Rule 144.

Mr. Fleischman was born in Cambridge, Massachusetts, on June 25, 1932. A member of the U.S. Army from 1952 to 1955, he served with the 173rd Military Intelligence Platoon in Germany from 1954 to 1955. Mr. Fleischman received his undergraduate education at Harvard College and graduated with a B.A. degree *cum laude* in history. He was a Stone Scholar at Columbia Law School, where he received his LL.B. degree in 1959.

Mr. Fleischman was admitted to the New York Bar in 1959 and to the bar of the U.S. Supreme Court in 1980. He serves on the Committee on Federal Regulation of Securities where he has chaired the Ad Hoc Subcommittee on Rule 144 and the Subcommittee on Broker-Dealer Matters, and was a co-draftsman of the Committee letter on utilization and dissemination of "inside" information. He is also a member of the Committee on Counsel Responsibility, and currently chairs the Committee on Developments in Business Financing where he co-drafted the Committee paper on resale of

institutional privately placed debt and chaired the Subcommittee on Simplified Indentures in addition to the Annual Review of Developments. Other bar activities include membership on the Committee on Developments in Investment Services, and the Administrative Law Committee on Securities, Commodities and Exchanges where he was vice chair for Commodities before taking the chair for three years.

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Footnotes

[1]*SEC v. First Jersey Securities, Inc.*, Litigation Release No. 10919 (October 31, 1985), 34 SEC Docket 725.

[2]*SEC v. Monarch Funding Corp., et al.*, Litigation Release No. 10864 (September 9, 1985), 33 SEC Docket 1693.

[3]*SEC v. Price Waterhouse, et al.*, Accounting and Auditing Enforcement Release No. 62 (June 20, 1985), 33 SEC Docket 611.

[4]*SEC v. Stephen Sui-Kuan Wang, Jr., et al.*, Litigation Release No. 11780 (June 27, 1988), 41 SEC Docket 443.

[5]*SEC v. Joseph Kerherve, et al.*, Litigation Release No. 11643 (January 13, 1988), 40 SEC Docket 76.

[6]*SEC v. Geoffrey W. Collier, et al.*, Litigation Release No. 11817 (July 26, 1988), 41 SEC Docket 837.

[7]*SEC v. Joseph Sierchio*, Litigation Release No. 11647 (January 14, 1988), 40 SEC Docket 81.

[8]*SEC v. Robert Chestman, et al.*, Litigation Release No. 11671 (October 6, 1987), 39 SEC Docket 675.

[9]*SEC v. Marcus Schloss & Co., Inc.*, Litigation Release No. 11653 (February 3, 1988), 40 SEC Docket 285.

[10]*SEC v. Andrew Solomon*, Litigation Release No. 11685 (March 28, 1988), 40 SEC Docket 1053.

[11]*SEC v. Douglas Ronald Yagoda*, Litigation Release No. 11654 (February 3, 1988), 40 SEC Docket 287.

[12]*In the Matter of Andrew Solomon*, Securities Exchange Act Release No. 25588 (April 14, 1988), 40 SEC Docket 1180.

[13]*In the Matter of Marcus Schloss & Co., Inc.*, Securities Exchange Act Release No. 25315 (February 5, 1988), 40 SEC Docket 299.

[14]*SEC v. Dominick Musella, et al.*, Litigation Release No. 9862 (January 11, 1983), 26 SEC Docket 1979.

[15]*SEC v. Dennis Levine, et al.*, Litigation Release No. 11095 (May 12, 1986), 35 SEC Docket 1212.

[16]*SEC v. Robert M. Wilkis, et al.*, Securities Exchange Act Release No. 23385 (July 1, 1986), 36 SEC Docket 9.

[17]*SEC v. Carl N. Karcher, et al.*, Litigation Release No. 11702 (April 14, 1988), 40 SEC Docket 1231.

[18]*SEC v. Gary E. Russolillo, M.D.*, Litigation Release No. 11795 (July 12, 1988), 41 SEC Docket 658.

[19]*SEC v. Drexel Burnham Lambert, Inc., et al.*, Litigation Release No. 11859 (September 7, 1988), 41 SEC Docket 1294.

[20]*In the Matter of Rooney, Pace, Inc., et al.*, Securities Exchange Act Release No. 25125 (November 16, 1987), 39 SEC Docket 1077.

[21]*SEC v. Zico Investment Holdings, et al.*, Litigation Release No. 11763 (June 13, 1988), 41 SEC Docket 294.

[22]*SEC v. Carl Porto, et al.*, Litigation Release No. 11659 (February 8, 1988), 40 SEC Docket 390.

[23]*In the Matter of Sheppard Resources, Inc.*, (no release) (January 26, 1988); *In*

the Matter of Transworld Network Corp., Securities Act Release No. 6772 (May 9, 1988), 40 SEC Docket 1501; *In the Matter of Vanguard Financial Inc.*, Securities Act Release No. 6773 (May 9, 1988), 40 SEC Docket 1504; *In the Matter of Chatsworth Enterprises*, Securities Act Release No. 6774 (May 9, 1988), 40 SEC Docket 1508; and *In the Matter of Pilgrim Venture Corp.*, (no release) (January 26, 1988).

[24]*SEC v. Steven A. Keyser*, Litigation Release No. 11607 (November 18, 1987), 39 SEC Docket 1178.

[25]*In the Matter of Richfield Securities Inc.*, Securities Exchange Act Release No. 26129 (September 29, 1988), 41 SEC Docket 1521.

[26]*In the Matter of Tommy B. Duke*, Securities Exchange Act Release No. 25165 (November 30, 1987), 39 SEC Docket 1233.

[27]*SEC v. First City Financial Corp., Ltd., et al.*, Litigation Release No. 11195 (August 14, 1986), 36 SEC Docket 519.

[28]*SEC v. Towers Credit Corp., et al.*, Litigation Release No. 11829 (August 4, 1988), 41 SEC Docket 935.

[29]*SEC v. Hunter Mack Belton, et al.*, Litigation Release No. 11644 (January 13, 1988), 40 SEC Docket 77.

[30]*SEC v. Joseph Anthony Belmonte, Jr., et al.*, Litigation Release No. 11834 (August 23, 1988), 41 SEC Docket 999.

[31]*SEC v. James R. Bramble*, Litigation Release No. 11650 (January 21, 1988), 40 SEC Docket 134.

[32]*SEC v. James Simpson, et al.*, Litigation Release No. 11725 (May 5, 1988), 40 SEC Docket 1495.

[33]*SEC v. Goldcor, Inc., et al.*, Litigation Release No. 11808 (July 20, 1988), 41 SEC Docket 768.

[34]*In the Matter of John A. Grant*, Securities Exchange Act Release No. 25921 (July 15, 1988), 41 SEC Docket 679.

[35]*In the Matter of James F. McGovern*, Securities Exchange Act Release No. 25379 (February 22, 1988), 40 SEC Docket 488.

[36]*In the Matter of Katherine Williams McGuire*, Securities Exchange Act Release No. 25793 (June 9, 1988), 41 SEC Docket 128.

[37]*In the Matter of William Edgar Crowder, et al.*, Securities Exchange Act Release No. 25393 (February 24, 1988), 40 SEC Docket 511.

[38]*SEC v. Flexible Computer Corp., et al.*, Litigation Release No. 11594 (November 3, 1987), 39 SEC Docket 995.

[39]*SEC v. Primo, Inc., et al.*, Accounting and Auditing Enforcement Release No. 167 (October 29, 1987), 39 SEC Docket 917.

[40]*SEC v. Electro-Catheter Corp., et al.*, Litigation Release 11347 (February 4, 1987), 37 SEC Docket 1084.

[41]*SEC v. The Cannon Group, et al.*, Litigation Release No. 11603 (November 9, 1987), 39 SEC Docket 1064.

[42]*SEC v. Stereo Village Inc., et al.*, Accounting and Auditing Enforcement Release No. 188 (March 3, 1988), 40 SEC Docket 1496.

[43]*SEC v. Lane Telecommunications, Inc., et al.*, Accounting and Auditing Enforcement Release No. 198 (August 18, 1988), 41 SEC Docket 1098.

[44]*In the Matter of USF&G Corp., et al.*, Accounting and Auditing Enforcement Release No. 182 (March 1, 1988), 40 SEC Docket 602.

[45]*In the Matter of Michael P. Richer, et al.*, Accounting and Auditing Enforcement Release No. 184 (March 29, 1988), 40 SEC Docket 997.

[46] *In the Matter of Steven L. Komm*, Securities Exchange Act Release No. 25254 (January 11, 1988) 40 SEC Docket 7.

[47] *In the Matter of E.F. Hutton Group, Inc.*, Accounting and Auditing Enforcement Release No. 183 (March 29, 1988), 40 SEC Docket 1058.

[48] *In the Matter of American Savings and Loan Association of Florida*, Securities Exchange Act Release No. 25788 (June 8, 1988), 41 SEC Docket 95.

[49] *In the Matter of Keith Bjelajac*, Securities Exchange Act Release No. 26124 (September 28, 1988), 41 SEC Docket 1504.

[50] *In the Matter of Steven L. Komm*, Accounting and Auditing Enforcement Release No. 178 (February 9, 1988), 40 SEC Docket 398.

[51] *In the Matter of Norman Abrams, et al.*, Accounting and Auditing Enforcement Release No. 179 (February 12, 1988), 40 SEC Docket 478.

[52] *SEC v. The Santa Barbara Funds, et al.*, Litigation Release No 11712 (April 25, 1988), 40 SEC Docket 1388.

[53] *SEC v. Western Guaranteed Income Trust, Series 85–1, et al.*, Litigation Release No. 11655 (February 4, 1988), 40 SEC Docket 290.

[54] *In the Matter of the Gabelli Group, Inc., et al.*, Securities Exchange Act Release No. 26005 (August 17, 1988), 41 SEC Docket 1038.

[55] *SEC v. Forty Four Management, Ltd., et al.*, Litigation Release No. 11717 (April 28, 1988), 40 SEC Docket 1393.

[56] *In the Matter of Carey Fund Management, Inc.*, Securities Exchange Act Release No. 16564 (September 19, 1988), 41 SEC Docket 1446.

[57] *In the Matter of Continental Equities Corporation of America*, Securities Exchange Act Release No. 26091 (September 19, 1988) 41 SEC Docket 1380.

[58] *SEC v. David Peter Bloom, et al.*, Litigation Release No. 11641 (January 12, 1988), 40 SEC Docket 73.

[59] *In the Matter of David Peter Bloom*, Investment Adviser Act Release No. 1101 (January 12, 1988), 40 SEC Docket 69; *In the Matter of Greater Sutton Investors Group*, Investment Adviser Act Release No. 1102 (January 12, 1988), 40 SEC Docket 71.

[60] *SEC v. Dennis L. Jeffers, et al.*, Litigation Release No. 11796 (July 12, 1988), 41 SEC Docket 659.

[61] *In the Matter of Mark Bailey & Co., et al.*, Investment Advisers Act Release No. 1105 (February 24, 1988), 40 SEC Docket 555.

[62] *In the Matter of Westmark Financial Services, Corp., et al.*, Investment Advisers Act Release No. 1117 (May 16, 1988), 40 SEC Docket 1718.

[63] *In the Matter of Edwin Fishbaine*, Investment Advisers Act Release No. 1108 (March 9, 1988), 40 SEC Docket 742.

[64] *In the Matter of Bryce S. Kommerstad*, Securities Exchange Act Release No. 25945 (July 26, 1988), 41 SEC Docket 793.

[65] *In the Matter of Dale E. Berlage*, Securities Exchange Act Release No. 25562 (April 8, 1988), 40 SEC Docket 1157.

[66] *SEC v. Bryce S. Kommerstad*, Litigation Release No. 11818 (July 26, 1988), 41 SEC Docket 839.

[67] *In the Matter of Dean Witter Reynolds, Inc.*, Securities Exchange Act Release No. 26144 (September 30, 1988), 41 SEC Docket 1680.

[68] *SEC v. Flagship Securities, Inc., et al.*, Litigation Release No. 11690 (April 1, 1988) 40 SEC Docket 1127.

[69] *In the Matter of Flagship Securities Inc., et al.*, Securities Exchange Act Release No. 25790 (June 8, 1988), 41 SEC Docket 119.

[70] *In the Matter of E.F. Hutton & Co., Inc., et al.*, Securities Exchange Act Release No. 25054 (October 22, 1987), 39 SEC Docket 756.

[71] *In the Matter of Brian J. Lareau*, Securities Exchange Act Release No. 26038 (August 29, 1988), 41 SEC Docket 1189.

[72] *In the Matter of Paine Webber, Inc.*, Securities Exchange Act Release No. 25418 (March 4, 1988), 40 SEC Docket 693.

[73] *In the Matter of Paul Gerald White*, Securities Exchange Act Release No. 25085 (November 3, 1987), 39 SEC Docket 933.

[74] *In the Matter of Petro-Source Securities, Inc., et al.*, Securities Exchange Act Release No. 25381 (February 23, 1988) 40 SEC Docket 495.

[75] *In the Matter of Robert M. Winston, et al.*, Securities Exchange Act Release No. 25548 (April 4, 1988), 40 SEC Docket 1082.

[76] Release No. 33-6779 (June 10, 1988), 41 SEC Docket 167.

[77] Release No. 33-6806 (October 21, 1988), 42 SEC Docket 91.

[78] *Id.*

[79] Release No. 34-25217 (December 21, 1987), 39 SEC Docket 1443.

[80] *Id.*

[81] Release No. 34-25631 (April 27, 1988), 40 SEC Docket 1407.

[82] Release No. 33-6763 (April 4, 1988), 40 SEC Docket 1067.

[83] Release No. 33-6778 (June 2, 1988), 41 SEC Docket 3.

[84] Release No. 33-6784 (July 8, 1988), 41 SEC Docket 572.

[85] Release No. 33-6758 (March 3, 1988), 40 SEC Docket 584.

[86] Release No. 33-6759 (March 3, 1988), 40 SEC Docket 588.

[87] Release No. 33-6768 (April 14, 1988), 40 SEC Docket 1150.

[88] Release No. 33-6791 (August 1, 1988), 41 SEC Docket 853.

[89] Release No. 33-6764 (April 7, 1988), 40 SEC Docket 1072.

[90] 133 Cong. Rec. H10741 (daily ed. November 30, 1987).

[91] Staff Accounting Bulletin No. 72 (November 10, 1987), 39 SEC Docket 1068 (Income Statement Classification of Charges by Utilities for Disallowed Costs or the Costs of Abandoned Plants); Staff Accounting Bulletin No. 71A (December 15, 1987), 39 SEC Docket 1432 (Determining Adequacy of Borrowers' Equity in Underlying Property); Staff Accounting Bulletin No. 73 (December 30, 1987) 39 SEC Docket 1568 (Application of Push-Down Accounting in Separate Financial Statements of Subsidiaries Acquired in Purchase Transactions); Staff Accounting Bulletin No. 74 (December 30, 1987), 39 SEC Docket 1568 (Disclosure by Registrant When an Accounting Standard has been Issued but not yet Adopted); Staff Accounting Bulletin No. 75 (January 4, 1988), 39 SEC Docket 1619 (Certain Accounting and Disclosure Issues Relevant to a Proposed Mexican Debt Transaction); Staff Accounting Bulletin No. 76 (January 12, 1988), 40 SEC Docket 84 (Effect of Certain *De Minimis* Sales by Affiliates on Compliance with ASRs 130 and 135 Regarding Risk Sharing in Business Combinations Accounted for as Pooling of Interests); Staff Accounting Bulletin No. 77 (March 4, 1988), 40 SEC Docket 746 (Allocation of Debt Issue Costs in a Business Combination Accounted for as a Purchase); Staff Accounting Bulletin No. 78 (August 5, 1988) 41 SEC Docket 1177 (Certain Matters Relating to Quasi-Reorganizations); and Staff Accounting Bulletin No. 79 (September 2, 1988), 41 SEC Docket 1309 (Accounting for Transactions Undertaken by a Company's Principal Stockholder for the Benefit of the Company).

[92] The National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, was jointly sponsored and funded by the American Institute of Certified Public Accountants, the American Accounting Association,

the Financial Executives Institute, the Institute of Internal Auditors, and the National Association of Accountants.

[93] Report of the National Commission on Fraudulent Financial Reporting (October 1987).

[94] Financial Reporting Release No. 31 (April 12, 1988), 40 SEC Docket 1140.

[95] Financial Reporting Release No. 34 (March 2, 1989), 42 SEC Docket 1779.

[96] Release No. 33-6789 (July 19, 1988), 41 SEC Docket 681.

[97] 15 U.S.C. 78o(c)(4).

[98] 15 U.S.C. 78p(a). Expanding section 15(c)(4) of the Exchange Act to include section 16(a) would provide the Commission with an administrative remedy to address violations of the stock ownership reporting requirements on persons owning more than ten percent of any class of equity security registered pursuant to Section 12 of the Exchange Act and officers and directors of issuers of such securities.

[99] Proposed Statement of Financial Accounting Standards, *Employers' Accounting for Postretirement Benefits Other than Pensions.*

[100] Statement of Financial Accounting Standards No. 96, *Accounting for Income Taxes.*

[101] Statement of Financial Accounting Standards No. 100, *Deferral of Effective Date of FASB Statement No. 96.*

[102] Proposed Statement of Financial Accounting Standards, *Disclosures about Financial Instruments.*

[103] Statements of Financial Accounting Standards No. 97, *Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments* and No. 98, *Accounting for Leases.*

[104] FASB Technical Bulletin No. 87-3, *Accounting for Mortgage Servicing Fees and Rights.*

[105] FASB Technical Bulletins No. 88-1, *Issues Relating to Accounting for Leases* and No. 88-2, *Definition of Right of Setoff.*

[106] Statements on Auditing Standards No. 53, *The Auditor's Responsibility to Detect and Report Errors and Irregularities*, No. 54, *Illegal Acts by Clients*, No. 55, *Consideration of the Internal Control Structure in a Financial Statement Audit*, No. 56, *Analytical Procedures*, No. 57, *Auditing Accounting Estimates*, No. 58, *Reports on Audited Financial Statements*, No. 59, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, No. 60, *Communication of Internal Control Structure Related Matters Noted in an Audit* and No. 61, *Communication with Audit Committees.*

[107] SEC Practice Section, Annual Report 1987-1988, page 19.

[108] SEC, Division of Market Regulation, *The October 1987 Market Break*, (February 1988).

[109] *Id.*

[110] Letters from David S. Ruder, Chairman, to George Bush, President, United States Senate, and to James C. Wright, Speaker, United States House of Representatives, (June 23, July 6, and July 7, 1988).

[111] See, *e.g.*, letter from David S. Ruder, Chairman, to William Proxmire, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate, (March 4, 1988).

[112] Executive Order No. 12631 (March 18, 1988), 53 FR 9421.

[113] Interim Report of the Working Group on Financial Markets (May 1988).

[114] The market reforms undertaken in response to the October 1987 market

break are described in detail in a letter from David S. Ruder, Chairman, to William Proxmire, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate, (October 19, 1988).

[115]Securities Exchange Act Release No. 25669 (May 5, 1988), 53 FR 16820.

[116]Securities Exchange Act Release No. 25890 (July 7, 1988), 53 FR 26546.

[117]Securities Exchange Act Release No. 25671 (May 6, 1988), 53 FR 16399. Section 31 of the Securities Exchange Act of 1934 requires national securities exchanges to pay certain fees based on their transaction volume. Rule 31-1 under the Act provides exemptions for certain exchange transactions.

[118]File No. SR-Amex-87-32.

[119]File No. SR-NASD-88-23.

[120]Securities Exchange Act Release No. 26119 (September 27, 1988), 53 FR 39002.

[121]Securities Act Release No. 6810 (December 16, 1988), 53 FR 52550.

[122]See SEC, Division of Market Regulation, *The October 1987 Market Break* (February 1988), Chapter 10.

[123]*Id.*

[124]*Interim Report of the Working Group on Financial Markets* (May 1988).

[125]Securities Exchange Act Release No. 26154 (October 3, 1988), 41 SEC Docket 1707.

[126]Securities Exchange Act Release No. 26153 (October 3, 1988), 41 SEC Docket 1701.

[127]Securities Exchange Act Release No. 25146 (November 20, 1987), 39 SEC Docket 1191.

[128]Securities Exchange Act Release No. 25740 (May 28, 1988), 40 SEC Docket 1759.

[129]Securities Exchange Act Release No. 25957 (August 2, 1988), 41 SEC Docket 866.

[130]See footnote 108, *supra*.

[131]Securities Exchange Act Release No. 25102 (November 13, 1987), 39 SEC Docket 998.

[132]Securities Exchange Act Release No. 26051 (August 31, 1988), 41 SEC Docket 1197.

[133]Letter from Jonathan Kallman, Assistant Director, to Karen L. Saperstein, Associate General Counsel, ISCC, September 13, 1988.

[134]Letter from Jonathan Kallman, Assistant Director, to Karen L. Saperstein, Associate General Counsel, ISCC, March 23, 1988.

[135]Securities Exchange Act Release No. 25610 (April 22, 1988), 40 SEC Docket 1313.

[136]*Letter regarding Banco de Santander, S.A.* (October 23, 1987).

[137]*Letter regarding Barclays PLC, Barclays de Zoete Wedd (Securities) Limited* (April 22, 1988); *Letter regarding Barclays PLC* (April 29, 1988).

[138]*Letter regarding Norsk Hydro a.s.* (May 5, 1988).

[139]See, *e.g., letter regarding the International Stock Exchange of the United Kingdom and Republic of Ireland Limited* (September 29, 1987).

[140]The Association of Futures Brokers and Dealers; The Financial Intermediaries, Managers and Brokers Regulatory Association; Investment Management Regulatory Organisation Limited; and The Securities Association Limited.

[141]NYSE, NASD, CBOE, and AMEX.

[142]Securities Exchange Act Release No. 25801 (June 14, 1988), 41 SEC Docket 196.

[143]Securities Exchange Act Release No. 26136 (September 30, 1988), 41 SEC Docket 1662.

[144]Securities Exchange Act Release Nos. 26198 (October 19, 1988), 42 SEC Docket 43, and 26218 (October 26, 1988), 42 SEC Docket 127.

[145]Securities Exchange Act Release No. 26198 (October 19, 1988), 42 SEC Docket 43.

[146]See Securities Exchange Act Release No. 25599 (April 19, 1988), 40 SEC Docket 1259.

[147]Securities Exchange Act Release No. 25804 (June 15, 1988), 41 SEC Docket 212.

[148]Securities Exchange Act Release Nos. 25081 (November 2, 1987), 39 SEC Docket 927, and 25701 (May 17, 1988), 40 SEC Docket 1637.

[149]File No. SR-CBOE-88-17.

[150]Letter from Jonathan G. Katz, Secretary, to Paula Tosini, Division of Economic Analysis, CFTC (April 23, 1988).

[151]See letter from Jonathan G. Katz, Secretary, to Paula Tosini, Director, Division of Economic Analysis, CFTC, (September 1, 1988).

[152]Letter from Jonathan G. Katz, Secretary, to Paula A. Tosini, Director, Division of Economic Analysis, CFTC, (April 18, 1988).

[153]Letter from Richard G. Ketchum, Director, to Paula Tosini, Director, Division of Economic Analysis, CFTC, (October 7, 1988).

[154]Letter from Jonathan G. Katz, Secretary, to Paula Tosini, Director, Division of Economic Analysis, CFTC, (October 11, 1988).

[155]Letter from Jonathan G. Katz, Secretary, to Paula Tosini, Director, Division of Economic Analysis, CFTC, (October 11, 1988).

[156]Letter from Richard G. Ketchum, Director, to Marshall E. Hanbury, General Counsel, CFTC, (August 12, 1988).

[157]Securities Exchange Act Release No. 25072 (October 29, 1987), 39 SEC Docket 825.

[158]Securities Exchange Act Release No. 26217 (October 26, 1988), 42 SEC Docket 124.

[159]Letter from Jonathan G. Katz, Secretary, to Jean A. Webb, Secretary, CFTC, (August 19, 1988).

[160]Securities Exchange Act Release No. 25996 (August 15, 1988), 41 SEC Docket 1023.

[161]Securities Exchange Act Release No. 25995 (August 15, 1988), 41 SEC Docket 1017.

[162]Securities Exchange Act Release Nos. 25540 (March 31, 1988), 40 SEC Docket 1024, and 25868 (June 30, 1988), 41 SEC Docket 412.

[163]Securities Exchange Act Release No. 26087 (September 16, 1988), 41 SEC Docket 1376.

[164]Securities Exchange Act Release No. 25627 (April 29, 1988), 40 SEC Docket 1401.

[165]Securities Exchange Act Release No. 24853 (August 27, 1987), 39 SEC Docket 30.

[166]Securities Exchange Act Release Nos. 25739 (May 24, 1988), 40 SEC Docket 1756, and 25938 (July 22, 1988), 41 SEC Docket 784.

[167]Securities Exchange Act Release Nos. 25738 (May 24, 1988), 40 SEC Docket 1753, and 25811 (June 20, 1988), 41 SEC Docket 306.

[168]Securities Exchange Act Release No. 25233 (December 30, 1987), 39 SEC Docket 1522.

[169]*Public Hearing on the Multiple Trading of Options* (File No. 4-334) (February 11, 1988).

[170]Securities Exchange Act Release No. 26100 (September 22, 1988), 41 SEC Docket 1402.

[171]Letter from James B.G. Hearty, Chairman, MSRB, to David S. Ruder, Chairman, (December 17, 1987).

[172]*Report of the Securities and Exchange Commission on Regulation of Municipal Securities* (September 22, 1988).

[173]*Staff Report on the Investigation in the Matter of Transactions in Washington Public Power Supply System Securities* (September 22, 1988).

[174]Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, Title III, Pub. L. No. 100-202, 101 Stat. 1329-131 (December 22, 1987).

[175]Letter from Jonathan G. Katz, Secretary, to Neil Flanagin, Esq., Sidley & Austin (September 22, 1988).

[176]Securities Exchange Act Release No. 25285 (January 22, 1988), 53 FR 2484, 40 SEC Docket 143.

[177]Securities Exchange Act Release No. 25806 (June 16, 1988), 53 FR 23383, 41 SEC Docket 214.

[178]Securities Exchange Act Release No. 26028 (August 25, 1988) 41 SEC Docket 1126.

[179]Securities Exchange Act Release No. 26096 (September 20, 1988), 41 SEC Docket 1390.

[180]Securities Exchange Act Release No. 25891 (July 7, 1988), 41 SEC Docket 508.

[181]Securities Exchange Act Release No. 26150 (October 3, 1988), 41 SEC Docket 1695.

[182]Securities Exchange Act Release No. 25763 (May 27, 1988), 41 SEC Docket 21.

[183]Securities Exchange Act Release No. 25276 (January 20, 1988), 40 SEC Docket 97.

[184]Securities Exchange Act Release No. 25842 (June 23, 1988), 41 SEC Docket 337, affirmed in *Higgins v. SEC*, No. 88-4115 (2*nd* Cir. 1989).

[185]Securities Exchange Act Release No. 25859 (June 27, 1988), 41 SEC Docket 398.

[186]Securities Exchange Act Release Nos. 25677 (May 6, 1988), 40 SEC Docket 1521 and 25863 (June 28, 1988), 41 SEC Docket 406.

[187]Securities Exchange Act Release No. 26176 (October 13, 1988), 41 SEC Docket 1773.

[188]Securities Exchange Act Release No. 25981 (August 8, 1988), 41 SEC Docket 943.

[189]Securities Exchange Act Release No. 26029 (August 25, 1988), 41 SEC Docket 1147. The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network.

[190]Securities Exchange Act Release No. 25312 (February 4, 1988), 40 SEC Docket 247.

[191]See "The National Market System" subsection, *supra*, for information on additional NASD proposed rule changes.

[192]Securities Exchange Act Release No. 25457 (March 14, 1988), 40 SEC Docket 772.

[193]Securities Exchange Act Release No. 25690 (May 11, 1988), 40 SEC Docket 1539.

[194]Securities Exchange Act Release No. 25791 (June 9, 1988), 41 SEC Docket 122.

[195]File nos. SR-NASD-86-22 and SR-NASD-88-13. The proposals were approved after the close of fiscal year 1988 in, respectively, Securities Exchange Act Release No. 26185 (October 14, 1988), 42 SEC Docket 19 and Securities Exchange Act Release No. 26186 (October 14, 1988), 42 SEC Docket 22.

[196]Securities Exchange Act Release No. 25637 (May 2, 1988), 40 SEC Docket 1421.

[197]Securities Exchange Act Release No. 25949 (July 28, 1988), 41 SEC Docket 800.

[198]Securities Exchange Act Release No. 26044 (August 31, 1988), 41 SEC Docket 1193.

[199]Securities Exchange Act Release No. 25575 (April 12, 1988), 40 SEC Docket 1167.

[200]Securities Exchange Act Release No. 25800 (June 13, 1988), 41 SEC Docket 193.

[201]Securities Exchange Act Release No. 26153 (October 3, 1988), 41 SEC Docket 1701.

[202]Securities Exchange Act Release No. 25841 (June 23, 1988), 41 SEC Docket 335.

[203]See footnote 145, *supra*, and accompanying text.

[204]See, *e.g.*, letter from David S. Ruder, Chairman, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, United States House of Representatives, (January 30, 1989).

[205]Rule 19d-1 authorizes certain SROs to report certain technical violations quarterly in chart form. In fiscal year 1988, the number of cases reported in this abbreviated format was as follows: American Stock Exchange—12, New York Stock Exchange—79, Philadelphia Stock Exchange—191 and Pacific Stock Exchange—19. These cases are included in the text discussion and chart.

[206]Securities Investor Protection Act Release No. 149 (September 9, 1988), 41 SEC Docket 1366.

[207]Investment Company Act Release No. 16150 (Nov. 30, 1987), 39 SEC Docket 1229.

[208]Investment Company Act Release No. 16244 (Feb. 1, 1988), 40 SEC Docket 201.

[209]Investment Company Act Release No. 16245 (Feb. 2, 1988), 40 SEC Docket 207.

[210]Investment Company Act Release No. 16421 (June 2, 1988), 41 SEC Docket 3.

[211]Investment Company Act Release No. 16511 (Aug. 2, 1988), 41 SEC Docket 911.

[212]Investment Company Act Release No. 16504 (July 29, 1988), 41 SEC Docket 892.

[213]Investment Company Act Release No. 16431 (June 13, 1988), 41 SEC Docket 252.

[214]Investment Company Act Release No. 16619 (Nov. 2, 1988), 42 SEC Docket 257.

[215]Investment Advisers Act Release No. 1093 (Nov. 5, 1987), 39 SEC Docket 988 (Proposing release); Investment Advisers Act Release No. 1135 (Aug. 17, 1988), 41 SEC Docket 1093 (adopting release).

[216]Investment Advisers Act Release No. 1140 (Sept.16, 1988), 41 SEC Docket 1440.

[217]Securities Act Release No. 6787 (July 15, 1988), 41 SEC Docket 672.

[218]Investment Company Act Release No. 16503 (July 28,1988), 41 SEC Docket 820 (notice); Investment Company Act Release No. 16535 (Aug. 23, 1988), 41 SEC Docket 1165 (order).

[219]Investment Company Act Release No. 16366 (April 14, 1988), 40 SEC Docket 1209 (notice); Investment Company Act Release No. 16388 (May 3, 1988), 40 SEC Docket 1483 (order).

[220]Investment Company Act Release No. 16479 (July 12,1988), 41 SEC Docket 642 (notice); Investment Company Act Release No. 16502 (July 28, 1988), 41 SEC Docket 819 (order).

[221]Investment Company Act Release No. 16235 (Jan. 12, 1988), 40 SEC Docket 124.

[222]State of Israel (pub. avail. Aug. 17, 1988).

[223]G.T. Global Financial Services, Inc. (pub. avail. Aug. 2, 1988).

[224]Bank Bumi Daya New York Agency (pub. avail. June 7, 1988).

[225]Bank Ekspor Impor Indonesia New York Agency (pub. avail. July 15, 1988).

[226]Investment Company Institute (pub. avail. Sept. 23, 1988).

[227]Holding Company Act Release No. 24566 (Jan. 28, 1988), 40 SEC Docket 161.

[228]Holding Company Act Release No. 24579 (Feb. 12, 1988), 40 SEC Docket 442.

[229]Holding Company Act Release No. 24590 (Feb. 26, 1988), 40 SEC Docket 634.

[230]Holding Company Act Release No. 24641 (May 12, 1988), 40 SEC Docket 1547.

[231]Holding Company Act Release No. 24727 (Oct. 13, 1988), 41 SEC Docket 1781.

[232]Holding Company Act Release No. 24669 (June 23, 1988), 41 SEC Docket 344.

[233]*Lombardfin, S.p.A. v. SEC* and *Trasatlantic Financial Co. v. SEC*, 108 S. Ct. 1751 (1988).

[234]*SEC v. Tome*, 833 F.2d 1086 (2d Cir. 1987).

[235]*SEC v. Levine* and *SEC v. Wilkis*, 689 F. Supp. 317 (S.D.N.Y. 1988), *appeal pending*, No. 88-6294(L) (2d Cir.).

[236]*SEC v. Levine*, No. 86 Civ. 3726 (RO) and *SEC v. Wilkis*, No. 86 Civ. 5182 (RO) (single opinion Oct. 25, 1988).

[237]*SEC v. Blinder, Robinson & Co.*, 855 F.2d 677 (10th Cir. 1988), *cert. denied*, No. 88-850 (Feb. 21, 1989). Other issues in this appeal are discussed below in connection with litigation involving broker-dealers and market professionals.

[238]*Morrison v. Olson*, 108 S. Ct. 2597 (1988).

[239]*Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

[240]*Blinder, Robinson & Co. and Meyer Blinder v. SEC*, 837 F.2d 1099 (D.C. Cir. 1987), *cert. denied*, 57 U.S.L.W. 3235 (1988).

[241]*SEC v. Moskowitz*, Civ. No. H-87-862 (D. Md. 1988).

[242]*SEC v. Davis*, Fed. Sec. L. Rep. (CCH) ¶ 93,696 (S.D. Ohio 1988).

[243] *Blinder, Robinson & Co. and Meyer Blinder v. SEC*, 837 F.2d 1099 (D.C. Cir. 1987), *cert. denied*, 57 U.S.L.W. 3235 (1988).

[244] *Withrow v. Larkin*, 421 U.S. 35 (1975).

[245] *Antoniu v. SEC*, Nos. 85-5384, 88-1095 (8th Cir.).

[246] *The Stuart-James Co., Inc. and Marc N. Geman v. SEC*, No. 87-1402 (D.C. Cir. Sept. 20, 1988).

[247] *Kane v. SEC*, 842 F.2d 194 (8th Cir. 1988).

[248] *C.E. Carlson, Inc. and Charles E. Carlson v. SEC*, No. 86-2637 (10th Cir. June 10, 1988) (*pet. for rehearing denied* Nov. 7, 1988).

[249] *Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 835 F.2d 1031 (3d Cir. 1987).

[250] *McLaughlin, Piven, Vogel, Inc. v. Gross*, No. 88-1367 (3d Cir. Oct. 13, 1988).

[251] *SEC v. Suter*, 832 F.2d 988 (7th Cir. 1987).

[252] *Sanderson v. Rothenmund*, 682 F. Supp. 205 (S.D.N.Y. 1988).

[253] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[254] *Variable Annuity Life Insurance Co., et al. v. Otto*, 814 F.2d 1127 (7th Cir. 1987), *cert. denied*, 108 S. Ct. 2004 (1988).

[255] *Adena Exploration, Inc. v. Sylvan*, No. 87-1429 (5th Cir.).

[256] *Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985).

[257] *Arthur Young & Co. v. Reves*, 856 F.2d 52 (8th Cir. 1988).

[258] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[259] *Pinter v. Dahl*, 108 S.Ct. 2063 (1988).

[260] *Id.*

[261] *Wilson v. Ruffa & Hanover, P.C.*, No. 876-7357 (2d Cir.).

[262] *Basic, Inc. v. Levinson*, 108 S. Ct. 978 (1988).

[263] *Nationwide Corp. v. Howing Co.*, 826 F.2d 1470 (6th Cir. 1987), *cert. denied*, 108 S. Ct. 2830 (1988).

[264] *Newmont Mining Corp. v. Pickens*, 831 F.2d 1448 (9th Cir. 1987).

[265] *IU International Corp. v. NX Acquisitions Corp.*, 840 F.2d 220 (4th Cir. 1988).

[266] *R.H. Macy & Co. v. Campeau Corp.*, No. 88 Civ. 1548 (LBS)(S.D.N.Y.).

[267] *Koppers v. American Express Co.*, 689 F. Supp. 1413 (W.D. Pa. 1988).

[268] *American Carriers, Inc. v. Baytree Investors, Inc.*, No. 88-1533 (10th Cir.).

[269] *RP Acquisition Corp. v. Staley Continental, Inc.*, 686 F. Supp. 476 (D. Del. 1988).

[270] *RTE Corp. v. Mark IV Industries, Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 93,789 (E.D. Wis. May 6, 1988) (*vacated* June 22, 1988).

[271] *Salant Acquisition Corp. v. Manhattan Industries, Inc.*, 682 F. Supp. 199 (S.D.N.Y. 1988).

[272] *SEC v. Wall Street Publishing Institute, Inc.*, 851 F.2d 365 (D.C. Cir. 1988).

[273] *SEC v. Blinder, Robinson & Co., Inc.*, 855 F.2d 677 (10th Cir. 1988), *cert. denied*, No. 88-850 (Feb. 21, 1989).

[274] *United States v. Swift & Co.*, 286 U.S. 106 (1932).

[275] *SEC v. Allison*, No. 81-19 (N.D. Cal. Oct. 7, 1988). Appeal pending.

[276] *SEC v. First Jersey Securities, Inc.*, 843 F.2d 74 (2d Cir. 1988).

[277] *Occidental Petroleum Corp. v. SEC*, No. 87-5279 (D.C. Cir.).

[278] *In re Sealed Case*, No. 87-5290 (D.C. Cir. Sept. 2, 1988).

[279] *SEC v. Fox*, 858 F.2d 247 (5th Cir. 1988).

[280] *Awkard v. SEC*, No. CA 87-0835 (D.D.C. Sept. 15, 1987).

[281] *Panaro v. von Stein*, No. 87-1791 (S.D.N.Y.).

[282] *SEC v. The Electronic Warehouse, Inc.*, 689 F. Supp. 53 (D. Conn. 1988).

[283] *SEC v. The Royale Group, Ltd.*, C.A. No. 82-2415 (D.D.C. April 5, 1988).

[284] *In re Thomas*, 41 SEC Dkt. 69 (June 14, 1988).

[285] *Thomas v. SEC*, No. 88-4286 (5th Cir. 1988).

[286] *In re Schultzenberg*, A.A.E.R. No. 200 (September 23, 1988), *reprinted in* 1988 Transfer Binder, Fed. Sec. L. Rep. (CCH) ¶ 73,669 (Oct. 12, 1988).

[287] *Shub v. SEC*, No. Misc. 88-0496 (E.D. Pa. Oct. 3, 1988); *Falcone v. SEC*, No. 88-6556 (Civ.) (N.D. Fla. Aug. 29, 1988).

[288] *Broderick v. Ruder*, 685 F. Supp. 1269 (D.D.C. 1988).

[289] On October 5, 1987, and on April 13, 1988, Chairman Ruder testified before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce; on December 3, 1987, he testified before the Senate Committee on Banking, Housing, and Urban Affairs; and on December 9, 1987, Chairman Ruder testified before the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance of the House Committee on Banking, Finance, and Urban Affairs.

[290] Chairman Ruder testified before the House Committee on Agriculture (June 14, 1988); the Senate Committee on Banking, Housing, and Urban Affairs (May 24, 1988, March 31, 1988, February 3, 1988, and November 4, 1987); the Subcommittee on Telecommunications and Finance of the House Energy and Commerce Committee (May 19, 1988 and March 23, 1988); and the Senate Committee on Agriculture, Nutrition, and Forestry (March 17, 1988).

[291] The proposal defined an emergency justifying the Commission's use of such authority as "a major market disturbance characterized by, or constituting (i) a substantial threat of sudden and excessive fluctuations of securities prices generally that threaten fair and orderly markets, or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities."

[292] *In re Todd Shipyards Corp.* and *Todd Pacific Shipyard Corp.* Nos. 87-5005-5006 (Bankr. S.D.N.Y. 1988) (the U.S. Trustee, acting on request by the Commission, agreed to form a single committee to represent both common and preferred shareholders); *In re Global Marine, Inc., et al.*, Case Nos. 86-00771-H2-11 to 86-00782-H2-11 inclusive; Case No. 86-01308-H2-11; and Case No. 86-11035-H2-11 (Bankr. S.D. Texas 1988) (separate committee of subordinated debenture holders formed); *In re Allegheny International, Inc. et al.*, Bkcy, Nos. 88-448 through 88-450 (Bankr. W.D. Pa. 1988) (additional debenture-holders appointed to official unsecured committee).

[293] *In re Global Marine, Inc., et al.*, Nos. 86-00771-H2-11 to 86-0078-H2-11 inclusive, No. 86-01308-H2-11; and No. 86-11035-H2-11 (Bankr. S.D. Texas).

[294] *In re Allegheny International, Inc., et al.*, Nos. 88-448 through 88-450 (Bankr. W.D. Pa).

[295] *In re Melridge, Inc.*, Case No. 387-06589 P.11 (Bankr. D. Ore).

[296] *In re Baldwin-United Corp., et al.*, Case No. 1-83-02495 (Bankr. S.D. Ohio), *appeal pending*, Civil Case No. C-1-88-0056 (S.D. Ohio).

[297] *In re Allegheny International, Inc.*, Nos. 88-448 through 452 (Bankr. W.D. Pa. May 17, 1988), *rev'd* Civil No. 88-1101 (W.D. Pa.), *appeal dismissed*, No. 88-3338, 3351 (3d Cir. 1988).

[298] *In re Standard Metals*, 48 B.R. 778 (Bankr. D. Colo.), *aff'd in part*, No. 85-2-703 (D. Colo. Oct. 28, 1985), *aff'g bankr. ct. on other grounds*, 817 F.2d 625 (10th Cir. 1987), *rev'd in part on rehearing*, 839 F.2d 1383 (10th Cir. December 29, 1987) (per curiam), *pet. for cert. dismissed*, No. 88-243 (S. Ct. 1988).

[299] *In re Standard Metals*, 817 F.2d 625 (10th Cir. 1987).

[300] *In re American Reserve*, 80 B 4786 (Bankr. N.D. Ill. April 12, 1985), *rev'd* 71 B.R. 32 (N.D. Ill. 1987), *rev'd*, 840 F.2d 487 (7th Cir. 1988).

[301] *In re Standard Metals Corp.*, 48 B.R. 778 (Bankr. D. Colo.), *aff'd on other grounds*, No. 85-2-703 (D. Colo. Oct. 28, 1985), *aff'd in part*, 817 F.2d 625 (10th Cir. 1987), *rev'd on rehearing on other grounds*, 839 F.2d 1383 (10th Cir. Dec. 29, 1987), *pet. for cert. dismissed*, No. 88-243 (S. Ct. 1988).

[302] *In re Charter Co.*, 76 B.R. 191 (Bankr. M.D. Fla. 1986), *aff'd*, No. 86-1079-CIV-J-16 (M.D. Fla.), *appeal pending*, No. 88-3303 (11th Cir.).

[303] *In re LTV Corp.*, Nos. 86 B 11270 to 11334, 11402 and 11464 (BRL) (Bankr. S.D.N.Y.), *appeal pending*, 88 Civ. 645686488 (MEL). (S.D.N.Y.).

[304] *In re Allegheny International, Inc.*, Nos. 88-448 through 88-452 (Bankr. W.D. Pa.), *appeal pending*, CIV. ACT. No. 88-2345 (W.D. Pa.).

[305] *In re Allis-Chalmers Corp.*, Nos. 87 B 11225 to 11242 (Bankr. S.D.N.Y. Apr. 25, 1988).

[306] *In re Melridge*, No. 387-06589-P11 (Bankr. D. Ore Apr. 16, 1988).

[307] *In re Vidalia Sweets Brand, Inc.*, No. 85-00050 (Bankr. S.D. Ga. March 18, 1988).

[308] *In re The Rolfite Co.*, No. 87-03250-BKC-TCB (Bankr. S.D. Fla. May 23, 1988).

[309] *In re Cordyne Corp.*, No. 386-047-03511 (Bankr. D. Oreg. Dec. 16, 1987).

APPENDIX

THE SECURITIES INDUSTRY

Revenues, Expenses, and Selected Balance Sheet Items

Broker-dealers that are registered with the Commission produced revenues of $66.3 billion in calendar year 1987, three percent above the 1986 level. While brokerage revenues increased markedly from earlier years, the October stock market decline adversely impacted the dealer side of the business.

Pushed by record volume, revenues from securities brokerage increased by $2.6 billion (12 percent) in 1987. The brokerage side accounted for 36 percent of total revenues in 1987, compared to 33 percent in 1986. The increase in securities commissions of $2.6 billion (18 percent) accounted for the majority of this growth. Margin interest also rose by $500 million, while revenues from mutual fund sales declined by an equivalent amount.

As broker-dealers maintain substantial positions in equity securities, the October 1987 market decline resulted in significant dealer losses. Revenues from trading and investment fell $3.7 billion (20 percent) in 1987 while profits from underwriting declined by $1.0 billion (15 percent).

"All other revenues," which are dominated by interest income from securities purchased under agreements to resell and fees from handling private placements, mergers, and acquisitions rose $4.1 billion (23 percent) in 1987. These revenues accounted for 33 percent of total revenues in 1987, compared to 28 percent in 1986.

The strong growth in stock market trading volume in the first 9 months of 1987 resulted in an increase in expenses of 13 percent to $63.2 billion. Combined with the dealer-related drag on revenues, pre-tax income fell 62 percent to $3.1 billion. The pre-tax return on equity in 1987 was 9 percent, compared to 27 percent in 1986.

Assets fell by eight percent to $479.2 billion at year-end 1987, with liabilities declining 9 percent to $445.2 billion. Ownership equity increased $4.9 billion during 1987 to $46.9 billion.

Table 1

UNCONSOLIDATED FINANCIAL INFORMATION FOR BROKER-DEALERS 1983–1987

(Millions of Dollars)

	1983[r]	1984[r]	1985[r]	1986[r]	1987[p]
Revenues					
1. Securities commissions	$ 10,392.4	$ 9,269.7	$ 10,955 0	$ 13,976 5	$ 16,560.3
2. Gains (losses) in trading and investment accounts	9,842.3	10,760.9	14,549 2	18,145 0	14,428.5
3. Profits (losses) from underwriting and selling groups	4,089.8	3,248.6	4,986 7	6,742.6	5,719.0
4. Margin interest	2,233.4	2,970 8	2,746 0	3,021 6	3,495.6
5. Revenues from sale of investment company shares	1,493 3	1,452 0	2,753 6	4,540.3	4,067 9
6. All other revenues	8,852 8	11,905.2	13,853 8	17,997.8	22,071.7
7 Total revenues	$ 36,904.1	$ 39,607.1	$ 49,844.3	$ 64,423 8	$ 66,343 0
Expenses					
8 Registered representatives' compensation (Part II only) [1]	$ 6,601 2	$ 6,171 2	$ 8,184.0	$ 10,701 0	$ 11,051 4
9. Other employee compensation and benefits	6,413 8	6,756 7	8,149 0	11,002.6	12,132.9
10 Compensation to partners and voting stockholder officers	1,540 4	1,503.0	1,778 9	2,232.7	2,448 1
11. Commissions and clearance paid to other brokers	1,787 2	1,906 8	2,314.2	2,994.5	3,543.3
12. Interest expenses	6,846 6	10,693 1	11,469 8	14,232.9	16,728 0
13. Regulatory fees and expenses	199 6	225 8	339 7	416 5	431 9
14 All other expenses [1]	8,308 5	9,493.9	11,106.4	14,542.4	16,863.7
15. Total expenses	$ 31,697 3	$ 36,750.6	$ 43,341 9	$ 56,122.6	$ 63,199 3
Income and Profitability					
16. Pre-tax income	$ 5,206.8	$ 2,856 6	$ 6,502 4	$ 8,301 2	$ 3,143 7
17. Pre-tax profit margin	14 1	7 2	13 0	12 9	4 7
18. Pre-tax return on equity	30 7	15.2	26 7	26.8	9 2
Assets, Liabilities and Capital					
19. Total assets	$250,103 7	$313,821.7	$452,463.3	$520,940 5	$479,218 9
20. Liabilities					
a Unsubordinated liabilities	230,177.4	290,255.1	421,593.8	478,990.6	432,330 1
b Subordinated liabilities	2,954 3	4,761.3	6,553 6	10,944 7	12,860 5
c Total liabilities	233,131 7	295,016 4	428,147 4	489,935.3	445,190.6
21 Ownership Equity	$ 19,926 2	$ 23,566 6	$ 30,869 4	$ 41,950 0	$ 46,888 7
Number of firms	7,374	8,272	8,957	9,436	9,196

[1] Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report

Figures may not sum due to rounding
r = revised
p = preliminary

Source: FOCUS Report

Table 2

UNCONSOLIDATED ANNUAL REVENUES AND EXPENSES FOR BROKER-DEALERS DOING A PUBLIC BUSINESS 1983–1987

(Millions of Dollars)

	1983[r]	1984[r]	1985[r]	1986[r]	1987[p]
Revenues					
1. Securities commissions	$ 9,953.2	$ 8,953 9	$10,537.1	$13,488.2	$16,029.2
2 Gains (losses) in trading and investment accounts	8,841.1	9,699.3	12,996.6	16,264.5	12,489 7
3. Profits (losses) from underwriting and selling groups	4,064.2	3,244.2	4,981.3	6,737.9	5,715.2
4 Margin interest	2,185.2	2,950.1	2,683.6	2,999.4	3,469 1
5. Revenues from sale of investment company shares	1,492.9	1,451.8	2,753.4	4,539.8	4,068.1
6 All other revenues	8,015.7	11,321.3	13,343.5	17,368.7	21,465.1
7 Total revenues	$34,552 3	$37,620 6	$47,295.6	$61,398.5	$63,236.4
Expenses					
8. Registered representatives' compensation (Part II only) [1]	$ 6,540.3	$ 6,162 3	$ 8,161.6	$10,653.6	$11,038.0
9. Other employee compensation and benefits	6,163.4	6,621.7	7,984.9	10,777.0	11,893.5
10. Compensation to partners and voting stockholder officers	1,416.5	1,367.6	1,643.0	2,037.2	2,188.9
11. Commissions and clearance paid to other brokers	1,673.0	1,794.1	2,178.4	2,776.2	3,341.9
12 Interest expenses	6,139.9	10,122.4	10,842.7	13,611.7	16,258.3
13. Regulatory fees and expenses	174.6	202.9	313.2	384.4	400.2
14. All other expenses [1]	7,843.6	9,129.1	10,708.7	13,983.1	16,298.6
15. Total expenses	$29,951 3	$35,400.0	$41,832.6	$54,223.2	$61,419.4
Income and Profitability					
16. Pre-tax income	$ 4,601.0	$ 2,220.6	$ 5,463.0	$ 7,175.3	$ 1,817.0
17. Pre-tax profit margin	13.3	5.9	11.6	11.7	2.9
18. Pre-tax return on equity	30.7	13.3	25.3	25.8	5.8
Number of firms	4,686	5,350	5,890	6,225	6,309

[1] Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report.

Figures may not sum due to rounding

r = revised
p = preliminary

Source FOCUS Report

Table 3

UNCONSOLIDATED BALANCE SHEET FOR BROKER-DEALERS DOING A PUBLIC BUSINESS YEAR-END, 1983–1987

(Millions of Dollars)

	1983[r]	1984[r]	1985[r]	1986[r]	1987[p]
Assets					
1. Cash	$ 3,611.5	$ 4,217.3	$ 6,618.2	$ 8,916.3	$ 7,558.5
2. Receivables from other broker-dealers	26,809.9	29,801.0	63,289.8	65,279.2	61,854.7
3. Receivables from customers	32,413.3	30,537.4	47,632.3	54,132 3	38,736.7
4. Receivables from non-customers	1,440.5	1,417.6	2,603.6	3,572.7	3,372.4
5. Long positions in securities and commodities	74,496.1	108,203 5	150,834 3	164,655.6	116,922.3
6. Securities and investments not readily marketable	316.7	651.2	425.9	490.3	460 8
7. Securities purchased under agreements to resell (Part II only) [1]	70,994.8	107,859 3	140,634.2	185,482.7	211,927.3
8. Exchange membership	245.7	256.6	268.4	292.9	346.1
9 Other assets [1]	10,038.3	12,225 7	16,066 2	20,286.2	21,192.3
10. Total assets	$220,366.9	$295,169.6	$428,372.9	$503,108.2	$462,371.2
Liabilities and Equity Capital					
11. Bank loans payable	$ 19,914.6	$ 27,351.0	$ 41,344.8	$ 38,471.2	$ 20,734.1
12. Payables to other broker-dealers	23,384.7	24,999.3	52,275.9	50,987.6	43,164.0
13. Payables to non-customers	1,687.2	1,691.9	3,197.1	3,403.1	4,185.3
14. Payables to customers	18,811.8	19,997.9	31,723.6	40,671.0	34,331.0
15. Short positions in securities and commodities	38,779.8	45,779.6	79,162 2	76,851.0	73,734.2
16 Securities sold under repurchase agreements (Part II only) [1]	82,103.7	134,919.3	164,950.3	220,965.8	209,711.0
17. Other non-subordinated liabilities [1]	17,996.8	19,290.1	28,197.4	34,024.9	32,633.7
18. Subordinated liabilities	2,723.1	4,425.0	5,965.2	9,904.1	12,446.0
19. Total liabilities	$205,401.7	$278,454.1	$406,816.6	$475,278 6	$430,939.3
20. Equity capital	$ 14,965.2	$ 16,715.5	$ 21,556.3	$ 27,829.6	$ 31,431.9
Number of firms	4,686	5,350	5,890	6,225	6,309

[1] Resale agreements and repurchase agreements for firms that neither carry nor clear is included in "other assets" and "other non-subordinated liabilities" respectively as these items are not reported separately on Part IIA of the FOCUS Report.

Figures may not sum due to rounding.

r = revised
p = preliminary

Source: FOCUS Report

Securities Industry Dollar In 1987 For Carrying and Clearing Firms

Data for carrying and clearing firms which do a public business are presented here to allow for more detail as reporting requirements for firms which neither carry nor clear differ and data aggregation of these two types of firms necessarily results in loss of detail. Carrying and clearing firms are those firms which clear securities transactions or maintain possession or control of customers' cash or securities. This group produced 84 percent of the securities industry's total revenues in calendar year 1987.

Brokerage activity accounted for about 34 cents of each revenue dollar in 1987, an increase from 31 cents in 1986. Securities commissions were the most important component, producing 23 cents of each dollar of revenue, while margin interest and revenues from mutual fund sales generated six cents and five cents, respectively.

The dealer side produced 60 cents of each dollar of revenue. Twenty-one of these cents came from trading and investments, 10 cents from underwriting, and 30 cents from other securities-related revenues. The latter is comprised primarily of interest income from securities purchased under agreements to resell and fees from handling private placements, mergers and acquisitions.

Total expenses consumed 98 cents of each revenue dollar, compared to 89 cents in 1986. The result was a pre-tax profit margin of 2 cents per revenue dollar, compared to 11 cents in 1986.

Employee-related expenses (registered representatives' compensation and clerical and administrative employees' expenses) are the largest component of expenses. Employee-related expenses consumed 38 cents of the revenue dollar in 1987, a slight increase from 1986. As a percent of revenues, interest expense rose to 29 percent, from 25 percent in 1986.

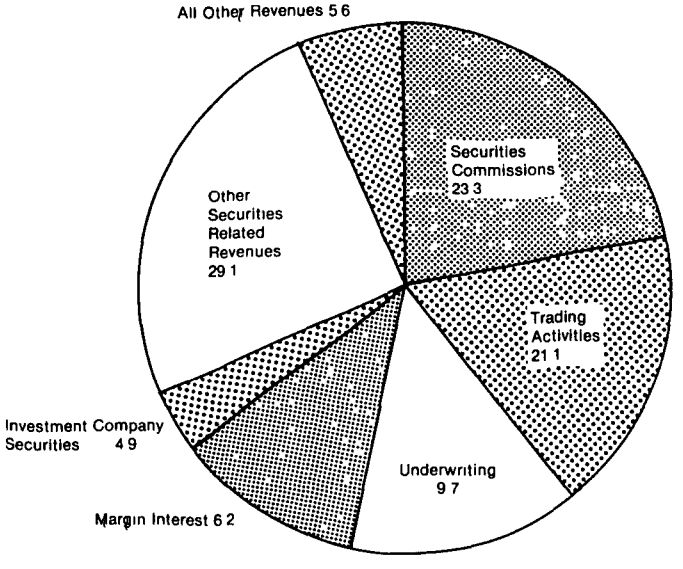
Total assets of broker-dealers carrying and clearing customer accounts fell by $42.3 billion to $452.6 billion at year-end 1987. Long positions were the most important factor, with the value of inventory falling $47.7 billion to $114.4 billion. Resale agreements was one of the few asset categories to grow, increasing 14 percent to $211.9 billion at year-end 1987. Resale agreements now comprise 47 percent of total assets. Most of the remaining assets represented receivables, either from customers or other broker-dealers.

Total liabilities decreased $45.3 billion, or 10 percent to $424.6 billion. Virtually all individual liability items shared in this decline. Owners' equity rose 12 percent, from $25.0 billion in 1986 to $28.0 billion in 1987.

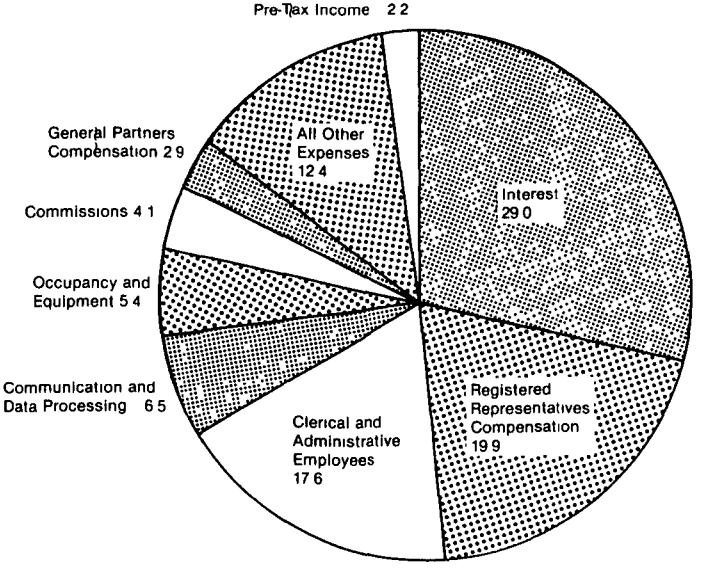
Securities Industry Dollar In 1987

For Carrying/Clearing Firms

SOURCES OF REVENUE



EXPENSES AND PRE-TAX INCOME



Figures may not add due to rounding

NOTE Includes information for firms doing a public business that carry customer accounts or clear securities transactions

SOURCE X-17A-5 FOCUS REPORTS

Table 5

UNCONSOLIDATED REVENUES AND EXPENSES FOR CARRYING/CLEARING BROKER-DEALERS

(Millions of Dollars)

	1986[r]		1987[p]		
	Dollars	Percent of Total Revenues	Dollars	Percent of Total Revenues	Percent Change 1986–1987
Revenues					
1. Securities commissions	$10,906.4	20.1%	$12,945.3	23.3%	18.7%
2. Gains (losses) in trading and investment accounts	15,484.0	28.5	11,737.3	21.1	(24.2)
3. Profits (losses) from underwriting and selling groups	6,298.6	11.6	5,381.0	9.7	(14.6)
4. Margin interest	2,999.4	5.5	3,469.1	6.2	15 7
5. Revenues from sale of investment company shares	3,205.1	5.9	2,743.4	4.9	(14.4)
6. Other securities related revenues	13,090.6	24.1	16,158.5	29.1	23.4
7. All other revenues	2,275.8	4.2	3,116 5	5.6	36.9
8. Total revenues	$54,259 9	100 0%	$55,551.1	100.0%	2.4%
Expenses					
9. Registered representatives' compensation	$10,653.6	19.6%	$11,038.0	19 9%	3.6%
10. Other employee compensation and benefits	8,968.9	16.5	9,781.2	17.6	9.1
11. Compensation to partners and voting stockholder officers	1,505 4	2.8	1,601 6	2.9	6.4
12. Commissions and clearance paid to other brokers	1,765 0	3.3	2,301.3	4.1	30.4
13. Communications	2,463.8	4.5	2,778.0	5 0	12.8
14. Occupancy and equipment costs	2,374.7	4.4	2,988 7	5.4	25.9
15. Data processing costs	687 6	1.3	830.6	1.5	20.8
16. Interest expenses	13,496.5	24.9	16,103.6	29.0	19.3
17. Regulatory fees and expenses	323.5	0.6	333.0	0.6	2.9
18. Losses in error accounts and bad debts	456.6	0.8	1,178.6	2.1	158.1
19. All other expenses	5,420.4	10.0	5,382 5	9.7	(0.7)
20. Total expenses	$48,116.0	88.7%	$54,317.1	97.8%	12.9%
Income and Profitability					
21 Pre-tax income	$ 6,143.9		$ 1,234.0		(79.9)%
22. Pre-tax profit margin		11.3		2.2	
23. Pre-tax return on equity		24.6		4.4	
Number of firms	1,216		1,194		

Figures may not sum due to rounding.

r = revised
p = preliminary

Note Includes information for firms doing a public business that carry customer accounts or clear securities transactions

Source FOCUS Report

Table 6

UNCONSOLIDATED BALANCE SHEET FOR CARRYING/CLEARING BROKER-DEALERS

(Millions of Dollars)

	Year-end 1986[r]		Year-end 1987[p]		
	Dollars	Percent of Total Assets	Dollars	Percent of Total Assets	Percent Change 1986–1987
Assets					
1. Cash	$ 8,351 9	1 7%	$ 6,978.1	1 5%	(16.4)%
2. Receivables from other broker-dealers	62,340 2	12.6	58,371 4	12.9	(6.4)
a. Securities failed to deliver	14,089.1	2.8	8,260.7	1.8	(41 4)
b. Securities borrowed	35,711.0	7.2	42,474 5	9 4	18.9
c. Other	12,540.1	2.5	7,636.2	1 7	(39.1)
3. Receivables from customers	54,132.3	10.9	38,736.7	8.6	(28 4)
4. Receivables from non-customers	3,059.9	0.6	2,157.3	0.5	(29.5)
5. Long positions in securities and commodities	162,098.6	32.8	114,394 4	25.3	(29.4)
a. Bankers acceptances, certificates of deposit and commercial paper	11,956 6	2.4	10,567 7	2 3	(11.6)
b. U.S. and Canadian government obligations	89,870 8	18 2	63,536.5	14.0	(29 3)
c. State and municipal government obligations	16,344 4	3 3	8,001.0	1 8	(51.0)
d. Corporate obligations	21,448.5	4 3	17,351.9	3 8	(19.1)
e. Stocks and warrants	15,289.8	3 1	9,883.4	2 2	(35 4)
f. Options	872 1	0.2	566 9	0.1	(35 0)
g. Arbitrage	4,646.1	0.9	3,175.5	0.7	(31.7)
h. Other securities	1,082 1	0.2	754.4	0.2	(30.3)
i. Spot commodities	347.9	0 1	356.6	0.1	2.5
6. Securities and investments not readily marketable	399.4	0 1	341 2	0.1	(14 6)
7. Securities purchased under agreements to resell	185,482 7	37.5	211,927 3	46 8	14.3
8. Exchange membership	260 4	0.1	300 7	0.1	15 5
9. Other assets	18,724.5	3.8	19,366.7	4.3	3 4
10. Total assets	$494,850.1	100 0%	$452,573.7	100.0%	(8.5)%
Liabilities and Equity Capital					
11. Bank loans payable	$ 38,414.3	7 8%	$ 20,685.4	4.6%	(46 2)%
12 Payables to other broker-dealers	50,129.9	10 1	42,872.3	9.5	(14 5)
a. Securities failed to receive	13,945.1	2.8	7,637 5	1 7	(45.2)
b. Securities loaned	26,445 8	5.3	29,172 2	6 4	10.3
c. Other	9,738.9	2.0	6,062.7	1 3	(37.7)
13. Payables to non-customers	2,940.0	0 6	3,212 6	0.7	9.3
14. Payables to customers	40,671.0	8.2	34,331 0	7.6	(15.6)
15. Short positions in securities and commodities	74,854.2	15.1	70,302 3	15.5	(6.1)
16. Securities sold under repurchase agreements	220,965.8	44.7	209,711 0	46.3	(5 1)
17. Other non-subordinated liabilities	32,853 8	6 6	31,629.2	7.0	(3 7)
18. Subordinated liabilities	9,068.8	1.8	11,845 1	2 6	30 6
19. Total liabilities	$469,897.8	95 0%	$424,589.0	93.8%	(9.6)%
20 Equity capital	$ 24,952 2	5.0%	$ 27,984 7	6.2%	12 2%
Number of firms	1,216		1,194		

Figures may not sum due to rounding

r = revised

p = preliminary

Note: Includes information for firms doing a public business that carry customer accounts or clear securities transactions.

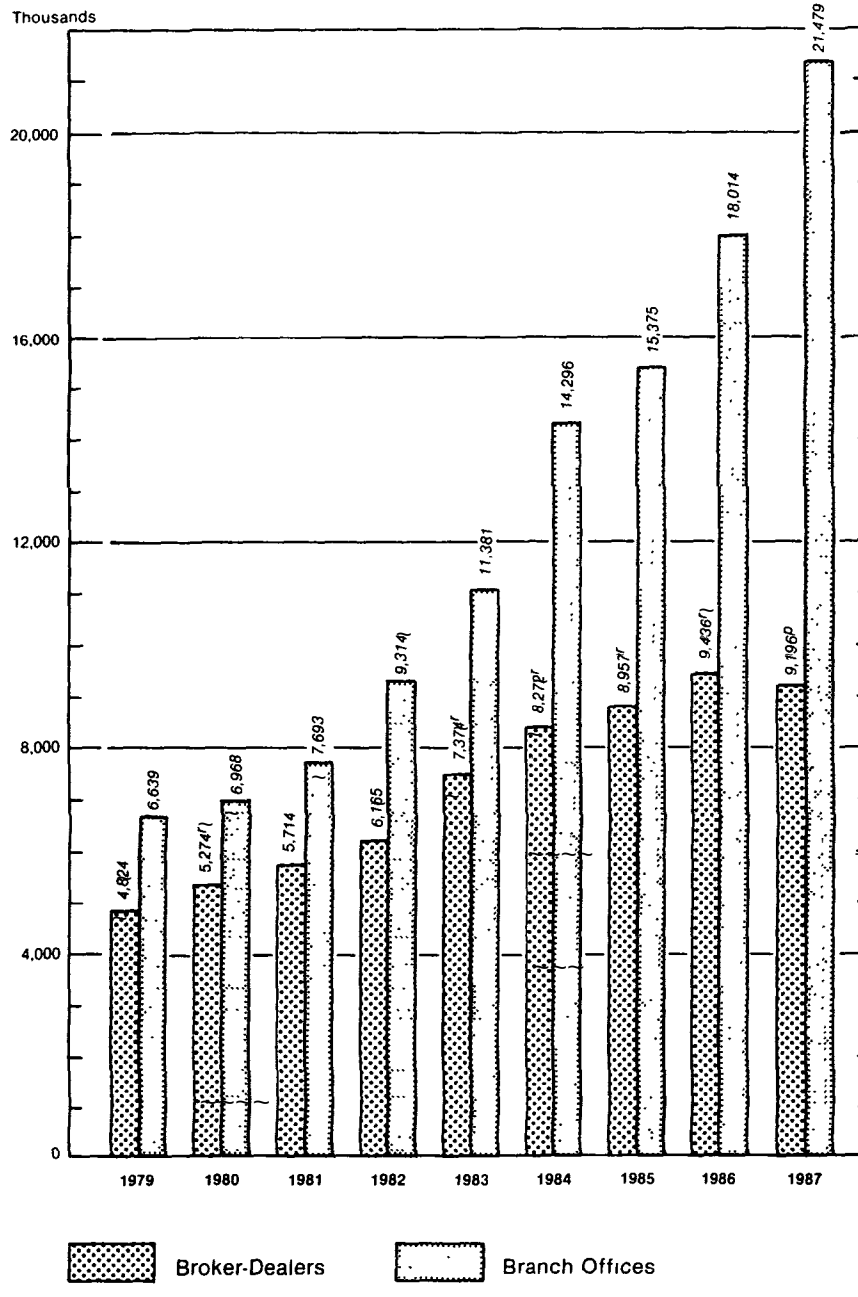
Source: FOCUS Report

Broker-Dealers, Branch Offices, Employees

The number of broker-dealers filing FOCUS Reports fell three percent from 9,436 in 1986 to 9,196 in calendar year 1987. During the same period, the number of branch offices increased nineteen percent from 18,014 to 21,479. The number of registered representatives employed in the securities industry rose from 404,000 to 459,000 in 1987, a fourteen percent increase.

Table 7

Broker-Dealers and Branch Offices



r = Revised p = Preliminary

SOURCE: FOCUS REPORT and
National Association of Securities Dealers

Table 8

BROKERS AND DEALERS REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934 EFFECTIVE REGISTRANTS AS OF SEPTEMBER 30, 1988

(Classified By Type of Organizations And By Location of Principal Office)

	Number of Registrants			
	Total	Sole Proprietorship	Partnership	Corporations [1]
ALABAMA	42	2	1	39
ALASKA	6	1	0	5
ARIZONA	110	2	4	104
ARKANSAS	51	2	0	49
CALIFORNIA	1377	314	137	926
COLORADO	209	6	5	198
CONNECTICUT	189	15	13	161
DELAWARE	20	0	2	18
DISTRICT OF COLUMBIA	51	3	2	46
FLORIDA	453	19	17	417
GEORGIA	136	2	7	127
HAWAII	15	0	1	14
IDAHO	13	1	1	11
ILLINOIS	3326	2252	347	727
INDIANA	84	11	2	71
IOWA	40	1	1	38
KANSAS	36	2	0	34
KENTUCKY	36	4	0	32
LOUISIANA	71	4	5	62
MAINE	20	0	1	19
MARYLAND	105	3	1	101
MASSACHUSETTS	251	24	11	216
MICHIGAN	142	14	2	126
MINNESOTA	128	6	1	121
MISSISSIPPI	24	1	0	23
MISSOURI	115	5	2	108
MONTANA	3	1	0	2
NEBRASKA	27	0	0	27
NEVADA	16	4	0	12
NEW HAMPSHIRE	11	1	1	9
NEW JERSEY	469	102	56	311
NEW MEXICO	18	0	1	17
NEW YORK	2712	771	397	1544
NORTH CAROLINA	88	2	0	86
NORTH DAKOTA	2	0	0	2
OHIO	170	8	10	152
OKLAHOMA	38	1	0	37
OREGON	50	3	2	45
PENNSYLVANIA	498	17	81	400
RHODE ISLAND	24	5	1	18
SOUTH CAROLINA	42	2	2	38
SOUTH DAKOTA	4	0	0	4
TENNESSEE	118	6	3	109
TEXAS	479	33	7	439
UTAH	47	2	0	45
VERMONT	11	1	1	9
VIRGINIA	88	3	2	83
WASHINGTON	119	5	1	113
WEST VIRGINIA	13	0	0	13
WISCONSIN	97	6	1	90
WYOMING	4	0	1	3
SUB Total	12198	3667	1130	7401
FOREIGN [2]	26	3	1	22
TOTAL	12224	3670	1131	7423

[1] Includes all forms of organization other than sole proprietorships and partnerships

[2] Registrants whose principal offices are located in foreign countries or other jurisdictions not listed

Table 9

APPLICATIONS AND REGISTRATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS

Fiscal Year 1988

Broker - Dealers		
Applications for Registration		
Received during Fiscal 1988		2,258[1]
Disposition of Applications:		
Registration Effected	1,533	
Returned	600	
Withdrawn	7	
Denied	0	
Total Applications disposed of		2,140
Total Pending as of September 30, 1988		118
Terminations of Registration		
Withdrawn	1,621	
Revoked	5	
Cancelled	265	
Total Terminations during Fiscal 1988		1,891
Total Registrations at end of Fiscal 1988		12,047[2]
Investment Advisers		
Applications for Registration		
Received during Fiscal 1988		3,638
Disposition of Applications		
Registration Effected	2,308	
Returned	1,109	
Withdrawn	5	
Denied	1	
Total Applications Disposed of		3,423
Total Pending as of September 30, 1988		215
Terminations of Registration:		
Withdrawn	1,058	
Revoked	6	
Cancelled	1,312	
Total Terminations at end of Fiscal 1988		2,376
Total Registrations at end of Fiscal 1988		14,464[2]

[1] This figure reflects resubmissions of returned filings as well as initial applications.

[2] This figure reflects improved accounting procedures

Table 10

APPLICATIONS AND REGISTRATIONS OF BROKERS, DEALERS, AND INVESTMENT ADVISERS

Fiscal Year 1988

Municipal Securities Dealers		
Applications for Registration		
Received during Fiscal 1988		19[1]
Disposition of Applications		
Registration Effected	14	
Returned	4	
Withdrawn	0	
Denied	0	
Total Applications disposed of		18
Total Pending as of September 30, 1988		1
Terminations of Registration:		
Withdrawn	13	
Revoked	0	
Cancelled	0	
Total Terminations during Fiscal 1988		13
Total Registrations at end of Fiscal 1988		342[2]
Transfer Agents		
Applications for Registration:		
Received during Fiscal 1988		136[1]
Disposition of Application:		
Registration Effected	110	
Returned	21	
Withdrawn	2	
Denied	0	
Total Applications Disposed of		133
Total Pending as of September 30, 1988		3
Terminations of Registration:		
Withdrawn	99	
Revoked	0	
Cancelled	39	
Total Terminations at end of Fiscal 1988		138
Total Registrations at end of Fiscal 1988		859[2]

[1] This figure reflects resubmissions of returned filings as well as initial applications.

[2] This figure reflects improved accounting procedures

Self-Regulatory Organizations: Expenses, Pre-Tax Income and Balance Sheet Structure

In 1987 the total revenues of self-regulatory organizations (SROs) with marketplace jurisdiction rose approximately $118.4 million to $896.6 million, an increase of 15.2% over 1986 (the 1986 increase was 21% over 1985). The New York Stock Exchange (NYSE), National Association of Securities Dealers (NASD), American Stock Exchange (Amex) and Chicago Board Options Exchange (CBOE) accounted for 79.2% of all SRO total revenues, up from 79.0% in 1986. The SROs' revenues are earned primarily from listing, trading, and market data fees. The NYSE reported total revenues of $349.4 million, of which 58.2% consisted of listing and trading fees, while 15.7% ($55 million) consisted of market data fees. The Amex reported total revenues of $114.5 million, the NASD reported $144.8 million and the CBOE reported $101.7 million. The NYSE experienced the largest magnitude increase in revenues ($53 million), while the Cincinnati Stock Exchange (CSE) experienced the largest percentage increase (46%) in revenues.

The total expenses of all marketplace SROs were $765.2 million in 1987, an increase of $117.7 million (18%) over 1986. The NYSE incurred the largest magnitude increase in expenses ($33.4 million), while the CSE experienced the largest percentage increase in total expenses (57%).

Aggregate total expenses increased commensurately with increases in aggregate total revenues. Accordingly, aggregate pre-tax income of these SROs remained virtually unchanged in 1987 at about $125.2 million. The NYSE experienced both the largest magnitude increase in pre-tax income ($68.3 million) and the largest percentage increase (40%) from 1986. The only other SRO that experienced a pre-tax income gain from 1986 levels was the CBOE, where pre-tax income increased $.88 million, a 5% increase from its 1986 level. The other marketplace SROs experienced a decline in pre-tax income. The NASD's decrease in pre-tax income of $7.69 million (−29%) from its 1986 level was the largest magnitude decrease in pre-tax income experienced by any marketplace SRO, while the Pacific Stock Exchange's (PSE's) 287% decrease (−$3.60 million) in pre-tax income was the largest percentage decrease in pre-tax income, with the PSE sustaining a loss, before taxes, of about $2.35 million. Only one other exchange, the CSE, experienced a loss. The Amex experienced a pre-tax income decrease of $4.01 million, or −20%, the Philadelphia Stock Exchange (Phlx) a decrease of $2.52 million, or −57%, and the Boston Stock Exchange a decrease of $70 thousand or −5%. The Midwest Stock Exchange experienced a decrease in pre-tax income of $2.64 million, a decrease of 57% from 1986. Finally, at the CSE 1987 pre-tax income decreased $128,000 (−57%), while at the Spokane Stock Exchange 1987 pre-tax income decreased $9,000 (−38%).

The total assets of all marketplace SROs were $1,286 million in 1987, a decrease of 17% from 1986. The largest amount of increase in total assets was experienced at the NYSE, where total assets increased $80.2 million (23%) from 1986 to 1987. The total assets of the NASD and the CSE also increased significantly, while the Phlx and the PSE experienced significant asset decreases from 1986 levels.

The aggregate net worth of the marketplace SROs rose to $546.4 million in 1987 from $474.7 million in 1986, an increase of 15%. The NASD and the PSE both experienced declines in their net worth, while all other SROs experienced positive growth in their net worth, with the CSE as the largest

percentage gainer at 281%. The NYSE's net worth increased by 18% from $184.8 million to $218.9 million.

Aggregate clearing agency service revenue increased by 24 percent, or $68 million, in 1987 due to increases in securities trading volume and additional use of depository services. Total depository service revenue increased $44 million primarily due to a $39 million gain by the Depository Trust Company (DTC), a $5 million gain by the Midwest Securities Trust Company (MSTC) and a $5 million increase at the MBS Clearing Corporation (MBSCC), a new registrant organized to service the mortgage-backed securities industry. Service revenue of clearing corporations increased almost $24 million, largely because of increases of $10 million at the National Securities Clearing Corporation (NSCC) and almost $8 million at the Options Clearing Corporation (OCC).

Total depository pre-tax income was down $8.5 million. The main reason was MBSCC's pre-tax loss of $7.5 million, owing to a reorganization of its depository division and its contemplated conversion to a limited purpose trust company. In addition, DTC earned $2.5 million less than the previous year, when it retained fees in order to increase shareholders' equity. DTC, as with all clearing agencies, adjusts refunds of fees and its fee structure to provide the amount of earnings which it wishes to retain.

The depositories continued to expand their base for service revenues by increasing the number of shares on deposit and the face value of debt securities in custody. At the end of 1987, the total value of securities in the depository system reached $3 trillion, of which DTC alone held over $1.8 trillion, not including some $1 trillion in certificates held by transfer agents as DTC's agent. This movement of certificates into depositories was due to further expansion of depository-eligible issues and the desire of participants to avail themselves of depository services. The MSTC had 642,000 eligible issues at year-end, up 19%, and DTC had some 491,000, up 32%. The major portion of the increase in securities placed in depositories was in debt issues, particularly municipal bonds, which increased 33%, to more than two-thirds of the principal amount of all municipal bonds currently outstanding in the United States.

The clearing corporations recorded an aggregate increase in pre-tax income of almost $1.5 million. NSCC posted a pre-tax earnings decrease of $3.3 million, OCC recorded an increase of $2.3 million, and the newly registered MBS Clearing Corporation (MBSCC) had a gain of $4 million in its clearing division's pre-tax income.

In April 1987, the PSE announced the closure of the clearance and depository functions not essential to PSE's trading operations. As a result, $47 billion of securities were moved to DTC's custody at midyear. NSCC now processes almost all of PSE's clearing volume. The Pacific Clearing Corporation (PCC) incurred a pre-tax loss of $2.6 million after a loss of $344,000 in 1986. Half of the 1987 loss resulted from costs of discontinued operations. The Pacific Securities Depository Trust Company (PSDTC) reported pre-tax income of $517,000 versus a pre-tax loss of $291,000 in 1986. The combined stockholders' equity of PCC and PSDTC was $45,000 after PSE converted $2.4 million of PCC debt to PSE into contributed capital. PSE members' equity totaled $14.4 million at the end of 1987.

The aggregate net worth of all clearing corporations and depositories rose by $6.6 million to a new high of over $45 million. In addition to the increase in net worth, participant clearing fund contributions increased by $123 million, or 16%. These funds provide protection to the clearing agencies in the

event of a participant default by means of a pro-rata charge against the clearing fund. The OCC's fund absorbed a loss of $6.8 million due to the default of a clearing member resulting from the extraordinary market events of October 1987. The default assessment was the first ever against non-failing participants' contributions. Despite this loss, the OCC participants' clearing fund increased 39% to $292 million.

Table 11

CONSOLIDATED FINANCIAL INFORMATION OF SELF-REGULATORY ORGANIZATIONS
1984–1987

(Thousands of Dollars)

	Amex[1]	BSE[2]	CBOE[3]	CSE[1]	ISE[4]	MSE[1]	NASD[2]	NYSE[1]	PHLX[1]	PSE[1]	SSE[1]	Total
Total Revenues												
1984	$ 75,775	$ 8,001	$ 54,812	$ 987	$23	$ 45,505	$ 91,478	$223,301	$ 38,645	$ 21,161	$56	$ 559,754
1985	$ 84,503	$ 9,221	$ 71,889	$1,239	$23	$ 57,081	$ 97,343	$257,706	$ 41,903	$ 24,100	$61	$ 645,069
1986	$102,252	$11,160	$ 93,816	$1,526	—	$ 71,576	$124,501	$296,364	$ 46,591	$ 30,376	$82	$ 778,244
1987	$114,490	$13,044	$101,669	$2,268	—	$ 88,625	$144,777	$349,400	$ 33,376	$ 48,921	$78	$ 896,648
Total Expenses												
1984	$ 61,665	$ 7,423	$ 53,405	$1,762	$19	$ 39,889	$ 71,896	$207,086	$ 37,892	$ 19,168	$36	$ 500,241
1985	$ 69,465	$ 7,971	$ 62,641	$1,312	$20	$ 54,617	$ 83,890	$222,007	$ 40,113	$ 22,031	$57	$ 564,124
1986	$ 77,709	$ 9,673	$ 75,325	$1,432	—	$ 66,562	$ 97,932	$247,749	$ 45,184	$ 25,937	$57	$ 647,560
1987	$ 92,825	$11,627	$ 82,295	$2,283	—	$ 86,397	$125,896	$281,100	$ 31,455	$ 51,266	$63	$ 765,207
Pre-Tax Income												
1984	$ 9,267	$ 588	$ 1,406	($ 775)	$ 8	$ 5,383	$ 19,582	$ 16,215	($ 759)	$ 1,994	$19	$ 52,928
1985	$ 9,596	$ 637	$ 9,247	($ 37)	$ 7	$ 1,910	$ 13,453	$ 35,699	$ 1,113	$ 2,069	$ 4	$ 73,698
1986	$ 19,675	$ 1,486	$ 18,491	$ 113	—	$ 4,664	$ 26,569	$ 48,615	$ 1,251	$ 4,439	$24	$ 125,327
1987	$ 15,662	$ 1,417	$ 19,373	($ 15)	—	$ 2,028	$ 18,881	$ 68,300	$ 1,919	($ 2,345)	$15	$ 125,235
Total Assets												
1984	$ 66,329	$ 8,317	$ 88,152	$ 694	$51	$136,994	$ 93,363	$272,639	$114,740	$ 46,219	$40	$ 827,538
1985	$ 74,937	$12,262	$ 95,539	$ 704	$57	$346,484	$108,658	$327,075	$126,966	$ 94,968	$43	$1,187,693
1986	$ 92,948	$12,856	$109,707	$ 992	—	$482,116	$138,245	$354,959	$241,917	$122,835	$65	$1,556,640
1987	$103,259	$15,904	$118,713	$1,295	—	$309,209	$165,027	$435,204	$ 69,371	$ 68,259	$77	$1,286,318
Total Liabilities												
1984	$ 16,122	$ 6,614	$ 53,748	$ 583	$ 1	$118,290	$ 19,888	$128,010	$101,748	$ 30,269	$ 4	$ 475,277
1985	$ 18,927	$ 9,920	$ 56,060	$ 630	$ 2	$326,161	$ 22,154	$164,286	$113,003	$ 75,712	$ 4	$ 786,859
1986	$ 26,099	$ 9,804	$ 60,221	$ 757	—	$459,159	$ 28,039	$170,119	$227,039	$100,653	$ 5	$1,081,895
1987	$ 28,103	$11,995	$ 59,632	$ 552	—	$284,853	$ 39,005	$216,219	$ 45,711	$ 53,856	$ 5	$ 739,931
Net Worth												
1984	$ 50,207	$ 1,702	$ 34,434	$ 111	$49	$ 18,704	$ 73,475	$144,629	$ 12,992	$ 15,950	$36	$ 352,289
1985	$ 56,010	$ 2,343	$ 39,478	$ 75	$55	$ 20,323	$ 86,534	$162,789	$ 13,963	$ 19,256	$43	$ 400,869
1986	$ 66,849	$ 3,052	$ 49,486	$ 195	—	$ 22,957	$110,206	$184,840	$ 14,878	$ 22,182	$60	$ 474,705
1987	$ 75,156	$ 3,909	$ 59,081	$ 743	—	$ 24,356	$126,022	$218,985	$ 23,660	$ 14,403	$73	$ 546,388

[1] Fiscal year ending December 31.
[2] Fiscal year ending September 30
[3] Fiscal year ending June 30
[4] The Intermountain Stock Exchange became inactive on October 31, 1986, and was unable to provide information for 1986 and 1987

Sources: SRO Annual Reports and Consolidated Financial Statements

Table 12
SELF-REGULATORY ORGANIZATIONS—CLEARING AGENCIES
1987 REVENUES and EXPENSES [1]

(thousands of dollars)

	Boston Stock Exchange Clearing Corporation 9/30/87	Depository Trust Company 12/31/87	MBS Clearing Corporation 12/31/87	Midwest Clearing Corporation 12/31/87	Midwest Securities Trust Company 12/31/87	National Securities Clearing Corporation 12/31/87 [2]	Options Clearing Corporation 12/31/87	Pacific Clearing Corporation 12/31/87 [3]	Pacific Securities Depository Trust Company 12/31/87 [3]	Philadelphia Depository Trust Company 12/31/87	Stock Clearing of Philadelphia 12/31/87	Total
Revenues												
Clearing services	$4,540		$ 4,783	$ 9,688		$ 72,335	$ 37,020	$ 6,221			$2,280	$136,867
Depository services		$164,479	3,210		$33,785				$5,410	$7,539		214,423
Interest	359	69,358	152	3,243	2,556	3,990	1,987	118	3,268	519	461	86,010
Other	149		1,766		2,053		10,849	7	165		504	15,493
Total revenues [4]	5,049	233,837	9,911	12,931	38,394	76,325	49,856	6,346	8,843	8,057	3,245	452,793
Expenses												
Employee costs	716	131,873	2,724	4,688	12,633	10,066	18,138	3,055	3,072	3,537	1,358	191,860
Data processing and communications costs	1,967	20,168	2,767	2,059	2,305	39,761	7,498	2,497	495	3,405	1,102	84,023
Occupancy costs	401	27,407	1,200	1,550	3,894	2,106	4,659	745	449	370	153	42,734
Contracted services cost	431		3,013		5,760	15,464						24,668
Costs of Discontinued Operations								1,374	2,303			3,677
All other expenses	129	53,889	3,616	2,625	13,332	5,743	17,325	1,248	2,007	449	120	100,483
Total expenses	3,644	233,337	13,320	10,922	37,724	73,140	47,620	8,919	8,326	7,761	2,733	447,445
Excess of revenues over expenses [5]	$1,405	$ 500	$ (3,409)	$ 2,009	$ 670	$ 3,185	$ 2,236	$(2,573)	$ 517	$ 296	$ 512	$ 5,348
Participant default							$ 6,764					$ 6,764
Shareholders' Equity	$2,844	$ 15,003	$ (917)	$ 4,540	$ 3,586	$ 10,688	$ 5,830	$ (45)	$ 815	$1,285	$1,861	$ 45,490
Clearing Fund:												
Depository		$224,174	$ 750		$14,913				$1,821	$ 577		$242,235
Option Clearing							$292,276					$292,276
Equity Clearing	$ 785		$36,620	$ 7,623		$329,981		$ 2,688			$3,647	$381,544

[1] Although efforts have been made to make the presentations comparable, any single revenue or expense category may not be completely comparable between any two clearing agencies because of (i) the varying classification methods employed by the clearing agencies in reporting operating results and (ii) the grouping methods employed by the Commission staff due to these varying classification methods.

[2] The consolidated financial statements of NSCC includes the International Securities Clearing Corporation ("ISCC"), a wholly owned subsidiary of NSCC.

[3] The Pacific Stock Exchange forgave PCC and PSDTC their allocated cost for administrative and financial services provided them by the PSE. Had these charges not been forgiven, PCC and PSDTC's expenses would have been greater by $1,506,000 and $3,900,000, respectively. The PSE transferred revenue from equities trading to PCC and PSDTC to more equitably reflect the revenues earned by each line of the business; this increased service revenues by $797,000 and $326,000, respectively. In April 1987, the Board of Governors of the PSE authorized the closure of PCC and PSDTC.

[4] Revenues are net of refunds which have the effect of reducing a clearing agency's base fee rates.

[5] This is the result of operations and before the effect of income taxes, which may significantly impact a clearing agency's net income.

Table 13

MUNICIPAL SECURITIES RULEMAKING BOARD STATEMENTS OF REVENUES AND EXPENSES AND CHANGES IN FUND BALANCE

for the years ended September 30, 1988 and 1987

	1988	1987
Revenues:		
Assessment fees	$1,044,489	$2,201,829
Annual fees	278,500	264,500
Initial fees	30,600	29,400
Investment income	307,787	337,292
Board manuals and other	55,423	90,016
	1,716,799	2,923,037
Expenses:		
Salaries and employee benefits	881,735	796,048
Board and committee	674,644	476,329
Operations	427,492	424,080
Education and communication	332,137	338,296
Professional services	119,598	141,546
Depreciation and amortization	85,021	58,014
	2,520,627	2,232,313
Excess of revenues over (under) expenses	(803,828)	690,724
Fund balance, beginning of year	5,115,465	4,424,741
Fund balance, end of year	$4,311,637	$5,115,465

Source: MSRB 1988 Annual Report. See that report for pertinent notes to the financial statements

Exemptions

Section 12(h) Exemptions

Section 12(h) of the Exchange Act authorizes the Commission to grant a complete or partial exemption from the registration provisions of Section 12(g) or from other disclosure or insider trading provisions of the Act where such exemption is consistent with the public interest and the protection of investors.

For the year beginning October 1, 1987 one application was pending and an additional twenty four applications were filed during the year. One of these applications was granted. Twenty four applications were pending at the end of the year.

Exemptions For Foreign Private Issuers

Rule 12g3-2 provides various exemptions from the registration provisions of Section 12(g) of the Exchange Act for the securities of foreign private issuers. Perhaps the most important of these is that contained in subparagraph (b) which provides an exemption for certain foreign issuers which submit, on a current basis, the material specified in the rule. Such material includes that information about which investors ought reasonably to be informed and which the issuer: (1) has made public pursuant to the law of the country in which it is incorporated or organized; (2) has filed with a foreign stock exchange on which its securities are traded and which was made public by such exchange; and (3) has distributed to its security holders. Periodically, the Commission publishes a list of those foreign issuers which appear to be current under the exemptive provision. The most current list is as of July 13, 1988, and contains a total of 1,040 foreign issuers.

FINANCIAL INSTITUTIONS

There were 3,497 companies registered under the Investment Company Act of 1940 as of September 30, 1988. New registrations totaled 338, with 124 registrations being terminated during the fiscal year. This compares with 1987 fiscal year figures of 3,305 total registrations, 505 new registrations and 74 terminations.

Table 14

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940

As of September 30, 1988

	New Registrations During FY '88	Terminations During FY '88	Approximate Market Value of Asset of Active Companies (Billions)*
Management Open-End (Mutual Funds) (Non-Insurance Company)	194	90	$ 806
Management Closed-End:			40
SBIC's	3	1	8
All others	87	13	
Sub-Total	90	14	
*Unit Investment Trust (Non-Insurance Company)	53	20	130
Face Amount Certificates	1	0	2
Insurance company, both open-end management and unit investment trust	0	0	116
TOTALS for Fiscal '88	338	124	$1,102

Total Number of Active Registered Investment Companies as of September 30, 1988: 3,497

There are approximately 269 inactive companies registered. Inactive refers to registered companies which as of September 30, 1988, were in the process of being liquidated or merged, or have filed an application pursuant to Section 8(f) of the Act of deregistration, or which have otherwise gone out of existence and remain only until such time as the Commission issues an order under Section 8(f) terminating their registration.

* The approximate market value of assets was calculated using various published services as well as staff estimates.

Table 15

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940

Since (1941)

Fiscal year ended September 30	Registered at beginning of year	Registered during year	Registration terminated during year	Registered at end of year	Approximate market value of assests of active companies (millions)
1941	0	450	14	436	$ 2,500
1942	436	17	46	407	2,400
1943	407	14	31	390	2,300
1944	390	18	27	371	2,200
1945	371	14	19	366	3,250
1946	366	13	18	361	3,750
1947	361	12	21	352	3,600
1948	352	18	11	359	3,825
1949	359	12	13	358	3,700
1950	358	26	18	366	4,700
1951	366	12	10	368	5,600
1952	368	13	14	367	6,800
1953	367	17	15	369	7,000
1954	369	20	5	384	8,700
1955	384	37	34	387	12,000
1956	387	46	34	399	14,000
1957	399	49	16	432	15,000
1958	432	42	21	453	17,000
1959	453	70	11	512	20,000
1960	512	67	9	570	23,500
1961	570	118	25	663	29,000
1962	663	97	33	727	27,300
1963	727	48	48	727	36,000
1964	727	52	48	731	41,600
1965	731	50	54	727	44,600
1966	727	78	30	775	49,800
1967	755	108	41	842	58,197
1968	842	167	42	967	69,732
1969	967	222	22	1,167	72,465
1970	1,167	187	26	1,328	56,337
1971	1,328	121	98	1,351	78,109
1972	1,351	91	108	1,334	80,816
1973	1,334	91	64	1,361	73,149
1974	1,361	106	90	1,377	62,287
1975	1,377	88	66	1,399	74,192
1976	1,399	63	86	1,376	80,564
1977*	1,403	91	57	1,437	76,904
1978	1,437	98	64	1,471	93,921
1979	1,471	83	47	1,507	108,572
1980	1,507	136	52	1,591	155,981
1981	1,591	172	80	1,683	193,362
1982	1,683	305	45	1,944	281,644
1983	1,944	287	50	2,181	330,458
1984	2,181	256	54	2,331	250,321
1985	2,331	299	47	2,583	525,000
1986	2,583	422	44	3,074	742,000
1987**	3,074	505	74	3,305	1,210
1988	3,305	338	124	3,497	1,102

* Began Fiscal Year Ending September 30, 1977

** Figures Changed to Billions

SECURITIES ON EXCHANGES

Market Value and Share Volume

The market value of equity/option transactions (trading in stocks, options, warrants and rights) on registered exchanges totaled $2.5 trillion in 1987. Of this total, $2.3 trillion, or 92 percent, represented the market value of transactions in stocks, rights and warrants and $204.8 billion or eight percent in equity (including exercises) and non-equity options transactions. The value of equity/option transactions on the New York Stock Exchange (NYSE) was $2.0 trillion, up 37 percent from the previous year. The market value of such transactions rose 62 percent to $101.6 billion on the American Stock Exchange (Amex) and increased 14 percent to $403.6 billion on all other exchanges. The volume of trading in stocks on all registered exchanges totaled 63.8 billion shares in 1987, a 32 percent increase over the previous year, with 83 percent of the total accounted for by trading on the NYSE.

The volume of options contracts traded on options exchanges (excluding exercises) was 305.1 million contracts in 1987, five percent higher than in 1986. The market value of these contracts increased 35 percent to $118.9 billion. The volume of contracts executed on the Chicago Board Options Exchange increased one percent to 182.1 million; option trading on the Amex went up eight percent; contract volume on the Philadelphia Stock Exchange rose 19 percent; and option trading on the Pacific Stock Exchange increased 38 percent.

Table 16 A

MARKET VALUE OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES [1]

(Thousands of Dollars)

		Total Market Value	Stocks [2]	Warrants	Rights	Equity Options Traded	Equity Options Exercised	Non-Equity Options [5,6]
All Registered Exchanges for Past Six Years								
Calendar Year	1982	$ 693,850,963	$ 602,669,878	$ 423,236	$ 1,152	$53,659,796	$37,046,803	$ 50,098
	1983	1,082,241,196	957,139,047	1,162,124	2,997	59,598,740 [3]	59,714,431	4,623,857
	1984	1,059,716,263	950,654,453	430,292	9,754	33,822,259	55,640,028	19,159,477
	1985	1,308,353,791	1,199,419,614	744,715	25,162	29,952,739	49,182,980	29,028,581
	1986	1,867,887,058	1,705,123,953	1,663,395	359,764	40,054,282	72,827,859	47,887,805
	1987	$2,491,720,836	$2,284,165,520	$2,713,954	$ 23,314	$53,123,325	$85,946,102	$65,748,621
Breakdown of 1987 Data by Registered Exchanges [7]								
All Registered Exchanges								
American Stock Exchange		$ 101,559,664	$ 52,548,101	$ 616,613	$ 1,578	$16,536,452	$22,649,215	$ 9,187,705
Boston Stock Exchange		30,449,667	30,449,667	0	0	0	0	0
Cincinnati Stock Exchange		7,986,792	7,986,792	0	0	0	0	0
Midwest Stock Exchange		121,622,117	121,622,117	0	0	0	0	0
New York Stock Exchange		1,986,549,119	1,983,311,276	1,498,107	20,252	407,229	839,785	472,470
Pacific Stock Exchange		71,388,327	57,406,801	544,740	1,484	5,612,648	7,572,141	250,513
Philadelphia Stock Exchange		47,761,828	30,810,930	54,494	0	4,733,648	7,402,330	4,760,427
Spokane Stock Exchange		29,836	29,836	0	0	0	0	0
Chicago Board Options [3]		$ 124,393,486	$ 0	$ 0	$ 0	$25,833,348	$47,482,631	$51,077,507

Note For footnotes see Table 16 B This table has been changed to more meaningfully reflect current changes in the market

Table 16 B

VOLUME OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES [1]

(Data in Thousands)

	Stocks [2] (Shares)	Warrants (Units)	Rights (Units)	Equity Options Traded (Contracts)	Equity Options Exercised [4] (Contracts)	Non-Equity Options [5,6] (Contracts)
All Registered Exchanges For Past Six Years						
Calendar Year: 1982	22,423,023	56,053	21,500	137,266	9,202	41
1983	30,146,335	157,942	11,737	134,286 [3]	13,629	14,399
1984	30,456,010	77,452	13,924	118,925	11,917	77,512
1985	37,046,010	108,111	33,547	118,553	10,512	114,190
1986	48,337,694	195,501	47,329	141,931	14,545	147,234
1987	63,770,625	238,357	74,014	164,432	17,020	140,698
Breakdown of 1987 Data by Registered Exchanges						
All Registered Exchanges						
‡American Stock Exchange	2,496,326	69,400	2,092	52,771	5,188	18,179
‡Boston Stock Exchange	819,833	0	0	0	0	0
*Cincinnati Stock Exchange	194,429	0	0	0	0	0
Midwest Stock Exchange	3,329,056	0	0	0	0	0
*New York Stock Exchange	53,037,522	134,364	71,515	1,306	157	2,193
Pacific Stock Exchange	2,033,856	32,996	407	18,952	2,106	459
‡Philadelphia Stock Exchange	834,588	1,597	0	18,088	1,932	11,067
Spokane Stock Exchange	25,015	0	0	0	0	0
*Chicago Board Options [3]	0	0	0	73,315	7,637	108,799

Figures may not sum due to rounding

N.A = Not Available

‡ Data of those exchanges marked with an asterisk cover transactions cleared during the calendar month, clearance usually occurs within five days of the execution of a trade Data of other exchanges cover transactions with effect trade dates falling within the reporting month

[1] Data on the value and volume of equity security sales are reported in connection with fees paid under Section 31 of the Securities Exchange Act of 1934 as amended by the Securities Acts Amendments of 1975 They cover odd-lot as well as round-lot transactions.

[2] Includes voting trust certificates, certificates of deposit for stocks, and American Depositary Receipts for stocks but excludes rights and warrants

[3] Data for June 1, 2, and 3, 1983 are not included

[4] Exercised contracts do not include January and February 1985 data

[5] Includes all exchange trades of call and put options in stock indices, interest rates and foreign currencies

[6] Trading in non-equity options began in October 22, 1982

[7] Total market value for individual exchanges does not include data for equity options exercised.

Source SEC Form R-31 and Options Clearing Corporation Statistical Report.

NASDAQ (Volume and Market Value)

NASDAQ share volume and market value information for over-the-counter trading has been reported on a daily basis since November 1, 1971. At the end of 1987 there were 5,537 issues in the NASDAQ system. Volume for 1987 was 37.9 billion shares, up 32 percent from the 28.7 billion shares traded in the previous year. It was the highest volume in NASDAQ's 15-year history. This trading volume encompasses the number of shares bought and sold by market-makers plus their net inventory changes. The market value of shares traded in the NASDAQ system was $499.9 billion at the end of 1987, the highest ever.

Share and Dollar Volume by Exchange

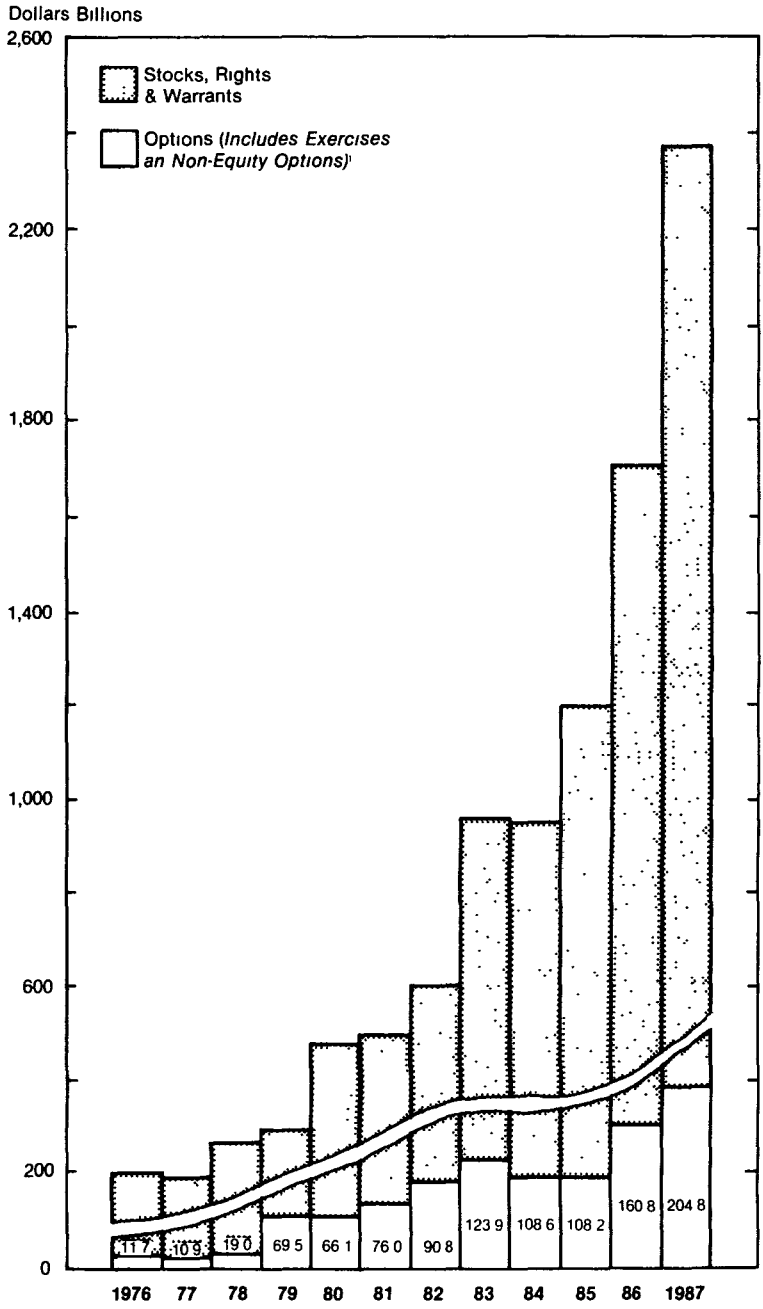
Share volume on all registered exchanges totaled 63.8 billion, an increase of 32 percent from the previous year. The New York Stock Exchange accounted for 83 percent of the 1987 share volume; the American Stock Exchange, six percent; the Midwest Stock Exchange, five percent; and the Pacific Stock Exchange, three percent.

The market value of stocks, rights and warrants traded was $2.3 trillion, 34 percent over the previous year. Trading on the New York Stock Exchange contributed 87 percent of the total. The Midwest Stock Exchange and Pacific Stock Exchange contributed five percent and three percent, respectively. The American Stock Exchange accounted for two percent of dollar volume.

Table 17

Market Value of Equity/Options

Traded On All U.S. Securities Exchanges



¹Includes equity options exercised as of 1/1/80, non-equity options as of 10/22/82

Table 18

SHARE VOLUME BY EXCHANGES [1]

In Percentage

Year	Total Share Volume (Thousands)	NYSE	AMEX	MSE	PSE	PHLX	BSE	CSE	Other [2]
1945	769,018	65.87	21.31	1.77	2.98	1 06	0.66	0 05	6.30
1950	893,320	76.32	13.54	2.16	3 11	0.97	0 65	0.09	3 16
1955	1,321,401	68.85	19.19	2.09	3 08	0 85	0.48	0.05	5.41
1960	1,441,120	68 47	22.27	2.20	3.11	0 88	0.38	0 04	2 65
1961	2,142,523	64.99	25.58	2 22	3.41	0 79	0 30	0 04	2 67
1962	1,711,945	71.31	20.11	2.34	2.95	0.87	0.31	0 04	2.07
1963	1,880,793	72.93	18.83	2 32	2.82	0 83	0.29	0.04	1 94
1964	2,118,326	72.81	19.42	2.43	2.65	0 93	0.29	0 03	1.44
1965	2,671,012	69 90	22.53	2.63	2.33	0.81	0.26	0 05	1 49
1966	3,313,899	69.38	22.84	2.56	2 68	0 86	0.40	0 05	1.23
1967	4,646,553	64.40	28.41	2.35	2.46	0.87	0 43	0.02	1 06
1968	5,407,923	61.98	29.74	2.63	2 64	0.89	0.78	0 01	1 33
1969	5,134,856	63.16	27.61	2.84	3.47	1 22	0 51	0.00	1.19
1970	4,834,887	71.28	19.03	3.16	3 68	1.63	0.51	0.02	0.69
1971	6,172,668	71.34	18 42	3.52	3.72	1 91	0.43	0 03	0 63
1972	6,518,132	70.47	18 22	3.71	4.13	2.21	0 59	0.03	0.64
1973	5,899,678	74.92	13.75	4.09	3.68	2 19	0 71	0 04	0.62
1974	4,950,842	78 47	10.28	4.40	3.48	1 82	0 86	0 05	0 64
1975	6,376,094	80 99	8.97	3.97	3 26	1 54	0.85	0 13	0 29
1976	7,129,132	80.05	9.35	3 87	3.93	1 42	0 78	0 44	0.16
1977	7,124,640	79.71	9.56	3.96	3.72	1 49	0.66	0 64	0 26
1978	9,630,065	79.53	10.65	3 56	3.84	1.49	0.60	0.16	0.17
1979	10,960,424	79.88	10.85	3.30	3.27	1.64	0.55	0.28	0 23
1980	15,586,986	79.94	10.78	3.84	2.80	1 54	0.57	0 32	0 21
1981	15,969,186	80.68	9.32	4.60	2.87	1 55	0.51	0 37	0 10
1982	22,491,935	81.22	6.96	5.09	3.62	2 18	0.48	0.38	0.07
1983	30,316,014	80.37	7.45	5.48	3.56	2 20	0.65	0.19	0.10
1984	30,548,014	82.54	5.26	6.03	3.31	1.79	0.85	0 18	0 04
1985	37,187,567	81 52	5.78	6.12	3.66	1.47	1.27	0.15	0 03
1986	48,580,524	81.12	6.28	5.73	3.68	1.53	1.33	0 30	0 02
1987	64,082,996	83 09	5.57	5.19	3.23	1.30	1.28	0.30	0 04

r = revised

[1] Share volume for exchanges includes stocks, rights, and warrants.

[2] Includes all exchanges not listed individually

Source: SEC Form R-31

Table 19

DOLLAR VOLUME BY EXCHANGES [1]

In Percentage

Year	Total Dollar Volume (Thousands)	NYSE	AMEX	MSE	PSE	PHLX	BSE	CSE	Other [2]
1945	16,284,552	82 75	10.81	2.00	1.78	0 96	1 16	0.06	0 48
1950	21,808,284	85.91	6.85	2.35	2.19	1.03	1 12	0 11	0.44
1955	38,039,107	86 31	6.98	2.44	1.90	1 03	0.78	0 09	0.47
1960	45,309,825	83.80	9.35	2.72	1 94	1 03	0 60	0.07	0.49
1961	64,071,623	82.43	10.71	2.75	1.99	1.03	0.49	0.07	0 53
1962	54,855,293	86.32	6.81	2 75	2.00	1.05	0.46	0 07	0.54
1963	64,437,900	85.19	7 51	2 72	2.39	1.06	0.41	0.06	0.66
1964	72,461,584	83 49	8.45	3 15	2.48	1 14	0.42	0.06	0 81
1965	89,549,093	81.78	9.91	3.44	2.43	1.12	0 42	0 08	0.82
1966	123,697,737	79.77	11 84	3 14	2.84	1 10	0.56	0.07	0.68
1967	162,189,211	77.29	14.48	3.08	2.79	1 13	0.66	0.03	0.54
1968	197,116,367	73 55	17.99	3 12	2.65	1 13	1.04	0.01	0 51
1969	176,389,759	73 48	17 59	3.39	3.12	1 43	0.67	0.01	0.31
1970	131,707,946	78.44	11 11	3.76	3.81	1 99	0.67	0.03	0.19
1971	186,375,130	79.07	9.98	4.00	3.79	2.29	0 58	0 05	0.24
1972	205,956,263	77.77	10.37	4.29	3 94	2.56	0.75	0.05	0.27
1973	178,863,622	82.07	6 06	4.54	3.55	2.45	1.00	0 06	0.27
1974	118,828,270	83.63	4.40	4.90	3.50	2.03	1.24	0 06	0.24
1975	157,256,676	85.20	3.67	4.64	3.26	1.73	1 19	0 17	0.14
1976	195,224,812	84 35	3.88	4.76	3.83	1 69	0.94	0.53	0 02
1977	187,393,084	83.96	4.60	4.79	3.53	1 62	0.74	0.75	0 01
1978	251,618,179	83.67	6.13	4.16	3.64	1.62	0.61	0.17	0.00
1979	300,475,510	83.72	6 94	3.83	2.78	1 80	0.56	0.35	0 02
1980	476,500,688	83.53	7.33	4.33	2.27	1.61	0 52	0.40	0.01
1981	491,017,139	84.74	5.41	5 04	2.32	1.60	0.49	0.40	0.00
1982	603,094,266	85.32	3 27	5.83	3.05	1 59	0 51	0.43	0.00
1983	958,304,168	85.13	3.32	6.28	2.86	1.55	0.66	0.16	0 04
1984	951,318,448	85.61	2.26	6 57	2.93	1.58	0.85	0 19	0.00
1985	1,200,127,848	85 25	2.23	6 59	3.06	1.49	1.20	0 18	0.00
1986	1,707,117,112	85 02	2.56	6.00	3.00	1 57	1.44	0.41	0.00
1987	2,286,902,788	86.79	2.32	5.32	2.53	1.35	1.33	0.35	0.00

r = revised

[1] Dollar volume for exchanges includes stocks, rights and warrants.

[2] Includes all exchanges not listed individually

Source: SEC Form R-31

Special Block Distribution

In 1987, there was one special block distribution with a value of $554.4 million, a decline from 12 special block distributions during 1986.

Table 20
SPECIAL BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES
(Value In Thousands)

	Secondary Distributions			Exchange Distributions			Special Offerings		
	Number	Shares Sold	Value	Number	Shares Sold	Value	Number	Shares Sold	Value
1945	115	9,457,358	$ 191,961	0	$ 0	0	79	947,231	$29,878
1946	100	6,481,291	232,398	0	0	0	23	308,134	11,002
1947	73	3,961,572	124,671	0	0	0	24	314,270	9,133
1948	95	7,302,420	175,991	0	0	0	21	238,879	5,466
1949	86	3,737,249	104,062	0	0	0	32	500,211	10,956
1950	77	4,280,681	88,743	0	0	0	20	150,308	4,940
1951	88	5,193,756	146,459	0	0	0	27	323,013	10,751
1952	76	4,223,258	149,117	0	0	0	22	357,897	9,931
1953	68	6,906,017	108,229	0	0	0	17	380,680	10,486
1954	84	5,738,359	218,490	57	705,781	24,664	14	189,772	6,670
1955	116	6,756,767	344,871	19	258,348	10,211	9	161,850	7,223
1956	146	11,696,174	520,966	17	156,481	4,645	8	131,755	4,557
1957	99	9,324,599	339,062	33	390,832	15,855	5	63,408	1,845
1958	122	9,508,505	361,886	38	619,876	29,454	5	88,152	3,286
1959	148	17,330,941	822,336	28	545,038	26,491	3	33,500	3,730
1960	92	11,439,065	424,688	20	441,644	11,108	3	63,663	5,439
1961	130	19,910,013	926,514	33	1,127,266	58,072	2	35,000	1,504
1962	59	12,143,656	658,780	41	2,345,076	65,459	2	48,200	588
1963	100	18,937,935	814,984	72	2,892,233	107,498	0	0	0
1964	110	19,462,343	909,821	68	2,553,237	97,711	0	0	0
1965	142	31,153,319	1,603,107	57	2,334,277	86,479	0	0	0
1966	126	29,045,038	1,523,373	52	3,042,599	118,349	0	0	0
1967	143	30,783,604	1,154,479	51	3,452,856	125,404	0	0	0
1968	174	36,110,489	1,571,600	35	2,669,938	93,528	1	3,352	63
1969	142	38,224,799	1,244,186	32	1,708,572	52,198	0	0	0
1970	72	17,830,008	504,562	35	2,066,590	48,218	0	0	0
1972	229	82,365,749	3,216,126	26	1,469,666	30,156	0	0	0
1973	120	30,825,890	1,151,087	19	802,322	9,140	91	6,662,111	79,889
1974	45	7,512,200	133,838	4	82,200	6,836	33	1,921,755	16,805
1975	51	34,149,069	1,409,933	14	483,846	8,300	14	1,252,925	11,521
1976	44	20,568,432	517,546	16	752,600	13,919	22	1,475,842	18,459
1977	39	9,848,986	261,257	6	295,264	5,242	18	1,074,290	14,519
1978	37	15,233,141	569,487	3	79,000	1,429	3	130,675	1,820
1979	37	10,803,680	192,258	3	1,647,600	86,066	6	368,587	4,708
1980	44	24,979,045	813,542	2	177,900	5,101	4	434,440	7,097
1981	43	16,079,897	449,600	0	0	0	0	0	0
1982	76	40,024,988	1,284,492	0	0	0	3	717,000	11,112
1983	85	70,800,731	2,245,465	0	0	0	0	0	0
1984	23	21,180,207	680,543	0	0	0	0	0	0
1985	12	25,458,047	856,917	0	0	0	0	0	0
1986	12	16,747,273	661,407	0	0	0	0	0	0
1987	1	9,424,800	$ 554,400	0	$ 0	0	0	0	$ 0

Source: NYSE and AMEX

Value and Number of Securities Listed on Exchanges

The market value of stocks and bonds listed on U.S. exchanges at the end of 1987 was $3.8 trillion, an increase of three percent over the previous year. The market value of stocks was $2.2 trillion, about the same as a year earlier. The value of listed bonds increased 11 percent. Stocks listed on the New York Stock Exchange had a market value of $2.1 trillion and represented 97 percent of the value of common and preferred stocks listed on registered exchanges. Those listed on the American Stock Exchange accounted for almost all of the remaining three percent of the total and were valued at $67.0 billion, a decrease of five percent over the previous year.

Table 21
SECURITIES LISTED ON EXCHANGES [1]
December 31, 1987

EXCHANGE	COMMON		PREFERRED		BONDS		TOTAL SECURITIES	
Registered:	Number	Market Value (Million)	Number	Market Value (Million)	Number	Market Value (Million)	Number	Market Value (Million)
American	823	$ 63,767	103	$ 3,242	319	$ 18,922	1,245	$ 85,931
Boston	115	2,234	0	0	3	8	118	2,242
Cincinnati	4	151	2	1	6	92	12	244
Midwest	7	489	3	14	0	0	10	503
New York	1,539	2,088,675	635	43,483	3,257	1,611,321	5,431	3,743,479
Pacific	60	1,570	36	916	95	2,407	191	4,893
Philadelphia	48	360	14	194	44	3	106	557
Spokane	34	19	0	0	0	0	34	19
Total	2,630	$2,157,265	793	$47,850	3,724	$1,632,753	7,147	$3,837,868
Includes Foreign Stocks:								
New York	67	$ 82,882	3	$ 1,271	89	$ 9,942	159	$ 94,095
American	54	22,292	4	684	4	134	62	23,110
Pacific	5	21	1	+	2	2	8	23
Total	126	$ 105,195	8	$ 1,955	95	$ 10,078	229	$ 117,228

N.A. = Not Available
+ = Less than 1 million

[1] Excludes securities which were suspended from trading at the end of the year, and securities which because of inactivity had no available quotes.

Source: SEC Form 1392

Table 22

VALUE OF STOCKS LISTED ON EXCHANGES

(Billions of Dollars)

Dec 31	New York Stock Exchange	American Stock Exchange	Exclusively On Other Exchanges	Total
1938	47.5	10.8	.	58.3
1939	46 5	10.1		56.6
1940	41.9	8.6		50.5
1941	35.8	7 4		43.2
1942	38.8	7.8		46.6
1943	47.6	9.9		57.5
1944	55.5	11.2		66.7
1945	73.8	14.4		88.2
1946	68.6	13.2		81.8
1947	68.3	12.1		80.4
1948	67.0	11.9	$3.0	81.9
1949	76.3	12 2	3.1	91.6
1950	93.8	13.9	3.3	111.0
1951	109.5	16.5	3.2	129.2
1952	120 5	16 9	3 1	140.5
1953	117.3	15.3	2.8	135.4
1954	169.1	22 1	3.6	194.8
1955	207.7	27.1	4.0	238.8
1956	219.2	31 0	3.8	254.0
1957	195.6	25.5	3.1	224.2
1958	276.7	31.7	4.3	312.7
1959	307.7	25.4	4.2	337.3
1960	307.0	24.2	4 1	335.3
1961	387.8	33.0	5.3	426.1
1962	345.8	24.4	4.0	374.2
1963	411.3	26.1	4.3	441.7
1964	474.3	28.2	4.3	506.8
1965	537.5	30.9	4.7	573.1
1966	482.5	27.9	4.0	514.4
1967	605.8	43 0	3.9	652.7
1968	692.3	61.2	6.0	759.5
1969	629.5	47.7	5.4	682.6
1970	636.4	39.5	4.8	680.7
1971	741.8	49.1	4.7	795.6
1972	871.5	55.6	5.6	932.7
1973	721.0	38.7	4 1	763.8
1974	511.1	23.3	2.9	537.3
1975	685.1	29.3	4 3	718.7
1976	858.3	36.0	4.2	898.5
1977	776.7	37.6	4 2	818.5
1978	822.7	39.2	2.9	864.8
1979	960.6	57.8	3.9	1,022.3
1980	1,242.8	103.5	2.9	1,349.2
1981	1,143.8	89 4	5 0	1,238.2
1982	1,305.4	77 6	6.8	1,389.7
1983	1,522 2	80.1	6.6	1,608.8
1984	1,529.5	52.0	5.8	1,587.3
1985	1,882.7	63.2	5 9	1,951.8
1986	2,128.5	70.3	6.5	2,205.3
1987	$2,132.2	$ 67.0	$5.9	$2,205.1

Source: SEC Form 1392

SECURITIES ON EXCHANGES

As of September 30, 1988, a total of 7,890 securities, representing 2,558 issuers, were admitted to trading on securities exchanges in the United States. This compares with 7,909 issues, involving 3,145 issuers a year earlier. Over 5,600 issues were listed and registered on the New York Stock Exchange, accounting for 58.0 percent of the stock issues and 81.1 percent of the bond issues. Data below on "Securities Traded on Exchanges" involved some duplication since it includes both solely and dually listed securities.

Table 23
SECURITIES TRADED ON EXCHANGES

	Issuers	Stocks				Bonds [1]
		Registered	Temporarily Exempted	Unlisted	Total	
American Stock Exchange	864	1,341	—	6	997	281
Boston Stock Exchange	1,070	1,157	—	989	1,129	11
Chicago Board of Trade	1	5	—	0	1	—
Cincinnati Stock Exchange	1,082	1,204	—	1,115	1,138	46
Midwest Stock Exchange	1,234	1,478	—	1,080	1,390	34
New York Stock Exchange	1,715	5,448	—	—	2,470	2,706
Pacific Coast Stock Exchange	826	1,114	—	247	992	157
Philadelphia Stock Exchange	842	1,214	—	727	996	97
Spokane Stock Exchange	22	22	—	3	19	3

[1] Issuers exempted under Section 3(a)(12) of the Exchange Act, such as obligations of United States Government, the states, and cities, are not included in this table.

Table 24
IMMOBILIZATION TRENDS

	1987	1986	1985	1984	1983	1982
Book-entry Deliveries at DTC (in thousands)	78,000	66,700	55,800	48,000	50,000	37,000
Total Certificates Withdrawn from DTC (in thousands)	10,000	9,200	9,100	10,100	13,600	12,500
Book-entry Deliveries per Certificate Withdrawn	7.8	7 3	6.1	4 8	3.7	3.0

CERTIFICATE IMMOBILIZATION

Book-entry deliveries continued to outpace physical deliveries in the settlement of securities transactions among depository participants. This tendency is illustrated in Table 24, IMMOBILIZATION TRENDS. The Table captures the relative significance of the mediums employed, in a ratio of book-entry deliveries to certificates withdrawn from DTC. The figures exclude municipal bearer bonds. In 1987, while the number of shares traded in U.S. markets increased by 32%, the total certificates withdrawn from DTC increased less than 10%, and the ratio of book-entry deliveries to certificates withdrawn continued to grow. In 1987, the ratio was over two and a half times the 1982 figure of 3.0 book-entry deliveries rendered for every certificate withdrawn.

1933 ACT REGISTRATIONS

Effective Registration Statements

During fiscal year 1988, 5,853 registration statements valued at $436.3 billion became effective. In fiscal year 1987, 8,520 statements, valued at $539.0 billion, became effective.

Table 25
EFFECTIVE REGISTRATIONS
(Millions of Dollars)

Fiscal Year	Total		Cash Sale for Account of Issuers			
	Number of Statements	Value	Common Stock and Other Equity [1]	Bonds, Debentures and Notes	Preferred Stock	Total
Fiscal Year Ended June 30						
1935 [2]	284	$ 913	$ 168	$ 490	$ 28	$ 686
1936	689	4,835	531	3,153	252	3,936
1937	840	4,851	802	2,426	406	3,634
1938	412	2,101	474	666	209	1,349
1939	344	2,579	318	1,593	109	2,020
1940	306	1,787	210	1,112	110	1,432
1941	313	2,611	196	1,721	164	2,081
1942	193	2,003	263	1,041	162	1,466
1943	123	659	137	316	32	485
1944	221	1,760	272	732	343	1,347
1945	340	3,225	456	1,851	407	2,714
1946	661	7,073	1,331	3,102	991	5,424
1947	493	6,732	1,150	2,937	787	4,874
1948	435	6,405	1,678	2,817	537	5,032
1949	429	5,333	1,083	2,795	326	4,204
1950	487	5,307	1,786	2,127	468	4,381
1951	487	6,459	1,904	2,838	427	5,169
1952	635	9,500	3,332	3,346	851	7,529
1953	593	7,507	2,808	3,093	424	6,325
1954	631	9,174	2,610	4,240	531	7,381
1955	779	10,960	3,864	3,951	462	8,277
1956	906	13,096	4,544	4,123	539	9,206
1957	876	14,624	5,858	5,689	472	12,019
1958	813	16,490	5,998	6,857	427	13,282
1959	1,070	15,657	6,387	5,265	443	12,095
1969	1,426	14,367	7,260	4,224	253	11,737
1961	1,550	19,070	9,850	6,162	248	16,260
1962	1,844	19,547	11,521	4,512	253	16,286
1963	1,157	14,790	7,227	4,372	270	11,869
1964	1,121	16,860	10,006	4,554	224	14,784
1965	1,266	19,437	10,638	3,710	307	14,655
1966	1,523	30,109	18,218	7,061	444	25,723
1967	1,649	34,218	15,083	12,309	558	27,950
1968	2,417	54,076	22,092	14,036	1,140	37,268
1969	3,645	86,810	39,614	11,674	751	52,039
1970	3,389	59,137	28,939	18,436	823	48,198
1971	2,989	69,562	27,455	27,637	3,360	58,452
1972	3,712	62,487	26,518	20,127	3,237	49,882
1973	3,285	59,310	26,615	14,841	2,578	44,034
1974	2,890	56,924	19,811	20,997	2,274	43,082
1975	2,780	77,457	30,502	37,557	2,201	70,260
1976	2,813	87,733	37,115	29,373	3,013	69,501
Transition Quarter:						
July-Sept 1976	639	15,010	6,767	5,006	413	12,246
Fiscal Year Ended Sept. 30						
1977	2,915	92,579	47,116	28,026	2,426	77,568
1978 [3]	3,037	65,043	25,330	23,251	2,128	50,709
1979	3,112	77,400	22,714	28,894	1,712	53,320
1980	3,402	110,583	33,076	42,764	2,879	78,719
1981	4,326	144,132	49,276	40,163	2,505	91,944
1982	4,846	164,455	50,486	63,950	3,939	118,375
1983	5,503	240,058	77,403	80,718	9,339	167,460
1984	5,087	209,866	66,571	74,136	4,984	145,691
1985	4,913	287,851	72,013	117,178	6,999	196,190
1986	5,925	484,383	93,470	258,360	12,168	363,998
1987r	8,520	539,025	120,755	291,957	15,453	428,165
1988p	5,853	436,276	100,259	233,598	9,302	343,159
Cumulative Total	110,894	$3,810,188	$1,161,860	$1,597,924	$106,088	$2,865,872

r = revised

p = preliminary

[1] Includes warrants, shares of beneficial interest, certificates of participation and all other equity interests not elsewhere included

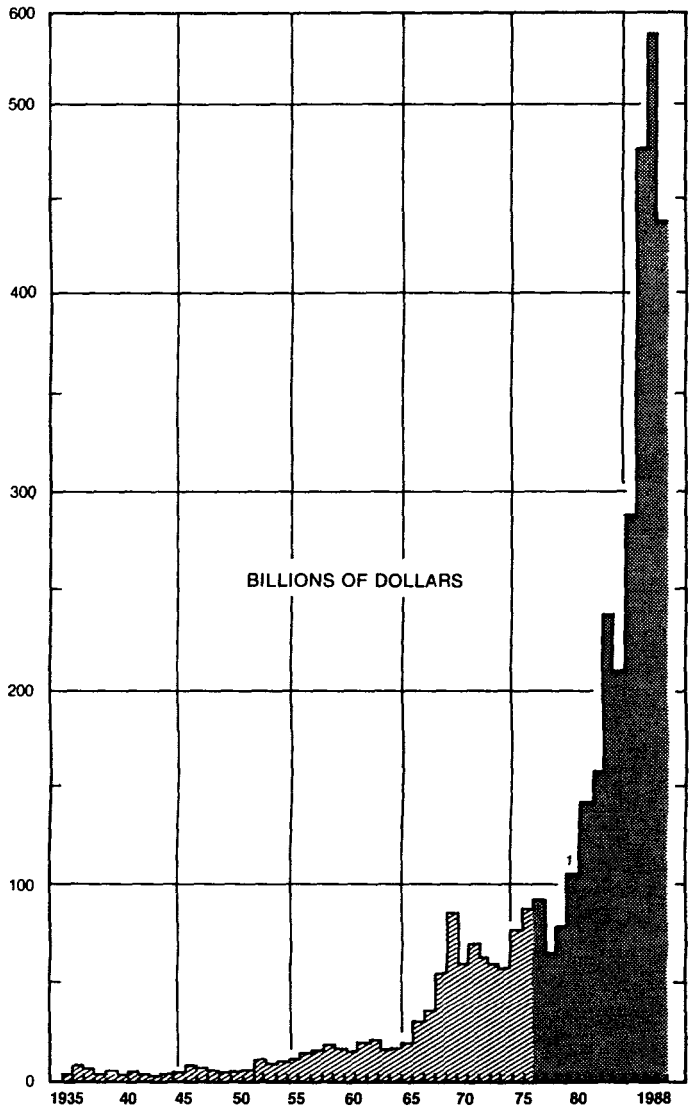
[2] For 10 months ended June 30, 1935

[3] The adoption of Rule 24f-2 (17 CFR 270 24f-2) effective November 3, 1977 made it impossible to report the dollar value of securities registered by investment companies

Table 26

Securities Effectively Registered With S.E.C

1935 — 1988



In 1977 Fiscal Year End Changed from June to September
Data for Transition Quarter July-September 1976 Not Shown on Charts
Value of Registrations $15 Billion

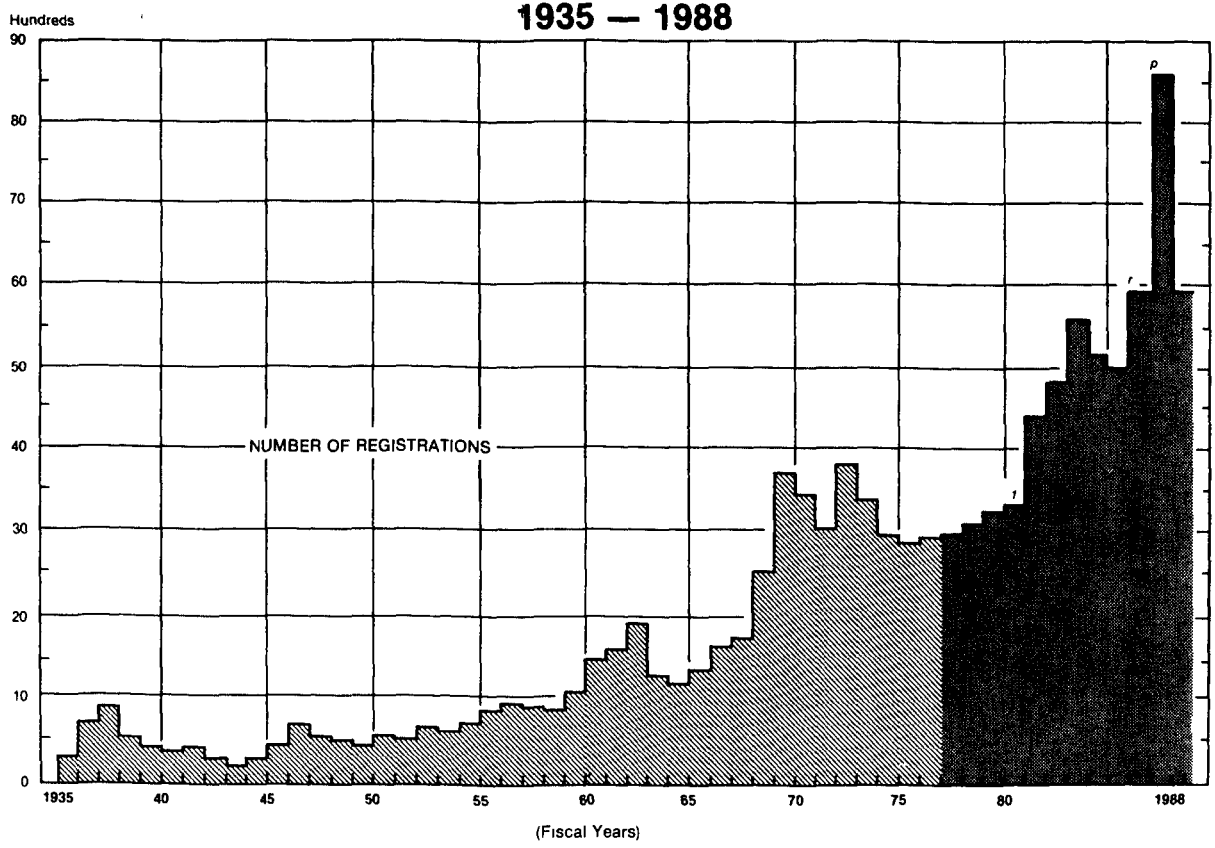
[1]Does Not Include Investment Companies As Of 1/1/78 Due To Rule Change

r ≡ *Revised*
p ≡ *Preliminary*

Table 27

Securities Effectively Registered With S.E.C.

1935 — 1988



In 1977 Fiscal Year End Changed from June to September
Data for Transition Quarter July September 1976 Not Shown on Charts
Number Of Registrations 639
Does Not Include Investment Companies As Of 1/1/78 Due To Rule Change

r = Revised

Purpose and Type of Registration

Effective registrations for cash sale for the accounts of issuers in fiscal year 1988 amounted to $343.2 billion, a decline of 20 percent from fiscal year 1987's total of $428.2 billion. In fiscal 1988, $95.4 billion of these registrations were for immediate cash sale, a decline of $33.7 billion (26 percent) from fiscal year 1987's figure of $129.0 billion.

Of the $95.4 billion, debt securities accounted for $49.8 billion (52 percent), common stock and other equity amounted for $39.8 billion (42 percent) and preferred stock totalled $5.8 billion (6 percent).

Delayed and extended cash sales registered for the account of the issuer totalled $247.8 billion or 57 percent of all registrations. Of registrations for delayed sales, domestic securities accounted for $187.9 billion while foreign securities accounted for $11.0 billion. Registration for extended sales came to $48.9 billion.

Securities registered for the account of the issuer for other than cash sale (*e.g.*, for exchange offers) amounted to $76.2 billion or 17 percent of all registrations. Registrations of securities for secondary offerings amounted to $16.9 billion or 4 percent of all registrations.

Registrations of all types were valued at $436.3 billion in fiscal year 1988. Of this amount, $247.1 billion in bonds and other debt securities were registered. Another $176.6 billion of common stock and other equity were registered and preferred stock registrations totalled $12.6 billion. Of the $247.1 billion registered in debt securities, $49.8 billion (20 percent) were registered for primary, immediate cash sale and registrations for primary, delayed and extended cash sales accounted for $183.8 billion (74 percent). The total for preferred stock ($12.6 billion) included $9.3 billion registered for issuers for cash sale, $2.2 billion registered for issuers for other purposes and $1.1 billion registered for secondary offerings. Of the $176.6 billion of registrations for common stock and other equity securities, registrations for issuers for cash sale came to $100.3 billion, other registrations for issuers totalled $70.8 billion and registrations for secondary offerings were valued at $5.5 billion.

Table 28
EFFECTIVE REGISTRATIONS BY PURPOSE AND TYPE OF SECURITY
FISCAL YEAR 1987r
(Millions of Dollars)

Purpose of Registrations	Total	Type of Security: Bonds, Debentures and Notes	Preferred Stock	Common Stock and Other Equity [1]
All Registrations (Estimated Value)	539,025	306,295	24,421	208,309
Account of Issuer for Cash Sale	428,165	291,957	15,453	120,755
Immediate Offering	129,049	62,533	9,724	56,792
Delayed and Extended Cash Sale	299,116	229,424	5,729	63,963
Domestic Delayed	239,182	221,028	4,777	13,377
Foreign Delayed	9,867	8,366	0	1,501
Extended	50,067	30	952	49,085
Account of Issuer for Other Than Cash Sale	92,008	5,647	8,081	78,280
Secondary Offerings	18,852	8,691	887	9,274

r = revised

[1] Includes warrants, shares of beneficial interest, certificates of participation and other equity interests not elsewhere included
Source: 1933 Act Registration Statements

Table 29
EFFECTIVE REGISTRATIONS BY PURPOSE AND TYPE OF SECURITY
FISCAL YEAR 1988p
(Millions of Dollars)

Purpose of Registrations	Total	Type of Security: Bonds, Debentures and Notes	Preferred Stock	Common Stock and Other Equity [1]
All Registrations (Estimated Value)	436,276	247,096	12,629	176,551
Account of Issuer for Cash Sale	343,159	233,598	9,302	100,259
Immediate Offering	95,371	49,763	5,773	39,835
Delayed and Extended Cash Sale	247,788	183,835	3,529	60,424
Domestic Delayed	187,924	173,567	3,506	10,851
Foreign Delayed	11,009	10,252	0	757
Extended	48,855	16	23	48,816
Account of Issuer for Other Than Cash Sale	76,207	3,252	2,196	70,759
Secondary Offerings	16,910	10,246	1,131	5,533

p = preliminary

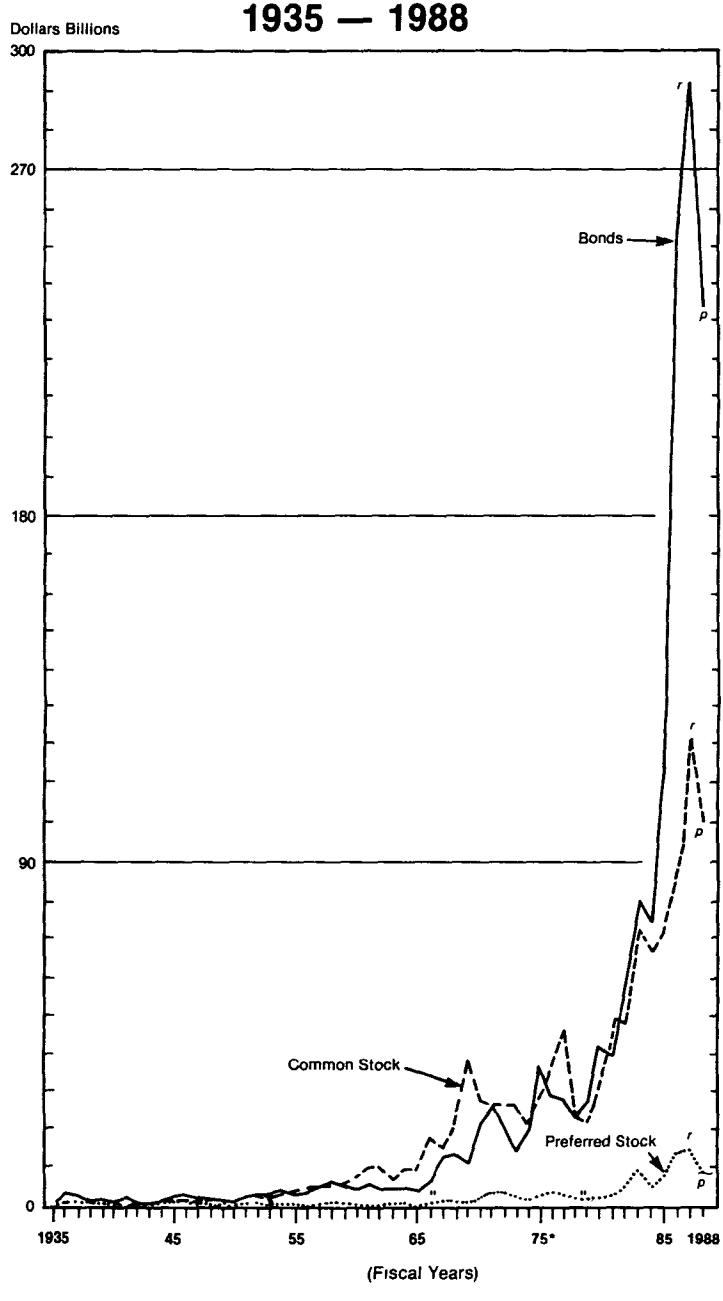
[1] Includes warrants, shares of beneficial interest, certificates of participation and other equity interests not elsewhere included
Source: 1933 Act Registration Statements

Table 30

Effective Registrations

Cash Sale For Account Of Issuers

1935 — 1988



*In 1977 Fiscal Year End Changed from June to September
Data for Transition Quarter July-September 1976 Not Shown on Chart
Bonds $5 1 Billion, Preferred Stock $ 4 Billion, Common Stock $6 8 Billion

r = Revised
p = Preliminary

Regulation A Offerings

During fiscal year 1988, 109 offering statements for proposed offerings under Regulation A were processed and cleared.

Table 31
CASH OFFERINGS UNDER REGULATION A

	Fiscal 1987	Fiscal 1988
Size: (In 000's)		
$ 500 or Less	45	45
501 – 1,000	28	26
1,001 – 1,500	26	38
Total	99	109
Underwriters:		
Used	16	13
Not Used	83	96
Total	99	109
Offerors:		
Issuing Companies	99	109
Stockholders	0	0
Issuer & Stockholders Jointly	0	0
Total	99	109

Table 32

TYPES OF PROCEEDINGS

ADMINISTRATIVE PROCEEDINGS

Persons Subject to Acts Constituting, and Basis for, Enforcement Action*	Sanction
Broker-dealer, municipal securities dealer, government securities dealer, transfer agent, investment adviser or associated person	
Willful violation of securities laws or rules; aiding or abetting such violation; failure reasonably to supervise others; willful misstatement or omission in filing with the Commission; conviction of or injunction against certain crimes or conduct.	Censure or limitation on activities; revocation, suspension or denial of registration; bar or suspension from association (1934 Act, Sections15(b) (4)–(6), 15(c) (1)–(2), 15B(c) (2)–(6), 17A(c)(3); Advisers Act, Section 203(e)–(f)).
Registered securities association	
Violation of or inability to comply with the 1934 Act, rules thereunder, or its own rules; unjustified failure to enforce compliance with the foregoing or with rules of the Municipal Securities Rulemaking Board by a member or person associated with a member.	Suspension or revocation of registration; censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1)).
Member of registered securities association, or associated person	
Entry of Commission order against person pursuant to 1934 Act, Section 15(b); willful violation of securities laws or rules thereunder or rules of Municipal Securities Rulemaking Board; effecting transaction for other person with reason to believe that person was committing violations of securities laws.	Suspension or expulsion from the association; bar or suspension from association with member of association (1934 Act, Section 19(h) (2)–(3)).
National securities exchange	
Violation of or inability to comply with 1934 Act, rules thereunder or its own rules; unjustified failure to enforce compliance with the foregoing by a member or person associated with a member.	Suspension or revocation of registration; censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1)).
Member of national securities exchange, or associated person	
Entry of Commission order against person pursuant to 1934 Act, Section 15(b); willful violation of securities laws or rules thereunder, effecting transaction for other person with reason to believe that person was committing violation of securities laws.	Suspension or expulsion from exchange; bar or suspension from association with member (1934 Act, Section 19(h) (2)–(3)).
Registered clearing agency	
Violation of or inability to comply with 1934 Act, rules thereunder, or its own rules; failure to enforce compliance with its own rules by participants.	Suspension or revocation of registration; censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1)).
Participant in registered clearing agency	
Entry to Commission order against participant pursuant to 1934 Act, Section 15(b) (4); willful violation of clearing agency rules; effecting transaction for other person with reason to believe that person was committing violations of securities laws.	Suspension or expulsion from clearing agency (1934 Act, Section 19(h) (2)).

Securities information processor	
Violation of or inability to comply with provisions of 1934 Act or rules thereunder	Censure or limitation of activities; suspension or revocation of registration (1934 Act, Section 11A(b) (6)).
Any person	
Willful violation of 1933 Act, 1934 Act, Investment Company Act or rules thereunder, aiding or abetting such violation, willful misstatement in filing with Commission	Temporary or permanent prohibition against serving in certain capacities with registered investment company (Investment Company Act, Section 9(b))
Officer or director of self-regulatory organization	
Willful violation of 1934 Act, rules thereunder or the organization's own rules; willful abuse of authority or unjustified failure to enforce compliance.	Removal from office or censure (1934 Act, Section 19(h) (4))
Principal of broker-dealer	
Engaging in business as a broker-dealer after appointment of SIPC trustee	Bar or suspension from being or becoming associated with a broker-dealer (SIPA, Section 10(b))
1933 Act registration statement	
Statement materially inaccurate or incomplete.	Stop order refusing to permit or suspending effectiveness (1933 Act, Section 8(d)).
Person subject to Sections 12, 13, 14 or 15(d) of the 1934 Act or associated person	
Failure to comply with such provisions or having caused such failure by an act or omission that person knew or should have known would contribute thereto.	Order directing compliance or steps effecting compliance (1934 Act, Section 15(c) (4))
Securities registered pursuant to Section 12 of the 1934 Act	
Noncompliance by issuer with 1934 Act or rules thereunder.	Denial, suspension of effective date, suspension or revocation of registration, prohibition against trading in securities when registration suspended or revoked (1934 Act, Section 12(j))
Public interest requires trading suspension	Summary suspension of over-the-counter or exchange trading (1934 Act, Section 12(k))
Registered investment company	
Failure to file Investment Company Act registration statement or required report; filing materially incomplete or misleading statement or report.	Suspension or revocation of registration (Investment Company Act, Section 8(e))
Company has not attained $100,000 net worth 90 days after 1933 Act registration statement became effective.	Stop order under 1933 Act; suspension or revocation of registration (Investment Company Act, Section 14(a))
Attorney, accountant, or other professional or expert	
Lack of requisite qualifications to represent others; lacking in character or integrity; unethical or improper professional conduct; willful violation of securities laws or rules; or aiding and abetting such violation	Permanent or temporary denial of privilege appearing or practicing before the Commission (17 CFR Section 201.2(e) (1))

Attorney suspended or disbarred by court, expert's license revoked or suspended, conviction of a felony or of a misdemeanor involving moral turpitude.	Automatic suspension from appearance or practice before the Commission (17 CFR Section 201.2(e) (2)).
Permanent injunction against or finding of securities violation in Commission-instituted action, finding of securities violation by Commission in administrative proceedings.	Temporary suspension from practicing before the Commission; censure; permanent or temporary disqualification from practicing before the Commission (17 CFR Section 201.2(e) (3)).
Member of Municipal Securities Rulemaking Board	
Willful violation of 1934 Act, rules thereunder, or rules of the Board, abuse of authority	Censure or removal from office (1934 Act, Section 15B(c) (8)).

CIVIL PROCEEDINGS IN FEDERAL DISTRICT COURTS

Persons Subject to Acts Constituting, and Basis for, Enforcement Action*	Sanction
Any person	
Engaging in or about to engage in acts or practices violating securities laws, rules or orders thereunder (including rules of a registered self-regulatory organization).	Injunction against acts or practices which constitute or would constitute violations (plus other equitable relief under court's general equity powers) (1933 Act, Section 20(b); 1934 Act, Section 21(d); Holding Company Act, Section 18(f); Investment Company Act, Section 42(e); Advisers Act, Section 209(e); Trust Indenture Act, Section 321).
Noncompliance with provisions of the laws, rules, or regulations under 1933, 1934, or Holding Company Act, orders issued by Commission, rules of a registered self-regulatory organization, or undertaking in a registration statement	Writ of mandamus, injunction, or order directing compliance (1933 Act, Section 20(c); 1934 Act, Section 21(e); Holding Company Act, Section 18(g)).
Trading while in possession of material non-public information in a transaction on an exchange or from or through a broker-dealer (and transaction not part of a public offering), or aiding and abetting such trading	Maximum civil penalty: three times profit gained or loss avoided as a result of transaction (1934 Act, Section 21(d)).
Issuer subject to Section 12 or 15(d) of the 1934 Act, officer, director, employee or agent of issuer; stockholder acting on behalf of issuer	
Payment to foreign official, foreign political party or official, or candidate for foreign political office, for purposes of seeking the use of influence in order to assist issuer in obtaining or retaining business for or with, or directing business to, any person.	Maximum civil penalty: $10,000 (1934 Act, Section 32(c)).
Securities Investor Protection Corporation	
Refusal to commit funds or act for the protection of customers.	Order directing discharge of obligations and other appropriate relief (SIPA, Section 7(b)).
National securities exchange or registered securities association	
Failure to enforce compliance by members or persons associated with its members with the 1934 Act, rules or orders thereunder, or rules of the exchange or association.	Writ of mandamus, injunction or order directing such exchange or association to enforce compliance (1934 Act, Section 21(e))

Registered clearing agency	
Failure to enforce compliance by its participants with its own rules.	Writ of mandamus, injunction or order directing clearing agency to enforce compliance (1934 Act, Section 21(e)).
Issuer subject to Section 15(d) of 1934 Act	
Failure to file required information, documents or reports.	Forfeiture of $100 per day (1934 Act, Section 32(b))
Registered investment company	
Name of company or of security issued by it deceptive or misleading	Injunction against use of name (Investment Company Act, Section 36(d))
Officer, director, member of advisory board, adviser, depositor, or underwriter of investment company	
Engage in act or practice constituting breach of fiduciary duty involving personal misconduct	Injunction against acting in certain capacities for investment company and other appropriate relief (Investment Company Act, Section 36(a))

CRIMINAL PROSECUTION BY DEPARTMENT OF JUSTICE

Persons Subject to Acts Constituting, and Basis for, Enforcement Action*	Sanction
Any person	
Willful violation of securities laws or rules thereunder; willfull misstatement in any document required to be filed by securities laws or rules; willful misstatement in any document required to be filed by self-regulatory organization in connection with an application for membership or association with member.	Maximum penalties· $100,000 fine and five years imprisonment; an exchange may be fined up to $500,000 (1934 Act, Section 21(d), 32(a)); $10,000 fine and five years imprisonment, a public utility holding company may be fined up to $200,000 for violations of Holding Comany Act (1933 Act, Sections 20(b), 24; Holding Company Act, Sections 18(f), 29; Trust Indenture Act, Sections 321, 325; Investment Company Act, Sections 42(e), 49; Advisers Act, Sections 209(e), 217).
Issuer subject to Section 12 or 15(d) of the 1934 Act: officer or director of issuer; stockholder acting on behalf of issuer; employee or agent subject to the jurisdiction of the United States	
Payment to foreign official, foreign political party or official, or candidate for foreign political office for purposes of seeking the use of influence in order to assist issuer in obtaining or retaining business for or with, or directing business to, any person	Issuer–$2,000,000; officer, director, employee, agent or stockholder–$100,000 and five year imprisonment (issuer may not pay fine for others) (1934 Act, Section 32(c)).

*Statutory references are as follows. "1933 Act," the Securities Act of 1933, "1934 Act," the Securities Exchange Act of 1934; "Investment Company Act," the Investment Company Act of 1940, "Advisers Act," the Investment Advisers Act of 1940; "Holding Company Act," the Public Utility Holding Company Act of 1935; "Trust Indenture Act," the Trust Indenture Act of 1939; and "SIPA," the Securities Investor Protection Act of 1970

Table 33

Fiscal 1988 Enforcement Cases Listed by Program Area

(Each case initiated has been included in only one category listed below, even though many cases involve multiple allegations and may fall under more than one category.)

Program Area—Broker-Dealer Back Office

Name of Case	Date Filed	Release No.
In the Matter of E F Hutton & Co., Inc., et al	102287	34-25054
In the Matter of Underwood, Neuhaus & Co , Inc , et al	121687	34-25200
In the Matter of Joseph T Cusack, et al	021988	34-25374
In the Matter of Jorge Sanchez	050988	34-25675
In the Matter of Flagship Securities Inc., et al	060888	34-25790
In the Matter of William J Green, et al	093088	34-26135
SEC v Flagship Securities Inc , et al	021188	LR-11690
SEC v. Fitzgerald, DeArman & Roberts, Inc	062888	LR-11800
SEC v. William Green, et al	091688	LR-11887

Program Area—Broker-Dealer. Fraud Against Customer

Name of Case	Date Filed	Release No.
In the Matter of Marina Securities, Inc., et al	111687	34-25130
In the Matter of Gallagher & Co., et al	112087	34-25142
In the Matter of Elvyn Q. Evans, et al	102987	34-25070
In the Matter of Alan C Refkin, et al	110287	34-25087
In the Matter of Paul Gerald White	110387	34-25085
In the Matter of Paine Webber Inc	030488	34-25418
In the Matter of Petro-Source Securities Inc , et al	022388	34-25381
In the Matter of Heidi Carolyn Ditchendorf	021188	34-25347
In the Matter of Dale E Barlage	040888	34-25563
In the Matter of Michael J Fee, et al	062288	34-25827
In the Matter of Steven E. Whiting	060288	34-25779
In the Matter of Robert T Wellman	062188	34-25828
In the Matter of William S. Craugh, et al.	061588	34-25803
In the Matter of S Mason Ackroyd	052788	34-25762
In the Matter of Anthony J Buttimer	082488	34-26023
In the Matter of William H Melhorn	093088	34-26138
In the Matter of Dean Witter Reynolds, Inc	093088	34-26144
In the Matter of Bryce S. Kommerstad	072688	34-25945
In the Matter of ITEC Securities Corp., et al.	082288	34-26014
In the Matter of Yasuhiro Nomoto	093088	34-26143
In the Matter of Proculo B Blando	080188	34-25953
In the Matter of CDA Securities Inc , et al	093088	34-26142
SEC v William Ray White	121487	LR-11636
SEC v Windsor Equity Corp., et al.	032188	LR-11693
SEC v Virginia Melhorn	050688	LR-11749
SEC v. Michael W. Rehtorik, et al	042588	LR-11755
SEC v Kirk A Knapp	051288	LR-11746
SEC v Daniel B Ptak	061388	LR-11791
SEC v. Anthony J Buttimer	080388	LR-11832
SEC v. Bryce S Kommerstad	071288	LR-11818
SEC v P&M Blando Corp , et al	071488	LR-11826
SEC v Dennis L Astorri, et al	092088	LR-11871

Program Area—Broker-Dealer Other

Name of Case	Date Filed	Release No
In the Matter of Paul Goldberg	060288	34-25781
In the Matter of Robert M Winston, et al	040488	34-25548
In the Matter of Frederick H Race, IV	041888	34-25592
In the Matter of Brian J Lareau	082988	34-26038
In the Matter of Richfield Securities Inc	092988	34-26129
In the Matter of William J. Gregerman	092888	34-26134
SEC v William S Craugh, et al	060188	LR-11769

Program Area—Broker-Dealer Stock Loan

Name of Case	Date Filed	Release No.
In the Matter of Alan H Kominz	092388	34-26105
SEC v Alan Kominz	091588	LR-11881

Program Area—Contempt-Civil

Name of Case	Date Filed	Release No
SEC v. Thomas A. Dentinger	112587	NONE
SEC v Thomas C. Shiu, et al	100187	LR–11574
SEC v. Stephen L. Read, et al.	110587	LR–11597
SEC v Havard Lee	121487	NONE
SEC v. Phillip A. Justice	022488	LR–11688
SEC v. Robert V. Yeo	032988	LR–11730
SEC v. Robert Cooper, et al.	040188	NONE
SEC v. Robert A. Dilanni	050588	LR–11726
SEC v. Michael Joyce, et al.	041888	NONE
SEC v James Simpson, et al	061688	NONE
SEC v. James L. Douglas	070888	NONE
SEC v. International Swiss Investment Corp., et al	072888	LR–11876
SEC v. Palmer Financial Corp., et al.	071888	NONE
SEC v. David D Sterns	120887	LR–11735
SEC v. William R. Cook	032988	NONE

Program Area—Contempt-Criminal

Name of Case	Date Filed	Release No
U.S. ex rel. SEC v. Michael L Allred, et al.	021688	LR–11740
U.S. ex rel. SEC v. Frederick R. Lawrence	051388	NONE

Program Area—Corporate Control: Beneficial Ownership

Name of Case	Date Filed	Release No
In the Matter of The Gabelli Group Inc , et al	081788	34–26005
SEC v. Leonard Levy, et al.	012188	LR–11648

Program Area—Corporate Control: Tender Offers

Name of Case	Date Filed	Release No
In the Matter of Meyers Parking System, Inc	091288	34–26069

Program Area—Delinquent Filings: Form 3 & 4

Name of Case	Date Filed	Release No
SEC v. Ronald A. Orr	051688	LR–11737
SEC v. Martin M. Rothschild	042788	LR–11714

Program Area—Delinquent Filings: Issuer Reporting

Name of Case	Date Filed	Release No.
SEC v. Stephen L. Read	110587	LR–11597
SEC v. Palmer Financial Corp., et al	020288	LR–11657
SEC v. Scopus Technology Co., Inc	062188	LR–11775
SEC v Olivier Management Corp	042788	LR–11715
SEC v. Hanover Companies, Inc.	060688	LR–11760
SEC v. Pacific Eastern Corp	082288	LR–11842

Program Area—Fraud Against Regulated Entities

Name of Case	Date Filed	Release No
SEC v. Robert Poiner, et al.	031888	LR–11692
SEC v. Aleksandrs Laurins	052588	LR–11758

Program Area—Insider Trading

Name of Case	Date Filed	Release No
In the Matter of Marcus Schloss & Co., Inc.	020588	34–25315
In the Matter of Andrew Soloman	041488	34–25588
In the Matter of John E Kilfoyle	041888	34–25596
In the Matter of Guiseppe B. Tome, et al.	081888	34–26008
SEC v. Robert Chestman, et al.	100687	AAER 181
SEC v. Shimon Lev	102287	LR–11582
SEC v. Joseph Sierchio	011488	LR–11647
SEC v. John Lombardi, et al.	032888	LR–11684
SEC v. Joseph Kerherve, et al	011388	LR–11643
SEC v. Marcus Schloss & Co., Inc	020388	LR–11653
SEC v. Douglas Ronald Yagoda	020388	LR–11654
SEC v. Andrew Solomon	032888	LR–11685
SEC v. Kurt A. Grey, et al.	032288	LR–11696
SEC v. Carl N. Karcher, et al	041488	LR–11702

SEC v Ann Stephenson, et al	051288	LR-11734
SEC v. Armand Leone Sr, et al.	042188	LR-11711
SEC v Michael O. Ingoldsby	050288	LR-11721
SEC v. Stephen Sui-Kuan Wang, Jr., et al	062788	LR-11780
SEC v Gary E. Russolillo, M D.	062388	LR-11795
SEC v. Mohd A Aslami	082988	LR-11852
SEC v. Donald L. Sturm	071188	LR-11793
SEC v. Charles A. Mills	092888	LR-11877
SEC v James Markham	092688	LR-11874
SEC v. Geoffrey W Collier, et al	072688	LR-11817
SEC v. Robert Slattery	090288	LR-11856

Program Area—Investment Adviser

Name of Case	Date Filed	Release No.
In the Matter of James M Wilson	111387	IA-1096
In the Matter of Philip S Wilson	112587	IA-1094
In the Matter of Steven J. Cullen	111087	IA-1094
In the Matter of Edwin Fishbaine	030988	IA-1108
In the Matter of Advantage Investments, Inc , et al	032488	IA-1110
In the Matter of Mark Bailey & Co , et al	022488	IA-1105
In the Matter of The Professionals, Inc , et al	021188	IA-1104
In the Matter of Greater Sutton Investors Group, Inc.	011288	IA-1102
In the Matter of John S LaLonde	012588	IA-1103
In the Matter of David Peter Bloom	011288	IA-1101
In the Matter of Todd W. Skulter	051788	IA-1121
In the Matter of Paul Freeman Van Avery, et al	040888	IA-1114
In the Matter of Westmark Financial Services Corp., et al.	051688	IA-1117
In the Matter of F&C Management Co., Inc , et al	040888	IA-1113
In the Matter of Strategic Financial Planning Inc	051788	IA-1119
In the Matter of Ronald H. Sirota	051788	IA-1120
In the Matter of Thomas C. Shiu	080188	IA-1132
In the Matter of Dennis Lee Grossman	093088	IA-1142
In the Matter of Proserv Inc , et al.	072288	IA-1131
SEC v. David Peter Bloom, et al	011188	LR-11641
SEC v. Forty Four Management Ltd , et al.	042888	LR-11717
SEC v. Private Asset Management Group Inc., et al.	060288	LR-11757
SEC v Dennis L Jeffers, et al	062888	LR-11796
SEC v. Stephen S. Fenichell	092088	LR-11868
SEC v. Tax Professionals Inc., et al	092688	LR-11899

Program Area—Investment Company

Name of Case	Date Filed	Release No.
In the Matter of Continental Equities Corp. of America	091988	IC-16565
In the Matter of VC Management (of Conn) Inc , et al	052488	IA-1123
In the Matter of Carey Fund Management, Inc.	091988	IA-1141
In the Matter of Leo J Frantzman	040588	IC-16349
SEC v. Western Guaranteed Income Trust	012988	LR-11655
SEC v. The Santa Barbara Funds, et al	041388	LR-11712
SEC v. International Swiss Investment Corp , et al	041588	LR-11704
SEC v. Joseph Anthony Belmonte, Jr , et al	071988	LR-11834
SEC v. George F Pavarini, et al.	071488	LR-11801

Program Area—Issuer Financial Disclosure

Name of Case	Date Filed	Release No
In the Matter of American Land Company	062188	34-25817
In the Matter of Gerald L. Zaidman	101687	AAER 197
In the Matter of USF&G Corp., et al.	030188	AAER 182
In the Matter of Steven L Komm	011188	AAER 175
In the Matter of Michael P. Richer, et al.	032988	AAER 184
In the Matter of The E.F Hutton Group Inc	032988	AAER 183
In the Matter of American Savings & Loan Assoc of Florida	060888	AAER 194
In the Matter of Mokan Productions, Ltd	011588	AAER 180
In the Matter of Alta Gold Co	050988	AAER 203
In the Matter of Stephen Grossman	111787	AAER 172
PRIVATE PROCEEDING	111287	NONE
In the Matter of Steven L Komm	020988	AAER 178
In the Matter of Norman Abrams, et al	021288	AAER 179
In the Matter of Keith Bjelajac	092888	AAER 201

SEC v Richard W Schmader	100587	AAER 165
SEC v Mokan Productions, Ltd., et al.	121687	LR-11632
SEC v. CitiSource, Inc., et al	122887	LR-11633
SEC v The Cannon Group, Inc , et al	110987	AAER 171
SEC v Primo, Inc , et al.	102887	AAER 167
SEC v Flexible Computer Corp., et al	110387	AAER 169
SEC v. Musikahn Corp., et al	010488	LR-11635
SEC v. Gary C. Armes	022388	LR-11671
SEC v. Stereo Village Inc., et al	030388	AAER 188
SEC v. Endotronics Inc.	050388	AAER 189
SEC v Cali Computer Systems Inc., et al	051088	AAER 190
SEC v. Lane Telecommunications, Inc., et al	081888	AAER 198
SEC v Colonial International Import Ltd , et al	092888	LR-11896
SEC v George Risk Industries Inc.	091388	AAER 199

Program Area—Issuer Related Party Transactions

Name of Case	Date Filed	Release No
SEC v American Biomaterials	041988	AAER 187
SEC v. Frank DuVal, et al	092988	LR-11898
SEC v. William A MacKay, et al	092988	AAER 202

Program Area—Issuer Reporting: Other

Name of Case	Date Filed	Release No
In the Matter of York Research Corp.	060688	34-25786
SEC v Genetic Breeding, Inc.	051088	NONE

Program Area—Market Manipulation

Name of Case	Date Filed	Release No.
In the Matter of Rooney Pace Inc., et al	111687	34-25125
In the Matter of Bradley E. Bohling	021188	34-25346
In the Matter of Richard E Moyer, et al.	033188	34-25543
In the Matter of Robert L. Smith	051788	34-25700
In the Matter of Norman H. Ironside	062188	34-25824
In the Matter of William E. Fritz	082988	34-26037
SEC v. Edward J. Roy, et al	123087	LR-11634
SEC v. Zico Investment Holdings, et al	120287	LR-11617
SEC v. Banco Resources, Ltd , et al	071488	LR-11802
SEC v Unioil, et al.	092888	LR-11880
SEC v Blaine C. Taylor, et al	071388	AAER 195
SEC v. Drexel Burnham Lambert, Inc , et al	090788	LR-11859
SEC v Howard Blumenthal	092688	LR-11872

Program Area—Offering Violations (By Non-Regulated Entities)

Name of Case	Date Filed	Release No
In the Matter of Sheppard Resources, Inc.	012688	33-6751
In the Matter of Transworld Network Corp.	012688	33-6772
In the Matter of Vanguard Financial Inc	012688	33-6773
In the Matter of Chatsworth Enterprises.	012688	33-6774
In the Matter of Pilgrim Venture Corp.	012688	33-6749
In the Matter of Centrac Associates Inc	011588	33-6747
In the Matter of Cytotech Corp.	092988	33-6800
In the Matter of New Era International, Inc	093088	33-6802
In the Matter of Tommy B. Duke	113087	34-25165
In the Matter of James F. McGovern	022288	34-25379
In the Matter of Gary C Granai	032488	34-25511
In the Matter of Jonathan S Silverman	093088	33-6803
In the Matter of William A. Calvo III	072788	34-25946
In the Matter of Jerome Tepps, et al.	071388	34-25901
SEC v. Hunter Mack Belton, et al.	122287	LR-11644
SEC v Phillip A Justice, et al	120487	LR-11656
SEC v Milton Schraiber	111887	LR-11611
SEC v. Kenneth H. Kube	101387	LR-11589
SEC v. Jerry M Traver	110687	LR-11608
SEC v. Larry Jones, et al	111987	LR-11622
SEC v. Carl Porto, et al.	011288	LR-11659
SEC v. J. Thomas Dotson, et al.	020888	LR-11672
SEC v. Wellness Research Corp , et al	041988	LR-11713
SEC v. James Simpson, et al	042588	LR-11725

SEC v. Quita, Inc., et al.	060888	LR-11764
SEC v. Oex Inc., et al.	041488	LR-11718
SEC v. Magan's Superbred Racehorses, Inc., et al.	062188	LR-11776
SEC v. R. G. Reynolds Enterprises, Inc., et al.	041288	LR-11707
SEC v. Lee Lovett	062088	LR-11771
SEC v. Maxaxam Corp., et al.	040788	LR-11695
SEC v. Zetex Ltd., et al.	052688	LR-11784
SEC v. Russell C. Gray, et al.	051688	NONE
SEC v. Magee Financial Corp., et al.	040588	NONE
SEC v. Goldcor, Inc., et al.	071588	LR-11808
SEC v. New Era International, et al.	092288	LR-11875
SEC v. Hiteck International Products, Inc., et al.	092788	LR-11886
SEC v. Martin M. Pinnas, et al.	080488	LR-11833
SEC v. Gene N. Flannes, et al.	081888	LR-11851
SEC v. First Houston Capital Resources Fund, Inc., et al.	080188	LR-11825
SEC v. Netco, Inc., et al.	082388	NONE
SEC v. Faspaq, Inc.	093088	LR-11893
SEC v. Towers Credit Corp., et al.	080488	LR-11829
SEC v. David S. Wagner	081288	LR-11841
SEC v. Joseph R. Edington, et al.	092888	LR-11890
SEC v. Star-Com I Ltd., et al.	101288	LR-11891
SEC v. William Flynn, et al.	080388	LR-11827
SEC v. Milton R. Bloomquist	030988	LR-11682
SEC v. Jack Gafford	060188	NONE

Program Area—Offering Violations (By Regulated Entities)

Name of Case	Date Filed	Release No.
In the Matter of William Edgar Crowder, et al.	022488	34-25393
In the Matter of Katherine Williams McGuire	060988	34-25793
In the Matter of John A. Grant	071588	34-25921
In the Matter of William R. Hedlund	093088	34-26141
In the Matter of Richard L. Sawyer	082488	34-26021
In the Matter of Michael K. Thomas	082488	34-26022
In the Matter of Bradley H. Koach	091688	34-26084
In the Matter of FPI Crest Securities	091688	34-26086
In the Matter of Malcolm G. Bartels	091688	34-26085
In the Matter of Worldwide Investment Research Ltd., et al.	061588	IA-1126
SEC v. Oreo Mines, Inc., et al.	022388	LR-11673
SEC v. Robert Vincent Yeo Jr., et al.	021888	LR-11674
SEC v. Horizons Research Laboratories Inc., et al.	022988	LR-11680
SEC v. National Energy Development, et al.	033188	LR-11698
SEC v. Katherine Williams McGuire	052588	LR-11753
SEC v. John A. Grant	052488	NONE

Program Area—Publication Disclosure

Name of Case	Date Filed	Release No.
SEC v. Robert A. Dresser, et al.	092988	LR-11879

Program Area—Transfer Agent

Name of Case	Date Filed	Release No.
In the Matter of National Stock Transfer Inc.	092788	34-26120
SEC v. Efficient Transfer, Inc., et al.	032988	LR-11720

Table 34

ENFORCEMENT CASES INITIATED BY THE COMMISSION DURING FISCAL 1988 IN VARIOUS PROGRAM AREAS

(Each case initiated has been included in only one category listed below, even though many cases involve multiple allegations and may fall under more than one category.)

Program Area in Which a Civil Action or Administrative Proceeding Was Initiated	Civil Actions [1,2]	Administrative Proceedings	21A Reports	Total [1]	% of Total Cases
Securities Offering Cases					
(a) Non-regulated Entity	34 (154)	14 (15)	0 (0)	48 (169)	
(b) Regulated Entity	6 (25)	10 (13)	0 (0)	16 (38)	
Total Securities Offering Cases	40 (179)	24 (28)	0 (0)	64 (207)	26%
Broker-Dealer Cases					
(a) Back Office	3 (6)	6 (14)	0 (0)	9 (20)	
(b) Fraud Against Customer	10 (15)	22 (35)	0 (0)	32 (50)	
(c) Stock Loan	1 (1)	1 (1)	0 (0)	2 (2)	
(d) Other	1 (2)	6 (11)	0 (0)	7 (13)	
Total Broker-Dealer Cases	15 (24)	35 (61)	0 (0)	50 (85)	21%
Other Regulated Entity Cases					
(a) Investment Advisers	6 (13)	19 (25)	0 (0)	25 (38)	
(b) Investment Companies	5 (22)	4 (5)	0 (0)	9 (27)	
(c) Transfer Agents	1 (1)	1 (1)	0 (0)	2 (2)	
Total Other Regulated Entity Cases.	12 (36)	24 (31)	0 (0)	36 (67)	14%
Issuer Financial Statement and Reporting Cases					
(a) Issuer Financial Disclosure	14 (51)	13 (19)	1 (1)	28 (71)	
(b) Issuer Reporting Other	1 (2)	1 (1)	0 (0)	2 (3)	
Total Issuer Financial Statement and Reporting Cases	15 (53)	14 (20)	1 (1)	30 (74)	12%
Insider Trading Cases	21 (47)	4 (6)	0 (0)	25 (53)	10%
Contempt Proceedings	17 (37)	0 (0)	0 (0)	17 (37)	7%
Market Manipulation Cases	7 (37)	6 (9)	0 (0)	13 (46)	5%
Corporate Control Violations	1 (3)	2 (7)	0 (0)	3 (10)	1%
Fraud Against Regulated Entities	2 (3)	0 (0)	0 (0)	2 (3)	1%
Related Party Transactions	3 (6)	0 (0)	0 (0)	3 (6)	1%
Publication Disclosure	1 (1)	0 (0)	0 (0)	1 (1)	0%
SUBTOTALS	134 (426)	109 (162)	1 (1)	244 (589)	
Delinquent Filings					
(a) Issuer Reporting	6 (10)	0 (0)	0 (0)	6 (10)	2%
(b) Forms 3 & 4.	2 (2)	0 (0)	0 (0)	2 (2)	1%
GRAND TOTALS	142 (438)	109 (162)	1 (1)	252 (601)	101%[3]

[1] The number of defendants and respondents is noted parenthetically

[2] This category includes injunctive actions, and civil and criminal contempt proceedings

[3] Percentages total more than 100% due to rounding of figures

Table 35
INVESTIGATIONS OF POSSIBLE VIOLATIONS OF THE ACTS ADMINISTERED BY THE COMMISSION

Pending as of October 1, 1987	805
Opened in fiscal year 1988	366
Total	1,171
Closed in fiscal year 1988	227
Pending as of September 30, 1988	944
Formal Orders of Investigation Issued in Fiscal Year 1988	68

Table 36
ADMINISTRATIVE PROCEEDINGS INSTITUTED DURING FISCAL YEAR ENDING SEPTEMBER 30, 1988

Broker-Dealer Proceedings	54
Investment Adviser, Investment Company and Transfer Agent Proceedings	24
Stop Order and Regulation A Proceedings	10
Rule 2(e) Proceedings	10
Disclosure Proceedings (Section 15(c)(4) of the Exchange Act)	8
Suspensions of Trading in Securities in Fiscal Year 1988	124

Table 37
INJUNCTIVE ACTIONS

Fiscal Year	Actions Initiated	Defendants Named
1979	108	511
1980	103	387
1981	114	398
1982	136	418
1983	151	416
1984	179	508
1985	143	385
1986	163	488
1987	144	373
1988	125	401

Foreign Restricted List

The Securities and Exchange Commission maintains and publishes a Foreign Restricted List which is designed to put broker-dealers, financial institutions, investors and others on notice of possible unlawful distributions of foreign securities in the United States. The list consists of names of foreign companies whose securities the Commission has reason to believe have been, or are being offered for public sale in the United States in possible violation of the registration requirement of Section 5 of the Securities Act of 1933. The offer and sale of unregistered securities deprives investors of all the protections afforded by the Securities Act of 1933, including the right to receive a prospectus containing the information required by the Act for the purpose of enabling the investor to determine whether the investment is suitable. While most broker-dealers refuse to effect transactions in securities issued by companies on the Foreign Restricted List, this does not necessarily prevent promotors from illegally offering such securities directly to investors in the United States by mail, by telephone, and sometimes by personal solicitation. The following foreign corporations and other foreign entities comprise the Foreign Restricted List.

1. Aguacate Consolidated Mines, Incorporated (Costa Rica)
2. Alan MacTavish, Ltd. (England)
3. Allegheny Mining and Exploration Company, Ltd. (Canada)
4. Allied Fund for Capital Appreciation (AFCA, S.A.) (Panama)
5. Amalgamated Rare Earth Mines, Ltd. (Canada)
6. American Industrial Research S.A., also known as Investigation Industrial Americana, S.A. (Mexico)
7. American International Mining (Bahamas)
8. American Mobile Telephone and Tape Co., Ltd. (Canada)
9. Antel International Corporation, Ltd. (Canada)
10. Antoine Silver Mines, Ltd. (Canada)
11. ASCA Enterprisers Limited (Hong Kong)
12. Atholl Brose (Exports) Ltd. (England)
13. Atholl Brose Ltd. (England)
14. Atlantic and Pacific Bank and Trust Co., Ltd. (Bahamas)
15. Bank of Sark (Sark, Channel Islands, U.K.)
16. Briar Court Mines, Ltd. (Canada)
17. British Overseas Mutual Fund Corporation Ltd. (Canada)
18. California & Caracas Mining Corp., Ltd. (Canada)
19. Caprimex, Inc. (Grand Cayman, British West Indies)
20. Canterra Development Corporation, Ltd. (Canada)
21. Cardwell Oil Corporation, Ltd. (Canada)
22. Caribbean Empire Company, Ltd. (British Honduras)
23. Caye Chapel Club, Ltd. (British Honduras)
24. Central and Southern Industries Corp. (Panama)
25. Cerro Azul Coffee Plantation (Panama)
26. Cia. Rio Banano, S.A. (Costa Rica)
27. City Bank A.S. (Denmark)
28. Claw Lake Molybdenum Mines, Ltd. (Canada)
29. Claravella Corporation (Costa Rica)
30. Compressed Air Corporation, Limited (Bahamas)
31. Continental and Southern Industries, S.A. (Panama)
32. Crossroads Corporation, S.A. (Panama)
33. Darien Exploration Company, S.A. (Panama)
34. Derkglen, Ltd. (England)
35. De Veers Consolidated Mining Corporation, S.A. (Panama)
36. Doncannon Spirits, Ltd. (Bahamas)
37. Durman, Ltd. Formerly known as Bankers International Investment Corporation (Bahamas)
38. Empresia Minera Caudalosa de-Panama, S.A. (Panama)
39. Ethel Copper Mines, Ltd. (Canada)
40. Euroforeign Banking Corporation, Ltd. (Panama)
41. Finansbanker a/s (Denmark)
42. First Liberty Fund, Ltd. (Bahamas)
43. General Mining S.A. (Canada)

44. Global Explorations, Inc. (Panama)
45. Global Insurance, Company, Limited (British West Indies)
46. Globus Anlage-Vermittlungsgesellschaft MBH (Germany)
47. Golden Age Mines, Ltd. (Canada)
48. Hebilla Mining Corporation (Costa Rica)
49. Hemisphere Land Corporation Limited (Bahamas)
50. Henry Ost & Son, Ltd. (England)
51. Hotelera Playa Flamingo, S.A.
52. Intercontinental Technologies Corp. (Canada)
53. International Communications Corporation (British West Indies)
54. International Monetary Exchange (Panama)
55. International Trade Development of Costa Rica, S.A.
56. Ironco Mining & Smelting Company, Ltd. (Canada)
57. James G. Allan & Sons (Scotland)
58. Jojoba Oil & Seed Industries S.A. (Costa Rica)
59. Jupiter Explorations, Ltd. (Canada)
60. Kenilworth Mines, Ltd. (Canada)
61. Klondike Yukon Mining Company (Canada)
62. KoKanee Moly Mines, Ltd. (Canada)
63. Land Sales Corporation (Canada)
64. Los Dos Hermanos, S.A. (Spain)
65. Lynbar Mining Corp. Ltd. (Canada)
66. Massive Energy Ltd. (Canada)
67. Mercantile Bank and Trust & Co., Ltd. (Cayman Island)
68. Multireal Properties, Inc. (Canada)
69. J.P. Morgan & Company, Ltd., of London, England (not to be confused with J.P. Morgan & Co., Incorporated, New York)
70. Norart Minerals Limited (Canada)
71. Normandie Trust Company, S.A. (Panama)
72. Northern Survey (Canada)
73. Northern Trust Company, S.A. (Switzerland)
74. Northland Minerals, Ltd. (Canada)
75. Obsco Corporation, Ltd. (Canada)
76. Pacific Northwest Developments, Ltd. (Canada)
77. Pan-Alaska Resources, S.A. (Panama)
78. Panamerican Bank & Trust Company (Panama)
79. Pascar Oils Ltd. (Canada)
80. Paulpic Gold Mines, Ltd. (Canada)
81. Pyrotex Mining and Exploration Co., Ltd. (Canada)
82. Radio Hill Mines Co., Ltd. (Canada)
83. Rancho San Rafael, S.A. (Costa Rica)
84. Rodney Gold Mines Limited (Canada)
85. Royal Greyhound and Turf Holdings Limited (South Africa)
86. S.A. Valles & Co., Inc. (Philippines)
87. San Salvador Savings & Loan Co., Ltd. (Bahamas)
88. Santack Mines Limited (Canada)
89. Security Capital Fiscal & Guaranty Corporation S.A. (Panama)
90. Silver Stack Mines, Ltd. (Canada)
91. Societe Anonyme de Refinancement (Switzerland)
92. Strathmore Distillery Company, Ltd. (Scotland)
93. Strathross Blending Company Limited (England)
94. Swiss Caribbean Development & Finance Corporation (Switzerland)
95. Tam O'Shanter, Ltd. (Switzerland)
96. Timberland (Canada)
97. Trans-American Investments, Limited (Canada)
98. Trihope Resources, Ltd. (West Indies)
99. Trust Company of Jamaica, Ltd. (West Indies)
100. United Mining and Milling Corporation (Bahamas)
101. Unitrust Limited (Ireland)
102. Vacationland (Canada)
103. Valores de Inversion, S.A. (Mexico)
104. Victoria Oriente, Inc. (Panama)
105. Warden Walker Worldwide Investment Co. (England)
106. Wee Gee Uranium Mines, Ltd. (Canada)
107. Western International Explorations, Ltd. (Bahamas)
108. Yukon Wolverine Mining Company (Canada)

Right to Financial Privacy

Section 21(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(h)(6)] requires that the Commission "compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of [Section 21(h)(21)] or the provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401-22 (the RFPA)] to obtain access to financial records of a customer and include it in its annual report to the Congress." During the fiscal year, the Commission made no applications to courts for orders pursuant to the subparagraphs and clauses of Section 21(h)(2) to obtain access to financial records of a customer. The table below sets forth the number of occasions upon which the Commission obtained accesss to the financial records of a customer using the procedures provided by (i) Section 1105 of the RFPA [12 U.S.C. 3405], applicable to administrative subpoenas; (ii) Section 1104 of the RFPA [12 U.S.C. 3404], applicable to customer consents; and (iii) Section 1107 of the RFPA [12 U.S.C. 3407], applicable to judicial subpoenas.

Section 1104	Section 1105	Section 1107
34	150	8

CORPORATE REORGANIZATIONS

During fiscal year 1988, the Commission entered its appearance in 54 reorganization cases filed under Chapter 11 of the Bankruptcy Code involving companies with aggregated stated assets of about $10 billion and close to 230,000 public investors. Counting these new cases, the Commission was a party in a total of 151 Chapter 11 cases during the fiscal year. In these cases the stated assets totalled approximately $50 billion and 1 million public investors were involved, including the Texaco Chapter 11 case with assets of $18.3 billion and about 275,000 public investors. During fiscal year 1988, 42 cases were concluded through confirmation of a plan of reorganization, dismissal, or liquidation, leaving 109 cases in which the Commission was a party at year-end.

Table 38

REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District	F.Y Opened	F.Y Closed
Aca Joe, Inc.	N.D. CA	1988	
ADI Electronics	E.D. NY	1987	
A.H. Robins Co., Inc	E.D. VA	1985	
AIA Industries, Inc.	E.D PA	1984	
Air Florida Systems, Inc. [1]	S.D FL	1984	1988
Airlift International, Inc	S.D. FL	1981	
Allegheny International, Inc.	W.D. PA	1988	
Allis-Chalmers	S.D NY	1987	
Allison's Place	C.D CA	1988	
Altec Corp [1]	C.D. CA	1985	1988
American Fuel Tech, Inc [3]	D. DE	1987	1988
American Healthcare Mgmt, Inc.	N.D. TX	1988	
American Monitor Corp	S.D IN	1986	
Amfesco Ind, Inc. [1]	E.D NY	1986	1988
Anglo Energy, Inc [1]	S.D NY	1988	
ATI, Inc [1]	D NJ	1985	1988
Basix Corporation	S.D NY	1988	
Beker Industries Corp	S.D NY	1986	
Berry Industries Corp	C.D CA	1985	
Birdview Satellite Communications, Inc	D KS	1988	
Branch Industries, Inc	S.D. NY	1985	
Buttes Gas & Oil Co	S.D. TX	1986	
Canton Industrial Corp.	C.D IL	1988	
Care Enterprises, Inc	C.D. CA	1988	
Castle Industries, Inc.	E.D. AR	1987	
Chalet Gourmet Corp.	C.D. CA	1985	
Charter Co.	M.D FL	1984	
Citel, Inc. [1]	N.D CA	1985	1988
Citywide Securities Corp [4]	S.D NY	1985	
CLC of America	E.D. MO	1986	
Coated Sales, Inc.	S.D NY	1988	
Coleco Industries, Inc	S.D. NY	1988	
Colonial X-Ray Corp [2]	S.D. FL	1986	1988
Columbia Data Products, Inc [1]	D MD	1985	1988
Combustion Protection Corp [2]	E.D. NY	1987	1988
Commonwealth Oil Refining Co., Inc.	W.D. TX	1984	
Connor Corp	E.D NC	1987	
Cook United, Inc. [2]	N.D. OH	1987	1988
Cordyne Corp [3]	D OR	1987	1988
Crompton Co., Inc	S.D. NY	1985	

Table 38—Continued

REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District		FY Opened	FY Closed
Dakota Minerals, Inc.	D	WY	1986	
DeLaurentiis Entertainment	C D	CA	1988	
Detroit-Texas Gas Gathering Co	S D	TX	1988	
D'Lites of America, Inc. [1]	N D	GA	1986	1988
Eastmet Corp [1]	D.	MD	1986	1988
Endotronics, Inc [1]	D	MN	1987	1988
Enterprise Technologies, Inc	S D	TX	1984	
Equestrian Ctrs of Amer., Inc.	C D	CA	1985	
Evans Products Co	S D	FL	1985	
Fashion Channel Network	C D	CA	1988	
Fidelity American Financial Corp. [2,4]	E D.	PA	1981	1988
Financial & Bus Serv., Inc	W.D	NC	1986	
Finest Hour, Inc	C D.	CA	1988	
Galaxy Oil Company [1]	N.D	TX	1987	1988
General Exploration Co.	N.D.	OH	1986	
General Resources Corp	N.D	GA	1980	
GIC Govt Securities, Inc [2,4]	M D.	FL	1986	1988
Global Marine, Inc	S D	TX	1986	
Hampton Healthcare, Inc.	M.D.	FL	1988	
Heck's Inc.	S D	WV	1987	
Helionetics, Inc	C D	CA	1987	
Holland Industries, Inc.	S.D	NY	1988	
Holiday Resources, Inc.	S.D	TX	1987	
ICX, Inc.	D	CO	1987	
Inflight Services, Inc.	S D	NY	1987	
Intn'l Inst of Applied Tech, Inc [2]	D	DC	1983	1988
Intn'l Pharmaceutical Products, Inc	C D	CA	1988	
International Waste Water [2]	M.D.	PA	1985	1988
Interstate Airlines, Inc.	E D	AR	1988	
Jerry Lamply [2,4]	S D.	MS	1988	1988
Kaiser Steel Corp.	D.C	CO	1987	
Kenai Corp.	S D	NY	1987	
The Key Company.	W D	NC	1988	
LTV Corporation	S D	NY	1986	
Magic Circle Energy Corp [1]	W D	OK	1985	1988
McLean Industries, Inc.	S.D	NY	1987	
Magnolia Development [2,4]	S D	MS	1988	1988
Manville Corp. [1]	S D	NY	1982	1988
Marathon Office Supply, Inc.	C.D	CA	1988	
Marvin Leon Warner [4]	M D	FL	1988	
Melridge, Inc	D	OR	1988	
Michigan General Corp.	N.D	TX	1987	
Microcomputer Memories, Inc. [2]	C.D	CA	1986	1988
Mid-America Petroleum, Inc	N.D	TX	1986	
Midland Capital Corp.	S D.	NY	1986	
Mission Insurance Group, Inc	C.D.	CA	1987	
Munson Geothermal, Inc.	D	NV	1988	
Murphy Industries, Inc. [1]	N.D	TX	1987	1988
Mustang Resources Corp.	S.D	TX	1988	
Natn'l Bus. Communications Corp. [1]	S.D.	FL	1986	1988
New Brothers, Inc	S D	GA	1985	
Nicklos Oil & Gas Co. [1]	S D	TX	1986	1988
Nucorp Energy, Inc [1]	S D	CA	1982	1988
Ohio Ferro-Alloys Corp.	N.D.	OH	1987	
Oliver's Stores	E D	NY	1987	
Overland Express, Inc.	S.D	IN	1988	
Pacific Express Holding, Inc.	E D	CA	1984	
Pengo Industries, Inc.	N.D.	TX	1988	

Table 38—Continued

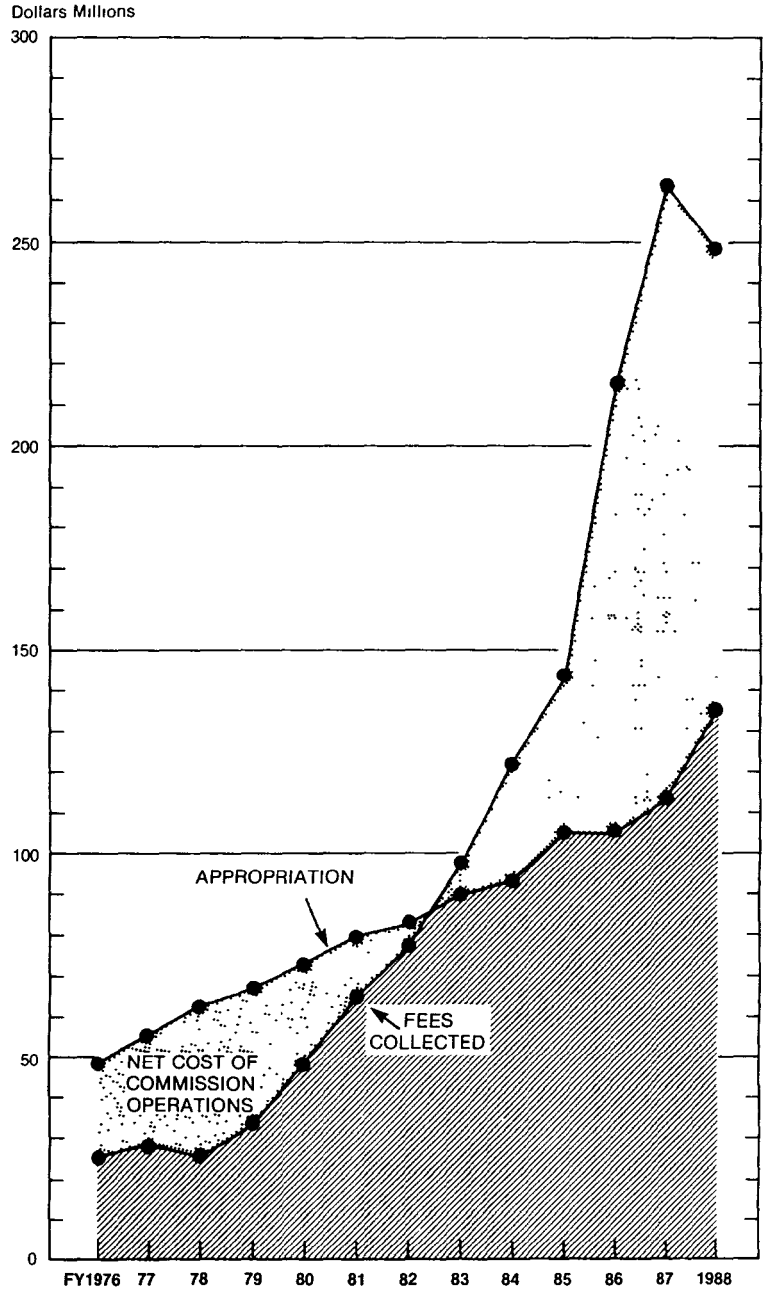
REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District	F.Y. Opened	F.Y. Closed
Petro-Serve [2]	S.D. MS	1988	1988
Pettibone Corp.	N.D. IL	1986	
Po'Folks, Inc	M.D. TN	1988	
Psych Systems [1]	D MD	1986	1988
Public Service Co of New Hampshire	D NH	1988	
QT&T, Inc.	E.D. NY	1987	
Radice Corporation	S.D. FL	1988	
Refinement International, Inc	C.D. CA	1988	
Revco D.S. Inc [4]	N.D. OH	1988	
The Rolfite Company [3]	M.D FL	1988	1988
Ronco Teleproducts, Inc	N.D. IL	1984	
Royle Airlines, Inc	W.D LA	1988	
Seatrain Lines, Inc	S.D. NY	1981	
Servamatic Systems, Inc	N.D CA	1986	
Shatterproof Glass Corp. [2]	E.D MI	1987	1988
Shearson-Murray Real Estate Fund, Ltd.	N.D. TX	1987	
Sooner Defense of Fla.	M.D. FL	1988	
Southern Hospitality Corp.	M.D TN	1988	
Specialty Retail Concepts, Inc.	W.D NC	1988	
Spencer Cos., Inc.	D. MA	1987	
Spring Meadows Associates	C.D. CA	1988	
Standard Metals Corp	D CO	1984	
State Capital Corp. [2]	M.D. FL	1985	1988
Storage Technology, Inc. [1]	D. CO	1985	1988
Swanton Corp.	S.D. NY	1985	
Systems for Health Care, Inc	N.D IL	1988	
Taco Eds, Inc. [2,4]	N.D OH	1984	1988
Texaco, Inc. [1]	S.D NY	1987	1988
Texas International Co.	W.D. OK	1988	
Texscan Corp.	D AZ	1986	
Tidwell Industries, Inc	N.D AL	1986	
Todd Shipyards Corp	D. NJ	1988	
Tomahawk Industries, Inc.	W.D. TN	1988	
Towle Manufacturing Con. [1]	S.D. NY	1986	1988
Traweek Investment Fund No 18, Ltd.	C.D. CA	1988	
Traweek Investment Fund No 20, Ltd.	C.D CA	1988	
Traweek Investment Fund No. 21, Ltd	C.D CA	1988	
Traweek Investment Fund No 22, Ltd.	C.D. CA	1988	
Twin City Barge, Inc [1]	D. MN	1987	1988
UNR Industries, Inc.	N.D. IL	1982	
The Veta Grande Cos, Inc [1]	C.D. CA	1986	1988
Victoria Station [1]	N.D. CA	1986	1988
W & J. Sloane Corp. [1]	S.D NY	1986	1988
Wedtech Corp	S.D NY	1987	
Wespac Investors Trust II	C.D. CA	1988	
The Western Co of No America	N.D. TX	1988	
Westworld Community Healthcaser, Inc	C.D. CA	1987	
Wheatland Investment Co [2,4]	E.D. WA	1985	1988
Wheeling-Pittsburgh Steel Corp.	W.D. PA	1985	
Worlds of Wonder, Inc	N.D. CA	1988	
Zienth Corporation	D. NJ	1988	
Zimmer Corp	S.D. FL	1988	
ZZZZ Best Co., Inc	C.D. CA	1987	
Total Cases Opened (FY 1988)		54	
Total Cases Closed (FY 1988)			42

[1] Plan of reorganization confirmed
[2] Debtor liquidated under Chapter 7.
[3] Chapter 11 case dismissed
[4] Debtor's securities not registered under Section 12(g) of the Exchange Act.

Table 39

Appropriated Funds vs Fees* Collected



*excludes disgorgements from fraud actions

Table 40
BUDGET ESTIMATES AND APPROPRIATIONS

$(000)

Action	Fiscal 1983		Fiscal 1984		Fiscal 1985		Fiscal 1986		Fiscal 1987		Fiscal 1988	
	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money
Estimate submitted to the Office of Management and Budget	2,016	$88,053	2,021	$94,935 [1]	2,310	$105,880	2,181	$117,314	2,172	$123,089	2,357	$151,665
Action by the Office of Management and Budget	-120	-3,753	-125	-3,000	-268	-1,197	-121	-9,197	-86	-9,039	-90	-6,629
Amount allowed by the Office of Management and Budget	1,896	84,300	1,896	91,935	2,042	104,683	2,060	108,117 [2]	2,086	114,050	2,267	145,036
Action by the House of Representatives	+125	+4,300	+203	+3,847	+4	-2,215	+23	+1,650	..	+1,050	..	-36
Sub-Total	2,021	88,600	2,099	95,782	2,046	102,468	2,088	109,787	2,086	115,100	2,267	145,000
Action by the Senate	...	-560	-170	-5,190	-4	+2,869	-28	+588	...	-1,050	...	-2,955
Sub-Total	2,021	88,040	1,929	90,592	2,042	105,337	2,060	110,355	2,086	114,050	2,267	142,045
Action by conferees	...	...	+92	+2,408	+4	..	+20	+745		+450	..	-6,824
Annual funding level	2,021	88,040	2,021	93,000	2,046	105,337	2,080	111,100	2,086	114,500	2,267	135,221
Supplemental appropriation		+1,650	..	+1,000	.	+1,045	.	. .	...	.	...	.
Sequestration	...	..	.	...	..	.	..	-4,777		...	...	...
Total funding level	2,021	89,690	2,021	94,000	2,046	106,382	2,080	106,323	2,086	114,500	2,267	135,221

[1] Includes $3,135,000 not in original OMB submission for pay increase expenses considered by Congress in initial deliberations.
[2] Includes 14 positions and $850,000 for Public Utility Regulation activities which were excluded from the agency submission but considered by Congress

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