# Fifteenth Annual Report

## of the

# Securities and Exchange Commission

## Fiscal Year Ended June 30, 1949



UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON : 1950

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
Price 55 cents

# SECURITIES AND EXCHANGE COMMISSION

Central Office
425 Second Street NW.
Washington 25, D. C.

## COMMISSIONERS

HARRY A. MCDONALD, *Chairman*
RICHARD B. MCENTIRE
PAUL R. ROWEN
DONALD C. COOK
EDWARD T. MCCORMICK

ORVAL L. DUBOIS, *Secretary*

## LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
*Washington, D. C., February —, 1950.*

SIR: I have the honor to transmit to you the Fifteenth Annual Report of the Securities and Exchange Commission, in accordance with the provisions of section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934; section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940; and section 216 of the Investment Advisers Act of 1940, approved August 22, 1940.

Respectfully,

HARRY A. MCDONALD,
*Chairman.*

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

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## FOREWORD

This is a report of the activities of the Securities and Exchange Commission during the fifteenth fiscal year of its existence. While the report is in no sense as ambitious a survey of the Commission's work and its problems as was undertaken in its Tenth Annual Report, some trends are noted herein for the five preceding years.

The statutes entrusted to the Commission give it a wide range of responsibility for protection of the investor. We have frequently stressed the fact that the generally applicable legislation administered by the Commission places its main emphasis on disclosure. That legislation is based on the theory that business, on the one hand, and the investor on the other, should retain a full range of individual responsibility for financial and investment decisions.

However, the statutes go further. For example, in regulating the conduct of securities professionals who do business with investors the statute imposes certain minimum capital requirements and provides that customers shall not be unduly prejudiced by practices in regard to the hypothecation of securities by professionals for their own borrowings. Since, in the ordinary course of business many firms handle cash and securities belonging to customers it is important for the Commission to help prevent loss to investors occurring as a result of violation of such restrictions. Further, many of the rules evolved under antifraud standards applying to such professionals have the effect of requiring obedience to certain business practices; an example is the doctrine, announced by the Commission and judicially affirmed, that dealers in the over-the-counter market may not, without disclosure, charge a customer a price not reasonably related to current market prices. While adequate disclosure and consent of the customer may avoid the charge of fraud when a firm has exacted high markups in its sales, the fact is that most firms obey the limitation on pricing inherent in the doctrine without regard to disclosure.

We have tried to show further in this report the importance, when dealing with securities frauds and manipulation, of prompt and preventative action. It is of little comfort to an investor to suffer loss through a firm which is, in effect, judgment proof. The best protection of the investor is to prevent the harm before it occurs.

For these reasons it is fallacious to think of the Commission as merely an information clearing house. It has duties which, in order to be fully borne, must carry the Commission's work into the books, records, practices, and financial conditions of thousands of securities firms scattered all over the country.

The "passive" activity of the Commission—the receipt and processing of filings—is activity over which the Commission has no control. It must be performed as the demand for the work arises. The Commission cannot, for example, delay work on a registration statement covering an issue of securities under the Securities Act of

1933 without either subjecting investors to the risk that an inadequate statement has been filed or unduly interfering with financing programs. On the other hand while the enforcement or "active" work in the examination of the records of securities firms by the Commission can be rationed according to available manpower and facilities it is no less significant to millions of investors than is the work of a superintendent of banks to depositors.

The Commission has long felt that its enforcement activities need to be strengthened. We are now considering streamlined procedures of examination to increase the number of inspections, and we hope that with additional funds we will be able to devote more manpower to this work.

An additional development worth commenting upon is the recent introduction by Senator Frear of S. 2408, a proposal to safeguard investors in securities not listed on national securities exchanges. The Securities Exchange Act contains several cardinal provisions whose purpose it is to change blind trading into informed investment by requiring corporate management to meet certain standards in its relations with investors. As a condition of listing its securities on a national securities exchange the law provides that each issuer must register and file initial and periodic information about the company and its financial affairs; it subjects those who solicit securityholders' proxies to the requirement that information be disclosed sufficient to permit an intelligent exercise of the vote; it contains provisions requiring disclosure by insiders—officers, directors and large holders of equity securities—of their holdings of equity securities of the corporation and contains provisions designed to prevent such persons from using inside information to profit from short term trading in equity securities of their companies. With limited exceptions these requirements do not exist with respect to securities not registered with the Commission under the Securities Exchange Act although many of their issuers are of substantial size and have substantial numbers of securityholders among the public.

S. 2408 would extend to certain large companies not now registered under the Securities Exchange Act the standards of that act relating to filing of information, the solicitation of proxies, and trading by corporate insiders. Not all companies would be so covered, but only those having assets of 3 million dollars or more and 300 or more securityholders—size limits selected because they indicate the existence of sufficient public interest in the company to warrant the extension of these standards.

This proposal was first contained in a report to the Congress by the Commission submitted in 1946 and entitled "A Proposal to Safeguard Investors in Unregistered Securities." That report showed how freedom from regulation permitted unregistered companies with large public stockholder interests to withhold from their securityholders the minimum information necessary for intelligent understanding of the investors' position and informed exercise of the investors' rights. The President endorsed this proposal and commended it to the Congress. Soon after the introduction, on August 8, 1949, of S. 2408, the Commission undertook to bring its 1946 report up to date. Such a revision should be ready soon.

The bill represents no departure from the basic philosophy of the existing law—that the securityholder who risks his money, who is the ultimate owner of the enterprise, is entitled to have a proper accounting from management of its stewardship of the company's affairs—but simply seeks to fill gaps left by piecemeal adoption of legislation affecting securities in 1934, 1935, 1936, 1938, 1939, and 1940. The bill would avoid the anomaly whereby the disposition of management's fiduciary duties depends, not upon the extent of public interest in a given company, but upon the accident that its management at one time listed the company's securities for trading on the exchange and registered them under the Securities Exchange Act.

Administration of the geographical integration and corporate simplification requirements of the Public Utility Holding Company Act of 1935 has continued at a rapid pace. During the fiscal year covered by this report 44 companies with assets of $1,748,878,827 were divested by registered holding companies through compliance with these standards. All of these companies thereby ceased to be subject to the Holding Company Act. Divestments since December 1, 1935, resulting in complete divorcement from jurisdiction under the Act were thus increased to 661 companies with assets of $7,964,764,537. Of the 2,152 companies subject at one time or another to the act, 1,510 have been eliminated through divestment, dissolution, mergers, and other means.

In addition 206 companies with assets of $3,781,000,000 have been divested by one or more holding companies, but remain subject to the statute by reason of their relationship to a registered holding company. One hundred forty-three of these companies with assets of approximately $3,355,000,000 are expected to continue under the Commission's jurisdiction indefinitely as members of systems which will become fully integrated. It is estimated that these integrated systems will control from 6 to 7 billion dollars of assets.

A great deal has been accomplished under the Holding Company Act. However, despite serious attrition in personnel the case workload today in the important categories is actually greater than it was in 1941. Average employment in the Division of Public Utilities had dropped from 234 in 1941 to 150 at the end of the 1949 fiscal year. Yet, at the end of the 1941 fiscal year we had only 37 voluntary and involuntary reorganization proceedings pending—at the end of the 1949 fiscal year we had 138. Total proceedings regarding reorganization and the acquisition and sale of properties and portfolio securities pending at the end of 1941 was 163—at the end of 1949 it was 265. In 1941 we disposed of 192 applications and declarations concerning financing out of 257 current for the year. During 1949 we disposed of 317 out of 434 current during the year. At the end of 1949 we had 117 of such proceedings pending, whereas at the end of 1941 we had 65.

This report is intended to inform the Congress of the activities of the Commission. The Commission's facilities are always available to supply further information about its work.

## COMMISSIONERS AND STAFF OFFICERS

(as of December 31, 1949)

| Commissioners | *Term expires June 5—* |
|---|---|
| HARRY A. MCDONALD, of Michigan, Chairman [1] | 1951 |
| RICHARD B. MCENTIRE | 1953 |
| PAUL R. ROWEN, of Massachusetts | 1950 |
| DONALD C. COOK, of Michigan [2] | 1954 |
| EDWARD T. MCCORMICK, of Arizona [3] | 1952 |

Secretary: ORVAL L. DUBOIS

**Staff Officers**

BALDWIN B. BANE, Director, Division of Corporation Finance. ANDREW JACKSON, Associate Director.

MORTON E. YOHALEM, Director, Division of Public Utilities. SIDNEY E. WILLNER, Associate Director.

ANTHON H. LUND, Director, Division of Trading and Exchanges.[4] SHERRY T. MCADAM, Jr., Associate Director.

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

EARLE C. KING, Chief Accountant.

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

NATHAN D. LOBELL, Executive Adviser to the Commission.

HASTINGS P. AVERY, Director, Division of Administrative Services.

WILLIAM E. BECKER, Director, Division of Personnel.

JAMES J. RIORDAN, Director, Division of Budget and Finance.

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[1] Elected Chairman on November 4, 1949.
[2] Appointed October 27, 1949 to fill the vacancy created by the resignation of Robert L. McConnaughey.
[3] Appointed November 2, 1949 to fill the vacancy created by the resignation of Edmond M. Hanrahan.
[4] Appointed to succeed the late Edward H. Cashion.

## REGIONAL AND BRANCH OFFICES

**Regional Administrators**

Zone 1—PETER T. BYRNE, Equitable Building (Room 2006), 120 Broadway, New York 5, N. Y.
Zone 2—PHILIP E. KENDRICK, Post Office Square Building (Room 501), 79 Milk Street, Boston 9, Mass.
Zone 3—WILLIAM GREEN, Atlanta National Building (Room 322), Whitehall and Alabama Streets, Atlanta 3, Ga.
Zone 4—CHARLES J. ODENWELLER, Jr., Standard Building (Room 1608), 1370 Ontario Street, Cleveland 13, Ohio.
Zone 5—THOMAS B. HART, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Ill.
Zone 6—ORAN H. ALLRED, United States Courthouse (Room 103), 10th and Lamar Streets, Fort Worth 2, Tex.
Zone 7—JOHN L. GERAGHTY, Midland Savings Building (Room 822), 444 Seventeenth Street, Denver 2, Colo.
Zone 8—HOWARD A. JUDY, Appraisers Building (Room 308), 630 Sansome Street, San Francisco 11, Calif.
Zone 9—JAMES E. NEWTON, 1411 Fourth Avenue Building (Room 810) Seattle 1, Wash.[1]
Zone 10—E. RUSSEL KELLY, 425 Second Street NW., Washington 25, D. C.

**Branch Offices**

Federal Building (Room 1074), Detroit 26, Mich.
United States Post Office and Courthouse (Room 1737), 312 North Spring Street, Los Angeles 12, Calif.
Pioneer Building (Room 400), Fourth and Roberts Streets, St. Paul 1, Minn.
Wright Building (Room 327), Tulsa 3, Okla.
United States Courthouse and Customhouse (Room 1006), 1114 Market Street, St. Louis 1, Mo.

[1] Appointed to fill the vacancy created by the retirement of Day Karr.



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# PART I

## ADMINISTRATION OF THE SECURITIES ACT OF 1933

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

### THE REGISTRATION PROCESS

#### Purpose of Registration

Unless exempted from the Securities Act, securities offered for sale in interstate commerce or by the use of the mails must be registered. Securities for which such exemption is provided consist, in general, of government and municipal securities and the issues of banks, railroads, cooperatives and other organizations and associations specified in section 3 (a) of the act or covered by exemptions in rules and regulations adopted by the Commission, as discussed elsewhere in this report, pursuant to section 3 (b) of the act. In addition, while the act contains no exemption for securities of governmental or other foreign issuers as such, Public Law 142, 81st Congress, approved by President Truman on June 29, 1949, extended a specific exemption to securities issued or guaranteed by the International Bank for Reconstruction and Development from the registration requirements of both the Securities Act of 1933 and the Securities Exchange Act of 1934.[1]

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

The registration statement as a whole discloses material facts dealing, among other things, with the character, size, and profitableness of the business, its capital structure, the uses to which the company intends to put the proceeds realized from the sale of the securities, options outstanding against securities of the issuer, remuneration of officers and directors, bonus and profit-sharing arrangements, underwriters' commissions, and pending and threatened legal proceedings. There must also be included in this document certified financial statements of the business enterprise.

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[1] For comments of the Commission made upon the proposal to exempt issues of the World Bank, see letter from Chairman Hanrahan incorporated in Senate Report No. 504 and House Report No. 708, to accompany S. 1664 and H. R. 4332, respectively, 81st Cong., 1st sess., calling attention to the fact that the provisions of these acts prohibiting outright fraud are applicable to "exempted securities," and under this enactment would continue to be applicable to securities issued or guaranteed by the World Bank.

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

Recently, there has been a marked trend, encouraged by the Commission, toward use of smaller prospectuses than had commonly been customary. As a result, in place of the cumbersome and somewhat formidable document, printed on a heavy stock of legal-size paper, which was commonly furnished to prospective investors during the early years of the administration of the act, in recent years many registrants used smaller and simpler prospectuses furnishing the lay investor with a more convenient and more readable document than heretofore.

**Examination Procedures**

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

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

Another informal procedure that has proved effective in speeding the registration process is the "pre-filing conference" between staff members and representatives of registrants and underwriters. In this manner registrants are encouraged to discuss problems in connection with the proposed filing for the purpose of determining in advance what types or methods of disclosure may be necessary under the circumstances of the particular case. Considerable use is made of this procedure, which has contributed to the marked reduction in the number of instances where the Commission has found it necessary to resort to stop-order proceedings or other formal action under section 8.

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

**Effective Date of Registration Statement**

The 20-day waiting period was provided by the Congress in order to permit widespread publicity among investors of the information contained in the registration statement before it becomes effective. The Commission is, however, empowered at its discretion to accelerate the effective date where the facts justify such action so that the full 20-day period need not elapse before the registration statement can become effective. In the exercise of this power, the Commission must have due regard to the adequacy of the information about the security already available to the public, to the complexity of the particular financing, and to the public interest and the protection of investors.

**Time Required to Complete Registration Process**

The Commission seeks to accomplish completion of the registration process within the statutory 20-day waiting period, and to that end it has enlisted the cooperation of representatives of the securities business. Studies of the amount of time required to complete the registration process in all cases during the past three years show that the median elapsed time has been shortened from 30½ days in 1947 to 24½ days in 1948 and to 22¼ days in the 1949 fiscal year.

*Time elapsed in registration process—1949 fiscal year*

| | 1948 | | | | | | 1949 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | July | Aug. | Sept. | Oct. | Nov. | Dec. | Jan. | Feb. | Mar. | Apr. | May | June |
| Total registration statements effective during month (number) | 26 | 27 | 31 | 34 | 40 | 27 | 26 | 38 | 43 | 59 | 32 | 38 |
| Elapsed time (median number of days): | | | | | | | | | | | | |
| From date of filing registration statement to first letter of comment | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| From date of letter of comment to first amendment by registrant | 7 | 9 | 7 | 8 | 7 | 9 | 10 | 7 | 7 | 6 | 6 | 6 |
| From date of first amendment to the effective date of registration | 6 | 6 | 6 | 5 | 6 | 6 | 4 | 4 | 3 | 4 | 4 | 4 |
| Total median elapsed time (days) | 23 | 25 | 23 | 23 | 23 | 25 | 24 | 21 | 20 | 20 | 20 | 20 |

The table covers all statements processed, including those where voluntary delays were sought for reasons extrinsic to the examination process. The detailed figures for each month of the year show that no more than 20 days in total elapsed time has been required to obtain effectiveness of the typical registration statement during each of the last four months of the year.

It will be noted from the table that the Commission has maintained a median of 10 days between receipt of filings and staff comment on the registration statement. Variations in time for the total registration process are due in large part to variations in the time taken for corrections by those who file statements and to the lapse between corrections and effectiveness. Many factors enter into the duration of the latter period; among them are the necessity for further corrections and variations in the time necessary for analyzing supplementally filed amendments.

## THE VOLUME OF SECURITIES REGISTERED

### Volume Of All Securities Registered in Fiscal Year

| | *1949* | *1948* |
|---|---|---|
| Total registered | $5, 333, 362, 000 | $6, 404, 633, 000 |

The amount of securities effectively registered during the 1949 fiscal year was 17 percent less than the amount registered in the 1948 period. For the five-year period ending with the 1949 fiscal period [2] the amount was $28,768,306,000, 226 percent greater than the $8,819,-902,000 for the 5-year period ended June 30, 1944, and 82 percent greater than the $15,280,021,000 for the 4-year and 10-month period ended June 30, 1939 adjusted to a 5-year period.

The volume registered in the 1949 fiscal year was distributed over 429 [3] effective registrations covering 588 issues, as compared with 435 statements covering 559 issues for the 1948 fiscal year.

### Securities Registered for Cash Sale

A. ALL SECURITIES

| | *1949* | *1948* |
|---|---|---|
| Registered for cash sale for accounts of issuers | $4, 204, 008, 000 | $5, 032, 199, 000 |
| Registered for cash sale for accounts of others than issuers | 193, 870, 000 | 209, 102, 000 |
| Total registered for cash sale | 4, 397, 878, 000 | 5, 241, 301, 000 |
| Total registered for other than cash sale | 935, 484, 000 | 1, 163, 332, 000 |
| Total of all registered securities | 5, 333, 362, 000 | 6, 404, 633, 000 |

[2] For 5-year summary see appendix table 1, pts. 4, 5 and 6.

[3] This figure differs from the 415 shown in the table on p. 9 due to difference in the classification as to the time of effectiveness of registration statements. See appendix table 1, footnote 2 for details.

B. STOCKS AND BONDS REGISTERED FOR CASH SALE FOR THE ACCOUNTS OF ISSUERS

| | 1949 | 1948 |
|---|---|---|
| Equity securities other than preferred stock | $1, 083, 117, 000 | $1, 678, 127, 000 |
| Preferred stock | 325, 854, 000 | 536, 942, 000 |
| Total all stock | 1, 408, 971, 000 | 2, 215, 069, 000 |
| All bonds | 2, 795, 036, 000 | 2, 817, 130, 000 |
| Total | 4, 204, 008, 000 | 5, 032, 199, 000 |

It should be noted that while the volume of bonds registered by issuers for cash sale decreased only slightly in the 1949 fiscal year, stock so registered showed a marked decrease.

From September 1934 through June 1948 new money purposes represented 33 per cent of the net proceeds expected from the sale of issues registered for the accounts of issuers. In the 1949 fiscal year new money purposes represented 76 percent of the expected net proceeds for the year—large enough to raise the 15-year average by 4 points to 37 percent.[5]

The table below shows the amount of each type of security registered for cash sale for the accounts of the issuers in each of the fiscal years 1935 through 1949 as well as the three 5-year totals. In addition to the totals of the new issues for cash sale, all registrations are shown for the same periods.

(Millions of dollars)[1]

| Fiscal year ended June 30 | All registrations | Cash sale for account of issuers | | | |
|---|---|---|---|---|---|
| | | Total | Bonds and face-amount certificates | Preferred stock | Common stock and certificates of participation |
| 1935[2] | 913 | 686 | 490 | 28 | 168 |
| 1936 | 4,835 | 3,936 | 3,153 | 252 | 531 |
| 1937 | 4,851 | 3,635 | 2,426 | 406 | 802 |
| 1938 | 2,101 | 1,349 | 666 | 209 | 474 |
| 1939 | 2,579 | 2,020 | 1,593 | 109 | 318 |
| 1935-39 | 15,280 | 11,626 | 8,328 | 1,003 | 2,293 |
| 1940 | 1,787 | 1,433 | 1,112 | 110 | 210 |
| 1941 | 2,611 | 2,081 | 1,721 | 164 | 196 |
| 1942 | 2,003 | 1,465 | 1,041 | 162 | 263 |
| 1943 | 659 | 486 | 316 | 32 | 137 |
| 1944 | 1,760 | 1,347 | 732 | 343 | 272 |
| 1940-44 | 8,820 | 6,812 | 4,922 | 812 | 1,078 |
| 1945 | 3,225 | 2,715 | 1,851 | 407 | 456 |
| 1946 | 7,073 | 5,424 | 3,102 | 991 | 1,331 |
| 1947 | 6,732 | 4,874 | 2,937 | 787 | 1,150 |
| 1948 | 6,405 | 5,032 | 2,817 | 537 | 1,678 |
| 1949 | 5,333 | 4,204 | 2,795 | 326 | 1,083 |
| 1945-49 | 28,768 | 22,249 | 13,502 | 3,047 | 5,698 |

[1] Dollar amounts are rounded to millions and will not necessarily add to totals.
[2] For 10 months ended June 30, 1935.

[5] See also appendix table 1, pts. 3 and

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

| *Type of issuer* | *1949* | *1948* |
|---|---|---|
| Electric, gas, and water companies | $1, 796, 709, 000 | $1, 606, 551, 000 |
| Transportation and communication companies [1] | 989, 911, 000 | 1, 674, 528, 000 |
| Financial and investment companies | 680, 600, 000 | 780, 542, 000 |
| Manufacturing companies | 679, 447, 000 | 872, 471, 000 |
| Extractive companies | 33, 495, 000 | 26, 238, 000 |
| Merchandising companies | 14, 675, 000 | 51, 333, 000 |
| Service companies | 9, 171, 000 | 20, 498, 000 |
| Construction and real estate companies | 0 | 39, 000 |
| Total | 4, 204, 008, 000 | 5, 032, 199, 000 |

[1] Does not include companies subject to regulation by the Interstate Commerce Commission and therefore exempt from registration.

Registrations of securities for cash sale by electric, gas, and water companies in the 1949 fiscal year established a new high for the group, exceeding by 8 percent the previous high established in the 1946 fiscal year and by 12 percent the amount for the 1948 fiscal year. They accounted for two-fifths of the total for the year. Transportation and communication companies, with 24 percent of the total, registered 41 percent less than in the 1948 fiscal year, which represents their peak year for the 15 years. Companies classified as financial and investment companies and manufacturing companies registered almost equal amounts of securities, 16 percent of the total each, decreases of 13 and 22 percent, respectively, from the amounts for the 1948 fiscal year. No registration statements were filed by foreign governments for cash sale during the 1949 and 1948 fiscal years.

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

| Amount registered to be sold through investment bankers: | *1949* | *1948* |
|---|---|---|
| Under agreements to purchase for resale | $2, 758, 454, 000 | $3, 016, 544, 000 |
| Under agreements to use "best efforts" to sell | 557, 361, 000 | 759, 791, 000 |
| Total registered to be sold through investment bankers | 3, 315, 814, 000 | 3, 776, 335, 000 |
| Total registered to be sold directly to investors by issuers | 888, 194, 000 | 1, 255, 865, 000 |
| Total | 4, 204, 008, 000 | 5, 032, 199, 000 |

In the 1949 fiscal year, investment bankers were used for the sale of 79 percent of the total securities registered for cash sale for the accounts of issuers as compared with 75 percent in the 1948 fiscal year. Commitments by investment bankers to purchase for resale involved 66 percent of the total registered for cash sale for the accounts of issuers, as compared with 60 percent in the 1948 fiscal year.[6]

[6] See also appendix table 1, pts. 2 and 5.

During the five fiscal years ended June 30, 1949, investment bankers underwrote for cash sale or exchange 1,821 registered issues amounting to $17,325,874,000. Of this amount, $10,957,543,000 represented bonds, $3,706,520,000 represented preferred stock, and $2,661,812,000 represented common stock.

That part of cost of flotation represented by commissions and discounts to investment bankers, but excluding other expenses, is shown for each type of security for each of the past 10 fiscal years. The table below covers securities effectively registered for cash sale through investment bankers to the general public for the accounts of the registrants, but does not include securities sold to existing security holders of the issuers, securities sold to special groups, and securities of investment companies.

*Commissions and discounts to investment bankers*

[Percent of gross proceeds]

| Year ended June 30— | Bonds | Preferred stock | Common stock |
|---|---|---|---|
| 1940 | 1.9 | 7.2 | 16.4 |
| 1941 | 1.8 | 4.1 | 14.4 |
| 1942 | 1.5 | 4.1 | 10.1 |
| 1943 | 1.7 | 3.6 | 9.7 |
| 1944 | 1.5 | 3.1 | 8.1 |
| 1945 | 1.3 | 3.1 | 9.3 |
| 1946 | .9 | 3.1 | 8.0 |
| 1947 | .9 | 2.8 | 9.3 |
| 1948 | .6 | 4.5 | 10.2 |
| 1949 | .8 | 3.8 | 7.1 |

## ALL NEW SECURITIES OFFERED FOR CASH SALE [7]

### Registered Securities

Securities effectively registered under the Securities Act of 1933 and actually offered for cash sale during the 1949 fiscal year still were at a high level, although lower than in any of the postwar years which have been characterized by a record volume of new capital issues. The amounts of such offerings, valued at actual offering prices, are as follows:[8]

| | *1949* | *1948* |
|---|---|---|
| Corporate (excluding investment companies) | $3, 443, 000, 000 | $3, 758, 000, 000 |
| Noncorporate (International Bank) | 0 | 249, 000, 000 |
| Total registered securities offered | 3, 443, 000, 000 | 4, 007, 000, 000 |

### Unregistered Securities

CORPORATE

Some $3,436,000,000 of unregistered corporate securities are known to have been offered for cash sale by issuers in the 1949 fiscal year as

[7] See appendix table 3 for a detailed statistical breakdown of the volume of all securities offered for cash sale in the United States. Footnote 1 of that table gives a description of the statistical series.

[8] The figures given in this section exclude securities sold through continuous offering, such as issues of open-end investment companies and securities sold through employee purchase plans, because complete data are not currently available.

compared with $3,644,000,000 in the 1948 fiscal year. The basis for exemption of these securities from registration is as follows:[9]

| Basis for exemption from registration: | 1949 | 1948 |
|---|---|---|
| Privately placed issues | $2, 657, 000, 000 | $3, 006, 000, 000 |
| Railroads and other common carriers | 621, 000, 000 | 452, 000, 000 |
| Commercial bank issues | 25, 000, 000 | 25, 000, 000 |
| Intrastate offerings | 2, 000, 000 | 9, 000, 000 |
| Offerings under regulation A [1] | 121, 000, 000 | 141, 000, 000 |
| Other exemptions | 10, 000, 000 | 11, 000, 000 |
| Total | 3, 436, 000, 000 | 3, 644, 000, 000 |

[1] Includes only offerings between $100,000 and $300,000 in size. See p. 11 for a more detailed discussion of regulation A offerings.

NONCORPORATE

The total of unregistered governmental and eleemosynary securities offered for cash sale in the United States during the 1949 fiscal year was $13,823,000,000 as compared with $11,879,000,000 in the 1948 fiscal year. These totals consist of the following:

| Issuer: | 1949 | 1948 |
|---|---|---|
| United States Government | $11, 135, 000, 000 | $9, 349, 000, 000 |
| State and local governments | 2, 513, 000, 000 | 2, 526, 000, 000 |
| Foreign governments | 166, 000, 000 | 0 |
| Miscellaneous nonprofit organizations | 8, 000, 000 | 4, 000, 000 |
| Total | 13, 823, 000, 000 | 11, 879, 000, 000 |

**Total Registered and Unregistered Securities**

The volume of all corporate securities offered for cash sale amounted to $6,879,000,000 in the 1949 fiscal year, somewhat lower than the 1948 figure. Offerings in the noncorporate category were moderately higher than in the preceding fiscal year, reflecting increased sales of United States savings bonds and notes and a large offering in this country of Canadian Government bonds. Comparable figures for the 1949 and 1948 fiscal years are:

| | 1949 | 1948 |
|---|---|---|
| Corporate | $6, 879, 000, 000 | $7, 402, 000, 000 |
| Noncorporate | 13, 823, 000, 000 | 12, 128, 000, 000 |
| Total securities | 20, 702, 000, 000 | 19, 530, 000, 000 |

**New Capital and Refinancing**

Proceeds from corporate securities flotations, both registered and unregistered, applicable to expansion of fixed and working capital amounted to $5,779,000,000. This may be compared with the $5,887,000,000 in the 1948 fiscal year, which was estimated to be the largest amount of money ever raised in the securities markets for new capital purposes. As between money allocated to fixed and working capital purposes in the 1949 fiscal year, there was an increase of $200 million in the amount for new plant and equipment expenditures, offset by a decline of 300 million dollars in proceeds for working capital purposes. Public utility companies (including telephone) accounted for 52 percent of the new money financing, industrial and miscellaneous firms for 38 percent, and railroad companies for 10

[9] Where a security may have been exempted from registration for more than one reason, the security was counted only once.

percent. The volume of refinancing through new issues of securities declined further to $777,000,000, compared with $1,136,000,000 in the 1948 fiscal year and a peak volume of $5,310,000,000 for the 1946 fiscal year.[10] Refunding of outstanding bonds fell to $151,000,000, the lowest amount for this purpose since the beginning of the series in 1934. However, funds used for repayment of other debt, principally bank loans, increased and amounted to $600,000,000 as compared with $360,000,000 in the preceding fiscal year.

## REGISTRATION STATEMENTS FILED

Four hundred and fifty-five registration statements were filed in the 1949 fiscal year covering proposed offerings in the aggregate amount of $5,124,439,119.

*Number and disposition of registration statements filed*

| | Prior to July 1, 1948 | July 1, 1948, to June 30, 1949 | Total as of June 30, 1949 |
|---|---|---|---|
| Registration statements: | | | |
| Filed | 7,588 | 455 | 8,043 |
| Effective—net | 6,258 | [1] 415 | [2] 6,663 |
| Under stop or refusal order—net | 182 | 0 | 182 |
| Withdrawn | 1,093 | 52 | 1,145 |
| Pending June 30, 1948 | 55 | | |
| Pending June 30, 1949 | | | 53 |
| Aggregate dollar amount: | | | |
| As filed | $52,838,232,030 | $5,124,439,119 | $57,962,671,149 |
| As effective | $48,780,336,063 | $5,333,362,000 | $54,113,698,063 |

[1] Excludes 13 registration statements which became effective and were subsequently withdrawn.
[2] 10 registration statements which became effective prior to July 1, 1948, were withdrawn during the year and are counted in the number withdrawn.

A long-range comparison shows that during the 5 years ended June 30, 1949, 2,623 registration statements were filed covering proposed financing in the aggregate amount of $29,792,518,627, or an amount three times greater than that for the preceding 5 years, as shown below:

*Registration statements filed 1940–49*

| Fiscal year— | Number | Amount |
|---|---|---|
| 1940 | 338 | $1,956,841,248 |
| 1941 | 337 | 3,412,087,877 |
| 1942 | 235 | 1,825,433,469 |
| 1943 | 150 | 959,326,793 |
| 1944 | 245 | 1,774,316,982 |
| 5 years ended June 30, 1944 | 1,305 | 9,928,006,369 |
| 1945 | 400 | 4,182,726,108 |
| 1946 | 752 | 7,401,260,809 |
| 1947 | 567 | 6,934,388,303 |
| 1948 | 449 | 6,149,704,288 |
| 1949 | 455 | 5,124,439,119 |
| 5 years ended June 30, 1949 | 2,623 | 29,792,518,627 |

[10] See appendix table 4 for statistics in greater detail as to the use of net proceeds from the sale of securities.

*Additional documents filed in the 1949 fiscal year related to Securities Act registrations*

| Nature of document: | Number |
|---|---|
| Material amendments to registration statements filed before the effective date of registration | 706 |
| Formal amendments filed before the effective date of registration for the purpose of delaying the effective date | 754 |
| Material amendments filed after the effective date of registration | 542 |
| Total amendments to registration statements | 2,002 |
| Supplemental prospectus material, not classified as amendments to registration statements | 1,063 |
| Reports filed under sec. 15 (d) of the Securities Exchange Act of 1934 pursuant to undertakings contained in registration statements under the Securities Act of 1933: | |
| Annual reports | 744 |
| Current reports | 1,013 |
| Total filings | 4,822 |

## EXEMPTION FROM REGISTRATION UNDER THE ACT

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

The Commission has adopted five regulations pursuant to this authority: Regulation A, a general exemption for small issues; regulation A–R, a special exemption for notes and bonds secured by first liens on family dwellings; regulation A–M, a special exemption for assessable shares of stock of mining companies; regulation B, an exemption for fractional undivided interests in oil or gas rights; and regulation B–T, an exemption for interests in oil royalty trusts or similar types of trusts or unincorporated associations.

The act originally imposed a maximum limit of $100,000 upon the amount of an offering which the Commission was thus empowered to exempt from registration until by amendment of the statute effective May 15, 1945, this limit was raised to $300,000. Following this amendment of the law, the Commission revised its regulation A insofar as it applies to issuers (as distinguished from controlling stockholders) so as to extend the general exemption from the registration requirements provided thereby up to the ceiling of $300,000.

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

It should be emphasized, however, that any exemption from registration permitted under section 3 (b) carries no exemption from civil liabilities under section 12 for misstatements or omissions, or from the criminal liabilities for fraud under section 17. For the proper enforcement of these sections, the conditions for the availability of the exemptions provided under section 3 (b) include, with the exception of regulation A–R, the requirement that certain minimum information be filed with the Commission and that disclosure of certain information

be made in sales literature, if any sales literature is used. While no prospectus need be used, selling literature must be filed in advance of its use.

**Exempt Offerings Under Regulation A**

There has been a marked increase in the amount of small financing by means of offerings made under regulation A since the maximum permissible amount of such an offering was tripled to $300,000 in May, 1945. The striking character of this increase in offerings can be noted in the following table:

| Fiscal year— | Number of letters of notification filed | Aggregate offering price |
|---|---|---|
| 1945 | 578 | $38,845,893 |
| 1946 | 1,348 | 181,600,155 |
| 1947 | 1,513 | 210,791,114 |
| 1948 | 1,610 | 209,485,794 |
| 1949 | 1,392 | 186,782,661 |

The figures for the 1949 fiscal year include 127 letters of notification covering offerings aggregating $18,355,308 of securities of companies engaged in some phase of the oil and gas business. This represents an increase of about 25 percent in the number and 50 percent in the dollar amount of these particular offerings over the 1948 year.

Of 1,389 letters of notification filed in the 1949 fiscal year (omitting three that were incomplete and subsequently withdrawn), 726 covered proposed offerings of $100,000 or less; 276 covered offerings of more than $100,000 and less than $200,000; and 387 covered offerings of an amount between $200,000 and $300,000. Issuing companies made 1,238 of these offerings, stockholders made 142, and both issuers and stockholders made the remaining 9. Commercial underwriters were employed to handle 396 of the offerings, officers and directors or other persons not regularly engaged in the underwriting business marketed 195, and no underwriter was used in connection with the remaining 798.

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

**Exempt Offerings Under Regulation A–M**

During the 1949 fiscal year the Commission received and examined four prospectuses covering an aggregate offering price of $375,000 for

assessable shares of stock of mining corporations exempt from registration under this regulation.

**Exempt Offerings Under Regulation B—Oil and Gas Securities**

To help deal with the special problems arising in oil and gas financing the Commission maintains a specialized unit in its central office. This unit not only administers regulation B but also gives technical help and advice with regard to offerings of oil and gas securities under other provisions and rules of the Securities Act. Where oil and gas securities are significant in the portfolio of broker-dealers undergoing inspection by the staff of the Commission, inspection reports are submitted to this unit for advisory assistance. Last year, in addition to its examination of 85 offering sheets filed under regulation B, this unit was called upon to render technical advisory assistance in connection with the examination of 127 letters of notification filed under regulation A covering securities of companies engaged in various phases of the oil and gas business; 54 registration statements and 58 amendments thereto; and 33 broker-dealer inspection reports. It assisted also in the examination of 7 applications for registration of securities on exchanges, 3 filings of proxy soliciting material, and 1 annual report on Form 1-MD, under the Securities Exchange Act of 1934, all raising some technical problem concerning oil and gas securities.

As a further means of coordinating its work dealing with the sale of oil and gas securities, the Commission maintains a petroleum geologist in Tulsa, Okla. This field officer is a source of up-to-date information on wells and tracts located in the Mid-Continent and Coastal regions. He not only makes examinations of actual tracts involved in specific investigations conducted by the central or various of the regional offices of the Commission, but also conducts a considerable amount of research pertaining to oil and gas production and development for use of the staff charged with examining offering sheets filed under regulation B and sales literature filed for the information of the Commission under regulation A.

The oil and gas unit maintains an extensive reservoir of pertinent information about various companies and wells now consisting of between 30,000 and 40,000 catalogued items. This information comes generally from all the oil-producing states in the United States, Canada, and Mexico and, in as yet a more limited way, from other oil-producing countries throughout the world.

The Commission's examination and investigative procedures are designed to protect investors in oil and gas securities, while saving needless time, effort and expense for all parties concerned, by avoiding insofar as possible any necessity to resort to legal proceeding. Most problems are disposed of directly and informally in the field before they would mature into litigation.

During the past 5 years the Commission has participated in only 17 oil and gas investigations which have led ultimately to court convictions or injunctions; and there have been only 204 preliminary, informal, and formal oil and gas investigations during this period.

As we have noted, examination of letters of notification and related sales literature filed under regulation A is concerned with aiding the Commission in the enforcement of section 17 of the act. Often the information needed for such examination does not require the expense

of a field trip but merely a reference to the technical files already catalogued by the Commission's oil and gas unit, or consultation with experts in other agencies of the Government. In a typical case, the Tulsa representative of the Commission, through his personal local contacts in the industry and expert information on most producing areas in the Mid-Continent and Rocky Mountain fields, is able to take any action indicated before the expiration of the five business days of waiting provided under the regulation before the securities may be sold. Where, for example, sales literature filed with the Denver regional office appears to be misleading, that office sends a copy immediately to the Tulsa office. If the material is found to be untrue or misleading, a report to that effect is communicated to the originating office before the waiting period has expired, so that the offerors may be informed and thus enabled to correct their sales literature before it is distributed to the public. Since sales campaigns of many of the regulation A issues extend over a period of many months, with new sales appeals being prepared for such issuance under the regulation sometimes as often as once every week or 10 days, these technical examinations and reports have become increasingly numerous and continuous. As evidence of the growth in this particular work, it may be noted that in the 1948 fiscal year the Tulsa Office prepared a total of 89 technical memoranda and investigative reports, of which 20 related to sales literature filed under regulation A, whereas last year the corresponding total had increased to 136, of which a very much larger number, 84, related to such sales data.

The exemption from registration provided by regulation B for fractional undivided interests in oil or gas rights is limited to a maximum aggregate offering price of $100,000. Regulation B requires that an offering sheet be filed with the Commission summarizing pertinent information regarding the security being offered. In the 1949 fiscal year a total of 85 such offering sheets, and 76 amendments thereto, were received and examined by the Commission. The following actions were taken on these filings:

*Various actions on filings under regulation B:*

| | |
|---|---|
| Temporary suspension orders (rule 340 (a)) | 28 |
| Orders terminating proceedings after amendment | 17 |
| Orders consenting to withdrawal of offering sheet and terminating proceeding | 2 |
| Orders terminating effectiveness of offering sheet (no proceeding pending) | 1 |
| Orders accepting amendment of offering sheet (no proceeding pending) | 30 |
| Orders consenting to withdrawal of offering sheet (no proceeding pending) | 1 |
| Total orders | 79 |

*Confidential written reports of sales under regulation B.*—The Commission also received and examined during the 1949 fiscal year 1,262 confidential written reports of actual sales made under regulation B and filed on Forms 1–G and 2–G, in the aggregate amount of $460,935. The reports are required pursuant to rules 320 (a) and 322 (c) and (d) of regulation B concerning sales made by broker-dealers to investors and by dealers to other dealers. Where examination of these reports indicates that a violation of the law may have occurred, the Commission makes an investigation or takes such other action as may be deemed appropriate.

During the past 5 years the proportion of nonproducing interests offered for sale under regulation B has more than doubled. These

nonproducing interests accounted for 22 percent of total regulation B filings in the 1945 fiscal year and for 55 percent of the total filed last year in the 1949 fiscal year.

*Oil and gas investigations.*—Nineteen new investigations involving oil and gas securities were instituted by the Commission in the 1949 fiscal year and 25 such cases closed. This brought the total current during the year to 150 and the number pending at the close of the year to 125. Most of these investigations, conducted by the regional offices and reviewed by the technical staff of the central office, arise out of complaints from investors to the Commission. They are undertaken primarily to determine whether the transactions in question were effected in violation of section 5, which requires registration, and of section 17, which prohibits fraud in securities transactions.

As a result of the evidence developed in some of these oil and gas investigations the Commission has filed complaints in the courts seeking injunctions restraining violations of the law, and has cooperated with the Department of Justice in undertaking criminal prosecutions where the facts warrant such action. During the 1949 year two persons were enjoined from violations of the registration provisions of the Securities Act and another was enjoined from further violations of the antifraud provisions of the act in the sale of oil and gas securities. In the same period indictments were secured in two cases developed by the staff, charging violations of these antifraud provisions, and one defendant whose transactions had previously led to his indictment for such offense was last year sentenced to imprisonment for 2 years.

## FORMAL ACTIONS UNDER SECTION 8

The purpose of the Commission's informal procedures in processing registration statements is to get registration statements which comply with the requirements of the act before the statements become effective. In almost all cases conference and comment by letter are sufficient both for the needs of the registrant and for the adequate protection of investors. It is sometimes necessary, however, for the Commission to exercise its powers under section 8 in order to prevent a registration statement from becoming effective in deficient or misleading form or to suspend the effectiveness of a registration statement which has already become effective.

Under section 8 (b) the Commission may institute proceedings to determine whether it should issue an order to prevent a registration statement from becoming effective. Such proceedings are authorized if the registration statement as filed is on its face inaccurate or incomplete in any material respect. Under section 8 (d) proceedings may be instituted at any time to determine whether the Commission should issue a stop-order to suspend the effectiveness of a registration statement if it appears to the Commission that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated or otherwise necessary to make the statements included not misleading. Under section 8 (e) the Commission may make an examination to determine whether to issue a stop-order under section 8 (d).

Examinations under section 8 (e) may be held in public, or the record may be made public after the close of the hearing. However,

to insure that no injury shall be done to a registrant by means of bad publicity if the examination should reveal no violation of the law, the Commission makes it a practice to hold such examinations preliminarily in private. On the other hand, all stop-order proceedings under section 8 (d) are held in public.

**Examinations under Section 8 (e)**

At the beginning of the past year one private examination under section 8 (e) was pending and three were authorized during the year. The examinations were discontinued and the registration statements withdrawn in two cases and stop-order proceedings were authorized in a third case. The registration statement was withdrawn and the record of examination was made public in the fourth case, described below:

*The First Guardian Securities Corporation—File No. 2–7554.*—The company filed a registration statement proposing the sale of nearly $2,000,000 of preferred and common stocks. The information contained in the registration statement indicated a willful attempt to distort descriptions of both the business of the company and the background of the company's promoters, who were also its principal officers and stockholders.

The prospectus stated: (1) That the company would deal in securities for the purpose of investment and trading and that funds not so used would, up to 50 percent of the company's assets, be used for making collateral or factoring loans or for any other types of profitable opportunities; (2) that during its period of operations the company had invested its money principally in collateral loans and had, in one case, charged the borrower a factoring rate of 2 percent a month, implying that this was the maximum rate; (3) that the management planned to operate the company in such manner as to enable it to qualify under section 361 of the United States Internal Revenue Code as a regulated investment company, which would entitle it to certain tax benefits; (4) that the company intended to pay a dividend on Common Stock of 20 cents per quarter and that initially the dividend would be paid from capital surplus; and (5) that the company did not intend to invest in real estate.

The prospectus also sought to convey the impression that the promoters had extensive business experience. In describing their experience the prospectus stated that "after successfully accumulating sufficient capital" they "organized a distributing agency for soft beverages during 1929;" that "they subsequently organized" a company "for the manufacture of textiles and integrated products from the raw yarn through a nationwide retail distribution;" and that "during 1943 and 1944 they liquidated their operations in the textile field and principally engaged in trading and investing in stocks, bonds and debentures for their own account and for the account of the members of their immediate family."

Investigation disclosed that the registration statement was in fact false and misleading. For example, the investigation disclosed that, contrary to the statements contained in the prospectus: (1) The policy of the registrant would be to place its monies primarily in collateral loans, which would be generally secured by non-liquid collateral such

as second mortgages on real estate, personal endorsements, chattel mortgages and shares of stock of privately owned corporations, and that the promoters had little experience in making such loans; (2) the company received fees and interest on collateral loans at rates as high as 12 percent a month; (3) the normal operations of the company would be such that it could not claim the tax benefits made available by section 361 of the Internal Revenue Code; (4) assuming that it sold all of the shares of stock offered, the company could not meet its stated dividend policy of 20 cents a quarter on the common stock payable out of earnings unless gross earnings were at least 15 percent on its capital, and that by reason of the asset coverage required with respect to the preferred stock by provisions of the Investment Company Act it could not pay such dividend out of capital surplus for more than 2 years at the most; and (5) the company did in fact intend to invest in real estate. Furthermore, the investigation disclosed that the financial statements included in the registration statement were certified by an accountant who owned shares of stock of the company during part of the period covered by the audit. The independence of the accountant was questioned for this reason.

Regarding the experience of the promoters, the investigation disclosed that the beverage business in which they had engaged consisted of the sale of soft drinks to factory workers when they were still no more than 13 years of age. The company which was engaged in the business of "manufacturing textiles and integrated products from the raw yarn through a nationwide retail distribution" was in fact a small enterprise engaged for the most part in the business of selling ladies' blouses. The reference to their trading in securities was no less misleading. It sought to convey the impression that they had experience in trading in securities but did not show the results of their experience. The investigation disclosed that during the period referred to in the prospectus the promoters traded extensively in securities and suffered a net loss as a result of their operations.

Subsequent to the investigation the Commission granted the company's request to withdraw the registration statement. At the same time the Commission ordered that the investigation pursuant to section 8 (e) be made public.

**Stop-Order Proceedings under Section 8 (d)**

Three stop-order proceedings were authorized in the 1949 fiscal year and public hearings were held in the cases during the year. In one case the registration statement was withdrawn and the proceedings dismissed. The remaining two cases were pending as of the close of the year.

*American Oil Explorers Inc.—File No. 2-7886.*—This company, newly organized for the purpose of engaging in speculative oil exploration, filed a registration statement on March 17, 1949, covering 5,000,000 shares of its 1-cent par value common stock to be offered to the public at a purported price of $1 per share, for an aggregate of $5,000,000. At the time the registration statement was filed the company's entire capital amounted to $1,000. Each purchaser of stock was to receive a paid-up life insurance policy in an amount equal to the price of the total number of shares purchased by each shareholder, but not less than $250 nor more than $2,000 for any one investor.

Such policy was to be purchased by the company from a specified insurance company for a single stated premium, the amount of which would vary with the age of the particular investor.

On April 5, 1949, the Commission ordered the institution of stop-order proceedings under section 8(d), alleging misstatements and omissions to state material facts in regard to numerous items of required information. Issue was taken, among other things, with the misleading nature of the proposed offering which combined life insurance and a speculative stock in one package. The company represented in the prospectus that by applying a major part of the proceeds from the sale of the issue to the purchase of fully paid-up life insurance having a face amount equal to the sum paid by investors, the scheme would provide investors with long-range protection against loss of the capital invested in the speculative program of oil exploration. The Commission attacked this deliberate attempt to imply the absence of risk in an investment in this highly speculative venture, since life insurance alone could have been bought elsewhere for the same or a lower premium without the need of subjecting a substantial amount of additional money to the hazards of the promoters' enterprise.

A second issue raised was the legality of a combined offering of life insurance with stock under pertinent State law. Additional issues included: (1) The accuracy and adequacy of the disclosures regarding the insurance company; (2) the failure to disclose properly the relationship between the registrant and another company, controlled by the registrant's promoters, which was to provide management advisory services; (3) the nature of the emoluments the promoters would receive through such arrangement; and (4) the failure to state that the price of the shares would vary as between investors by reason of the fact that a portion of the amount paid in, variable with the age of each investor, was to be invested in life insurance, and the resulting balance, representing the actual price of the stock, would differ materially for different purchasers.

After the Commission's order for a public hearing was issued, the registrant filed a request for withdrawal of its registration statement and no sale or offering of the securities was made. The request was granted by the Commission on April 19, 1949.

## DEFICIENCIES DISCOVERED IN EXAMINATION OF REGISTRATION STATEMENTS

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

### Failure to Disclose Interest of Parent Company

A company operating a chain of restaurants filed a registration statement for 120,000 shares of convertible preferred stock, $1 par value. Thirty-two thousand two hundred and fourteen of the shares

were to have been offered, by way of exchange, to the holders of the company's then outstanding $6 cumulative preferred stock, on a share-for-share basis, and the remaining 87,786 shares were to have been offered to the company's stockholders and to the public at $15 per share. The old preferred had a $100 liquidating preference and carried, as indicated, a $6 cumulative dividend rate. Dividend arrearages amounted to $95 per share. The new preferred stock to have been offered in the share-for-share exchange had a par value of $1 per share, a $30 liquidating preference and a cumulative dividend rate of $1.50. The registration statement failed to disclose adequately the rights which the old preferred stockholders would give up and the rights which they would receive if they accepted the exchange offer.

Although there was no equity for the common stock of the company the exchange of old preferred stock for the new preferred stock would create an equity for the common stock through the reduction in the liquidating preference and the elimination of dividend arrearages. No disclosure was made in the registration statement as to the benefits which would thereby accrue to the company's parent, which held 45 percent of the common stock.

In conferences with counsel for the company the staff pointed out these inadequacies of the registration statement. It developed in these conferences that the fair or current value of the company's property, plant and equipment, carried on the books of the company at a depreciated value of $3,478,301, was very substantially less than the books indicated, and that if the land, buildings, and equipment were offered for sale, these assets would probably yield less than $1,000,000. Shortly after these conferences the company withdrew the registration statement upon the grounds that the company's restaurants had been leased to another company and that the plan of financing was no longer necessary.

**Expenses Paid by Company to Accommodate Selling Stockholders**

A manufacturer of metal roofing filed a registration statement covering an offering of 30,000 issued shares of the company's $1 par value common stock to be sold to employees at $10 per share. Although the stock was owned by and to be offered in behalf of three of the company's principal officers, who were also directors and controlling stockholders of the company, the entire cost of financing purchases under this employee stock purchase plan was to be borne by the company as an accommodation to these selling stockholders. Thus it was disclosed in the registration statement as originally filed that purchases would be financed with loans from two local banks, and that the company would not only pay interest charges on the installment notes securing such loans but also the cost of insuring the loans, while providing in addition a special cash deposit in the banks for the purpose of guaranteeing all loans made. This participation by the company assured immediate payment to the selling stockholders.

This method of financing prompted serious questions on the part of the Commission's examining staff concerning not only the legality of the banks' participation therein but also whether the assumption of such expenses and guarantees by the company would constitute *ultra vires* acts as to which issues no disclosure was made in the regis-

tration statement. Subsequently, the registration statement was amended to indicate that the banks had entirely withdrawn from participation in the offering, that the company's participation therein was limited to periodic pay-roll deductions for payment of the shares purchased by the employees, and that the company's expenses in connection with the offering were confined to the cost of stock certificates and transfer fees.

**Failure to Disclose Cease and Desist Orders**

A company, owning a gold-mining property which had been developed by a predecessor, filed with its registration statement a prospectus in which it was represented that the property was then in condition for operation except for minor installations of mill equipment. An estimate of ore reserves in excess of 400,000 tons, as set forth in the prospectus, served to round out the registrant's picture of a mine about ready for productive operations. The ore reserve estimate rested on a three-page report by the company's mine manager. It was readily apparent upon examination, however, that this report gave no evidence that its ore estimate was based on an adequate sampling of the mine. On the contrary, it indicated an insufficient sampling. The prospectus omitted all discussion of this vitally important question of sufficiency of the sampling as a basis for the ore reserve estimate. It failed to show the following significant facts: (1) The predecessor company, after having finished substantially all development work done at the property and after a thorough sampling of the mine, concluded it had no ore reserves in its mine and that the mine did not justify any further expenditures; and (2) an extensive program of check-sampling by the company filing the registration statement gave results mainly consistent with those of the predecessor. After the deficient character of the registration statement was called to the attention of the company, a conference was arranged during which the inadequacies of the statement were discussed by the examining staff with a representative of the company. Thereafter the company elected to abandon its proposed public offering and withdrew its registration statement.

While the process of examination was under way, the Commission's staff discovered from sources of information independent of the registration statement that numerous cease and desist orders forbidding the sale of the registrant's securities were then in effect in several States, and it was pointed out to the registrant that disclosure of the existence of these orders would need to be included in the registration statement in order to make it not misleading to the public. The registrant's request for withdrawal was stated to have been made in view of the existence of these orders.

**Preferred Position of Insiders**

A company filed a registration statement covering the public offering of stock of the company. Some of the stock was to be offered by the company and the balance by company insiders—officers of the company and persons closely associated with them. Some of the stock to be offered by the insiders had been acquired through the exercise of options. These options had been obtained by an individual closely associated with the company management.

When the registration statement was filed it was examined by the staff in the ordinary course. Such examination disclosed the necessity for ascertaining further facts concerning the acquisition of the options. Upon inquiry, it was discovered that in acquiring the options financial statements were used which did not reflect then current earnings, which had substantially improved over those shown. The last purchases of options were made shortly before the close of the company's 1948 fiscal year, when new financial statements would have become available disclosing that earnings for that year had increased to about three times over earnings for the prior year. The stock obtained through exercise of the options was to be resold to the public at a price greatly in excess of the option price paid.

The company thereafter elected to withdraw its registration statement, giving as its reason the then condition of the securities market.

**Liability for Pensions not Disclosed**

A registration statement was filed by a gas company which, with its subsidiaries, had guaranteed annuities for life to certain former employees who had retired and to others who were eligible to retire. Annual payments to those retired were charged to profit and loss only when made. However, the issuer did not carry any liability in its balance sheet for the estimated amount of the cost of future payments of annuities for past services in the financial statements originally filed in connection with its public offering of securities. Following discussions held between the Commission's staff, representatives of the issuer, and the certifying accountants in the course of the examination of this registration statement, an actuarial study was made to ascertain the estimated liability representing the cost of these annuities. This cost was found to approximate $1,500,000 and was consequently so recorded on the balance sheet as a liability, with a corresponding reduction of earned surplus.

**Overstatement of Inventories and Understatement of Losses**

A registration statement filed by an aircraft producer preparatory to a public offering of debentures contained financial statements which indicated that the operating loss for the accounting period covered amounted to $783,000. As a result of inquiry, it was found by the staff that materials and parts inventories and work in process inventories were greatly overstated. At the same time it was discovered that realizable values from the sales of goods in the regular course of business were, on the other hand, substantially less than the actual cost of materials and other expenses of manufacture. The staff also ascertained that manufacturing costs used in determining operating results were based on standard costs which had not been properly adjusted to reflect substantially higher actual costs. Under the circumstances, appropriate adjustments were required to be made in the financial statements in order that they would not be misleading, as a result of which the amount of operating losses, originally reported as $783,000, was shown to be $2,000,000, and carrying values of inventories shown on the balance sheet were commensurately reduced. Subsequently the registration statement was withdrawn.

**Write-up of Fixed Assets**

A company engaged in the construction business filed a registration statement which included a consolidated balance sheet reflecting fixed assets in a gross carrying amount of approximately $11,000,000 and showing a net worth of $2,180,000. In the course of the staff's examination of the financial statements conferences were held with representatives of the issuer and it was ascertained that during 1928 certain land had been acquired in an arm's-length transaction and reflected on the books of a subsidiary at cost. The issuer constructed a building on this land which was completed in the early part of 1929. Shortly after the completion of the building negotiations were entered into with underwriters for the sale of securities and the underwriters, in negotiating the price and amount of the public offering, assigned a value to the land and buildings which was $4,507,000 in excess of cost. The issuer wrote up the fixed assets and assigned the entire amount of the write-up to land.

At the suggestion of the Commission's staff, a pro-forma consolidated balance sheet was included reflecting the consolidated financial condition of the company based on cost of fixed assets, which the Commission considers to be the proper accounting basis for carrying fixed assets. This accounting adjustment brought about while the registration statement was in process of examination resulted in a reduction of the asset value of land from $7,400,000 to $3,000,000, and the substitution of a deficit of $2,900,000 for a previously shown surplus of $1,600,000.

The original prospectus included a representation that the net book value of the common stock was $4.36 per share. This representation was revised to indicate further that the common stock had no net book value on the basis of using cost in accounting for fixed assets.

**Effect of Additional Depreciation and Taxes on Earning Power**

One company filed a registration statement in connection with the proposed sale of equity securities, the principal purpose of which was to acquire certain assets of a partnership and certain real estate from the partners. The amount to be paid for the partnership assets exceeded the amount at which they were carried on the partnership books, the excess being related to depreciable property.

The prospectus included a summary of earnings of the partnership for the 10½ years ended June 30, 1947. The staff pointed out that the summary of partnership income did not properly show the earning power of the assets to be acquired as recognition was not given to the additional depreciation charge resulting from the excess payment for property, nor to income taxes which would have been incurred had the partnership been operated as a corporation. As amended, the summary of earnings showed for each period the effect of additional depreciation and of income taxes computed on a pro-forma basis of rates ap plicable to corporations.

The significance of the added information thus disclosed may be appraised in the light of the following differences: The highest net income of the partnership during the 10½ years covered in the summary was $171,067.06 in 1943. Additional depreciation of $45,000 and corporate Federal income taxes of $46,000 would have reduced such

income to $80,067.06. Further, in 4 years in which there were profits on the partnership basis there would have been losses on the pro-forma basis. In respect of the latest period, the 6 months ended June 30, 1947, profits shown for the partnership of $111,648.92 become $55,148.92 on the corporation basis, a reduction of approximately 50 percent.

**Good Will Amortized**

An issuer, engaged primarily in the manufacture and sale of milk products, acquired, through merger, the facilities and business of another company engaged in a like business. The purchase price substantially exceeded the net assets as reflected on the acquired company's books. This excess, together with certain other transactions, gave rise to an item of approximately $1,300,000 in the consolidated balance sheet which was shown as good will. It was indicated, in a prospectus filed by the issuer in connection with a public offering of equity securities, that the good will balance was not being amortized. It was pointed out to representatives of the issuer that this good will appeared to represent, in effect, the cost of additional earnings which should be amortized against the realization of such earnings in order to make future statements of earnings meaningful. The issuer revised its prospectus to reflect the adoption of an amortization policy for its item of good will over a period of 15 years.

**Sale of Stock at Different Prices**

A foreign gold mining company filed a registration statement for 500,000 shares of common stock, $1 par value, to be offered at $1 per share. This company and its three predecessors (all controlled by the same promoter) despite sporadic efforts over a period of 30 years had been unsuccessful in their efforts to find a commercial body of ore. Following the filing of the statement a conference was had with the company's promoter and his counsel. At this conference the staff was informed that the stock was currently obtainable and had been sold in the foreign country at 50 cents per share, a fact not disclosed in the registration statement. It was also learned that the company's immediate predecessor had been denied the right to sell securities by a large number of States in this country and that the promoter had been refused a broker's license by the appropriate authorities in his own country. The registration statement was silent as to these matters.

The information given with respect to the development of the mining property and its prospects was inadequate and misleading. For example, it was stated in the prospectus that in 1918 a "* * * kidney of concentrated free gold * * *" was found on the property which was said to be "two feet long, ten inches wide, and about two feet deep" and to be "practically solid gold." This gold would have had a value of over $1,000,000 at the gold price prevailing in 1918. Since governmental reports of gold production for the area in which the property is located showed no gold production for the year 1918 or for a number of succeeding years, inquiry was made as to the issuer's basis for the representation. No supporting evidence was presented.[11]

[11] This representation about the gold kidney does not appear in a new registration statement filed by the company recently which was under examination at the close of the 1949 fiscal year.

Upon being advised of the serious nature and extent of the deficiencies existing in the registration statement, the company withdrew the statement.

**Promoter's Profit in Cooperative**

A cooperative apartment corporation filed a registration statement in connection with an offering of common stock wholly owned by the sponsor of the enterprise, the stock to be purchased in conjunction with the issuance to each purchaser of a proprietary lease on an apartment. The estimated profit accruing to the sponsor was not disclosed in the registration statement originally filed. At the suggestion of the Commission the prospectus was amended to reveal that the cost of the building and related charges was estimated at $550,000, for which the purchasers were paying $700,000 ($400,000 in stock and $300,000 first mortgage) resulting in a profit to the sponsor of $150,000.

**Disclosure of Financial Position**

An electrical products manufacturing corporation filed a registration statement covering 270,000 shares of its common stock. Some time prior to the date of filing the company reported to its stockholders a net loss of $724,000 for the 6-month period ended October 31, 1948. However, the certified financial data included in the proposed form of prospectus pursuant to the requirements of the Securities Act indicated a net loss of $3,108,000 for that period. The greater loss disclosed in the prospectus was due to additional inventory write-downs and reserves of $1,765,000, a further reserve of $396,000 against possible loss on an investment in an affiliated company, and other audit adjustments of $223,000.

The principal deficiency in respect of the financial statements related to inventories, which at October 31, 1948, after deducting a reserve of $2,200,000, represented over 42 percent of total assets and 64 percent of total current assets.

The prospectus and the report of a management consultant retained by the corporation showed that the corporation was carrying excess inventories, the discontinuance of certain product lines, and reflected absolescence and faults in products. Further, the prospectus stated there was general inefficiency in purchasing, production, shipping, and warehousing.

The amounts stated in the balance sheet for inventories were based upon book records. The accountants in their certificates stated: "* * * such continuous records of quantities as are maintained by the Corporation with respect to certain portions of the inventories are not integrated in monetary amounts with the general accounting records. * * *" They also stated: "Assuming use and realization of the inventories in the regular course of business, we have no reason to believe that the inventory amounts at October 31, 1948, have not been fairly stated." Inventories had been written down by $1,268,700 during the year ended April 30, 1948, and by $1,700,967 during the 6 months ended October 31, 1948.

The Commission's letter of comment set forth that, in view of the statements in the prospectus and elsewhere in respect of the inventories, it did not appear that reliable and dependable financial statements could be prepared in the absence of a physical inventory as of the balance sheet date and questioned whether the accountants had

followed generally accepted auditing procedures under the circumstances. This failure to take a physical inventory raised the serious question of whether the amount of inventories, and of the write-downs made therein, had been properly determined.

During the pendency of the registration statement the Federal Government attached the company's property because of a default in the payment of income taxes. Also the Reconstruction Finance Corporation imposed conditions with regard to a proposed mortgage-loan to which the company could not agree. The registration statement was subsequently withdrawn after the negotiation of an agreement for the sale of the company to another company.

The filing of the registration statement, which was immediately made public by the Commission pursuant to the statute, instantly gave rise to widespread publicity released by financial news services, financial writers and newspapers generally. The loss for the accounting period, as disclosed in the registration statement, was a matter of public record the moment it was filed, and it was immediately reported in the public press and in the various financial news services. Trading in the stock was suspended for 1 hour by the authorities of the exchange on which the security was listed so as to give investors an opportunity to consider a statement by the company's president concerning the revised figures shown in the prospectus.

**Comparative Investment Positions of Public and Promoters**

In order to disclose clearly certain essential features of a proposed offering, particularly the contributions made and benefits received by promoters, the staff of the Commission requested that certain information be presented in tabular form by a registrant engaged in the manufacture and sale of an electrical product. The relative amounts of cash contributed by the public and by the promoters and their respective voting power and shares in the dividends were set forth in the prospectus, pursuant to this request, in a simple table.

This table disclosed that, assuming all the stock were sold, the promotors would have 50 percent of the voting power for an investment of $2,500—less than 1 percent of the total capital investment in the company—whereas the price to the public of a similar 50 percent of the voting power would be $480,000. In addition, in case the registrant should be able to pay dividends of $80,000 or more a year, public investors could get a maximum of only $16,000 a year more than the promoters.

The registration statement was subsequently withdrawn, and the company elected to make an offering of a reduced number of shares under the exemption from registration provided by regulation A. However, disclosure similar in form to that described above, adjusted principally to the smaller amount of offering involved, was continued in the company's offering circular filed under regulation A.

In addition, the relative position of this company's class A stockholders was greatly improved by a change in their dividend rights effected while the registration statement as originally filed was undergoing examination. The original filing covered a proposed offering of class A stock. At that time the registrant had outstanding class B stock, all of which was owned by promoters. The class A stock was stated to have a noncumulative dividend preference of 30 cents

per share. After the payment of 30 cents on the class A stock the class B stock was entitled to 20 cents per share, and thereafter the two classes were to share equally in dividends. The registrant was requested to point out in the prospectus that because of the noncumulative feature of the class A stock and the promoters' ownership of class B stock it was within the latters' power and interest to withhold dividends on the class A stock until such time as earnings had accumulated to the point the registrant could pay 20 cents a share on the class B stock as well as 30 cents a share on the class A stock. By amendment then filed the registrant disclosed it had changed its class A stock to make it cumulative.

## CHANGES IN RULES, REGULATIONS AND FORMS

During the past 5 years the Commission has continued its long-established policy of revising its rules, regulations, and forms whenever it has appeared that such action was necessary for the protection of investors or to meet changing business conditions. This flexibility is intended to simplify compliance with the statute in the most practicable manner for different classes of issuers and securities with distinctive problems peculiar to the class. Changes may be made as a result of recommendations by the staff, or at the suggestion of persons who must comply with the requirements of the statute. In either case, no material change is made without a series of conferences with persons interested or who may be affected by such change. Some outstanding changes made during the past 5 years in the rules, regulations, and forms under the Securities Act of 1933 are summarized below.

### Rules Relating to Exemptions

For a summary review of changes in sizes of offerings exempted from registration by Commission rules see discussion, above, of exemptions under section 3 (b) of the Securities Act.

### Amendment of Rules Relating to Registration

*Rule 131—The Red-Herring Prospectus.*—Rule 131 was adopted by the Commission on December 5, 1946. Its purpose is to facilitate the dissemination of information about a security before the registration statement for such security becomes effective. It provides that the sending or giving to any person before a registration statement becomes effective of a copy of the proposed form of prospectus filed as a part of the registration statement shall not, in itself, constitute an "offer to sell," "offer for sale," "attempt or offer to dispose of," or "solicitation of an offer to buy," within the meaning of section 2 (3) of the act, if the proposed form of prospectus contains substantially the information required by the act and the rules and regulations thereunder to be included in a prospectus for registered securities, or substantially that information with certain specified exceptions. The rule was adopted for a trial period of 6 months and the Commission later announced that it would be continued in effect indefinitely. The copy of the prospectus so distributed is the so-called red-herring prospectus.

*Regulation C.*—On June 9, 1947, the Commission adopted a complete revision of regulation C, which contains general requirements

governing the preparation, form, contents, and filing of registration statements and prospectuses. The purpose of the revision was to simplify the registration procedure and conform the requirements of the rule to present day needs.

On November 10, 1948, the Commission added rule 431 to regulation C. This rule, designed to avoid the necessity of dual prospectuses in certain cases, provides that in sales of securities by an issuer to its existing stockholders a prospectus may consist of a copy of the proposed form of prospectus meeting the requirements of rule 131 plus a document containing such additional information that both together contain all of the information required to be included in a prospectus for registered securities. Under this rule most of the information required to be included in a prospectus may be sent to stockholders prior to the effective date of the registration statement. Upon the effectiveness of the registration statement the document is sent to stockholders incorporating the previous information by reference and containing such additional information as to price and related matters as is necessary to constitute a statutory prospectus.

**Amendment of Forms for Registration**

*Revision of Form S–1.*—The most important of the Commission's forms for registration of securities under the Securities Act of 1933 is Form S–1. On January 8, 1947, a revised and simplified Form S–1 was adopted and two predecessor forms, A–1 and A–2, were rescinded. Another predecessor form, Form E–1, was later rescinded. Further items of Form S–1 calling for information about remuneration of company officials were further amended on December 17, 1948, to reduce the number of persons whose individual remuneration must be disclosed.

*Revision of Form S–2.*—Form S–2 is used for the registration of securities of certain newly organized companies and other companies which are still in the promotional or development stage. It was revised so as to simplify considerably the requirements of the form. At the same time it superseded Form S–12, which was concurrently rescinded.

*Forms S–4 and S–5.*—Minor amendments to these forms were adopted recently on March 1, 1949. These amendments merely corrected certain references which required clarification because of other changes in the rules and regulations.

*Form S–7.*—With the organization of the International Bank for Reconstruction and Development (the so-called World Bank) it became necessary to adopt a form for the registration of security issues offered by the bank. Accordingly, Form S–7 was adopted for this purpose on July 8, 1947. This form followed the pattern of Form S–1 and other forms adopted under the act except that the requirements were adapted to the particular organization and functions of the bank. The Eighty-first Congress amended the Bretton Woods Agreements Act so as to exempt securities issued and securities guaranteed as to both principal and interest by the bank from the registration provisions of the act. Therefore, registration by the bank of such securities is no longer required. However, this amendment to the Bretton Woods Agreements Act requires the bank to file with the Commission such annual and other reports with regard to such securities as

the Commission shall determine to be appropriate in view of the special character of the bank and its operations and necessary in the public interest or for the protection of investors.

*Form S–11.*—When regulation A–M was adopted on March 24, 1945, the Commission concurrently adopted Form S–11 for the registration of shares of exploratory mining corporations. This form is for the use of mining corporations that are not engaged in active ore production and have no mining property developed beyond the exploratory stage. Its use is limited to corporations that have not been involved in recent successions and are without important subsidiaries. It dispenses with the requirement for the certification of financial statements by independent accountants since the type of corporation eligible to use the form will generally have had few financial transactions.

## LITIGATION UNDER THE SECURITIES ACT

Whenever it appears that any person has violated or is about to violate any of the provisions of the Securities Act of 1933, the Commission is authorized to bring an action to enjoin such violations. Such injunction actions, which are prophylactic in character, constituted the major portion of the litigation arising under the act during the past 5 years. A very considerable part of the injunctions which have been issued were directed against violations of sections 5 and 17. Section 5 requires all securities offered to the public other than those specifically exempted by the statute to be registered with the Commission. Section 17 makes unlawful the use of fraud in the sale of securities.

The attempts to circumvent those sections assume many forms, some of which are patterned upon schemes recurring in substantially the same form year after year,[12] and some of which involve new devices. One of the most ingenious sought to capitalize upon the public's general familiarity, as a result of the war bond drives, with the soundness and safety of government bonds as an investment. This familiarity was used by promoters of some highly speculative enterprises to obtain capital for their ventures without a full disclosure of the risks involved. Thus, investors were told that their investment would be guaranteed by the government and 75 percent of the funds involved were actually used to purchase government bonds, which would at maturity have a face value equal to 100 percent of the stockholder's investment, thereby "insuring" this investment. The promoters would then use the other 25 percent of the investment for the particular speculation in mind—without disclosing this fact. The Commission was successful in obtaining injunctions against such practices.[13]

In order to avoid the scrutiny which accompanies registration under the act, the promoters of some companies have disregarded the requirement of registration. Accordingly, actions instituted by the Commission to enforce the act in the sale of securities often involve violations of both sections 5 and 17. The industries in which fraud

[12] Of these, the so-called "Ponzi" scheme, is perhaps the most common. Under it, the promoter pays fabulous returns to investors by using the principal fund to pay interest. See *S. E. C.* v. *May* (Civil No 613; S. D. Tex. 1949).

[13] See *S. E. C.* v. *Haynes* (Civil No. 8066, E. D. Pa. 1948); *S. E. C.* v. *Derryberry* (Civil No. 2382, W. D. La.).

is attempted in the sale of securities vary. A substantial proportion of injunctions under the act have related to the sale of mining securities.[14]

Other actions instituted by the Commission have forced compliance with sections 5 and 17 of the act primarily with respect to the financing of oil wells,[15] gas wells,[16] and various alleged inventions or patents.[17] Although unscrupulous persons may practice fraud in the sale of securities of almost any business, these types of enterprises are often selected. The misrepresentations may include exaggeration of the prospects of the company being exploited, false claims of recommendations by Government agencies,[18] and omissions to state material facts concerning the portion of the proceeds of each sale which is to be used for the private purposes of a promoter.[19]

An injunction was granted by the district court in almost every action under the act in which the Commission sought injunction relief during the past 5 years. In one case, *S. E. C.* v. *W. J. Howey Co.*,[20] the district court refused to grant the injunction, was sustained by the Court of Appeals, and the Supreme Court granted *certiorari*. The Commission took the position that the sale of acreage which was part of a large citrus grove, when coupled with the offer of a contract to harvest and sell the fruit, constituted the sale of a security within the meaning of section 2 of the act. The Supreme Court so held, reversing the lower courts.

This decision approved the position consistently taken by the Commission that whenever a purchaser has no intention of assuming any control of the property purchased, but is really buying only an interest in a business enterprise and looks solely to the efforts of the promoter to earn a profit for him, there is involved the purchase of a security. Misrepresentations or fraudulent conduct in the course of such purchase, or the failure to register the security being sold when registration is necessary, furnish the basis for an injunction. The success achieved by the Commission in these cases is due, to some extent, to the care with which complaints are investigated.

The Securities Act, like the other statutes administered by the Commission, authorizes the Commission, pursuant either to a complaint or on its own initiative, to conduct investigations for the purpose of determining whether any provision of the act has been or is about to be violated. For the purpose of such investigations the Commission, or any officer designed by it, is empowered to administer oaths, subpena witnesses, or to require the production of records deemed relevant or material to the inquiry. Information disclosed in such investigations often serves as the basis for formal hearings conducted by the Commission, for injunction actions, or for references to the Department of Justice to institute criminal proceedings.

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[14] *S. E. C.* v. *Great Western Gold & Silvermine Corp.* (Civil No. 1602, D. Colo. 1946; *S. E. C.* v. *Blakesley* (Civil No. 1279, N. D. Ill. 1945); *S. E. C.* v. *Slocan Charleston Mining Co.* (Civil No. 1822, D. Wash., 1947); *S. E. C.* v. *Vindicator Silver Lead Mining Co.* (Civil No. 1766, D. Wash. 1947); *S. E. C.* v. *Nevada Wabash Mining Co.* (Civil No. 26695, N. D. Calif. 1947); *S. E. C.* v. *Sandy Boy Mines* (Civil No. 2085, D. Colo. 1947).

[15] *S. E. C.* v. *LeDone* (Civil No. 40-347, S. D. N. Y., 1947); *S. E. C.* v. *Ellenburger Exploration Enterprises* (Civil No. 1828, N. D. Tex. 1949).

[16] *S. E. C.* v. *John White, Mon Dakota Development Co.* (Civil No. 309, D. Mont. 1945).

[17] See *S. E. C.* v. *Fyre-Mist* (Civil No. 25178, D. Ohio 1947) involving a company organized for the purported purpose of manufacturing and selling a device for the burning of oil and water to produce enormous heat.

[18] See *S. E. C.* v. *Edmond Michel* (Civil No. 831, N. D. Ill. 1948).

[19] See *S. E. C.* v. *Aloha Oil Co.* (Civil No. 4463, W. D. Okla., 1949).

[20] 60 F. Supp. 440 (D. Fla. 1945), affirmed 151 F. 2d 714 (C. A. 5 1945), reversed 328 U. S. 293.

Considerable litigation has arisen out of refusals to appear in response to Commission subpenas. Usually, opposition to the subpena is short-lived,[21] for it is now well established that compliance should be prompt, and an appeal taken for purposes of delay will be dismissed.[22] Moreover, where the defendant continues his refusal to comply with the subpena in spite of a court order, the court is required to enter a decree that will coerce the production of the material named in the subpena. In the *Penfield* case, where a district court order obtained by the Commission enforcing a subpena *duces tecum* was ignored the Commission initiated contempt proceedings. The district court then merely ordered defendant to "pay a fine of $50, and stand committed until paid." Since this order did not enable the Commission to obtain access to the documents it had sought to subpena, an appeal was taken. The Court of Appeals reversed, ordering the entry of a coercive decree, and the Supreme Court affirmed the action of the Court of Appeals.[23]

In only one case during the past 5 years has a petition been filed for review of a Commission order entered pursuant to the Securities Act. In that case, petitioner sought to review a so-called order of the Commission consenting to the filing of amendments to a registration statement as of an earlier date and thus, by the automatic operation of section 8 (a) of the act, accelerating the effective date of the registration statement. The Court of Appeals for the First Circuit dismissed the petition for review on the ground, *inter alia*, that the action of the Commission was not reviewable.[24]

Current data concerning civil cases and appellate proceedings instituted under this act are included in appendix tables 26 and 28–32.

[21] Upon proof of materiality and relevance of the inquiry or documents sought enforcement is ordered by the court.
[22] *S. E. C.* v. *Vacuum Can Co.*, 157 F. 2d 530 (C. A. 7, 1946) *cert. den*, 330 U. S. 820.
[23] *Penfield* v. *S. E. C.*, 157 F. 2d 65 (C. A. 9, 1946) affirmed, 330 U. S. 585.
[24] *Crooker* v. *S. E. C.*, 161 F. 2d 944 (C. A. 1, 1947).

# PART II

## ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 is designed to eliminate fraud, manipulation, and other abuses in the trading of securities both on the organized exchanges and in the over-the-counter markets, which together constitute the Nation's facilities for trading in securities; to make available to the public information regarding the condition of corporations whose securities are listed on any national securities exchange; and to regulate the use of the Nation's credit in securities trading. The authority to issue rules on the use of credit in securities transactions is lodged in the Board of Governors of the Federal Reserve System, but the administration of these rules and of the other provisions of the act is vested in the Commission.

The act provides for the registration of national securities exchanges, brokers, and dealers in securities, and associations of brokers and dealers.

### REGULATION OF EXCHANGES AND EXCHANGE TRADING

#### Registration of Exchanges

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

At the close of the 1949 fiscal year the following 18 exchanges were registered as national securities exchanges:

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

Five exchanges were exempted from registration at the close of the 1949 fiscal year. These are:

Colorado Springs Stock Exchange.
Honolulu Stock Exchange.
Minneapolis-St. Paul Stock Exchange.
Richmond Stock Exchange.
Wheeling Stock Exchange.

The registration or exemption statement of each exchange contains information pertinent to the organization, rules of procedure, trading practices, membership, and related matters, and the exchanges are required to keep such information up to date by filing appropriate amendments. During the year the exchanges filed a total of 84 such

amendments, bringing the number of amendments filed during the past 5 years to 488. Many of these amendments contained only periodic information required by the rules, such as membership lists, names of officers and directors, financial statements of the exchanges, etc. However, changes which were effected by the exchanges in their constitutions, rules and trading practices were also reported. Each amendment was reviewed to ascertain whether the change was adverse to the public interest and complied with the Act. The nature of the changes in the exchanges' rules and trading practices varied considerably. Some of the more significant which occurred during the 1949 fiscal year are briefly outlined below:

New York Stock Exchange and New York Curb Exchange, effective December 15, 1948, each modified its rules to permit members trading for their own account on the floor of the exchange to purchase for their own account, under certain conditions, long stock at a price higher than the last sale. Previously, floor traders could not purchase for their own account any stock at a price higher than the last sale.

New York Curb Exchange, following action taken by New York Stock Exchange and others during the previous fiscal year, adopted, effective February 1, 1949, a revised schedule of commission rates on stocks selling at 50 cents or above per share. Its new commission rates are, as in the past, computed on a rate-per-share basis. Salt Lake and Spokane Stock Exchanges also revised their schedule of commission rates upward effective June 1 and 2, 1949, respectively.

New York Stock Exchange and New York Curb Exchange, on February 15, 1949, each amended its rules respecting equity in margin accounts to securities having a market value at or below $5 per share, for the purpose of new securities transactions or commitments or withdrawals of cash or securities. These two exchanges, on June 6, 1949, and June 15, 1949, respectively, also amended their rules by lowering the initial margin and minimum equity requirements from $1,000 to $500.

New York Curb Exchange adopted new standards to be followed in approving odd-lot differentials assigned to securities dealt in on the exchange. These new standards became effective June 1, 1949, and resulted in the revision on that date of the odd-lot differentials for 255 stocks.

Cincinnati Stock Exchange changed the method of trading on the exchange from a call system to one of continuous trading with a posted market. This change in trading procedure was patterned after the methods of Cleveland Stock Exchange and became effective on September 13, 1948. Under the old system of trading, all trading, except odd-lot trading in securities for which odd-lot books were operated by odd-lot dealers, was on call; i. e., members on the floor of the exchange engaged in competitive bids and offers for each security as it was called from the rostrum. The new system of continuous trading provides for all bids and offers to be posted upon a blackboard which is used as a trading post. Bids and offers are posted in order as to price and time received and the highest bidder and lowest offerer have preference over other bids and offers.

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Cincinnati Stock Exchange also amended its rules and regulations to permit delivery through a designated Cincinnati bank or trust company of securities having no transfer office in the city of Cincinnati.

Philadelphia Stock Exchange changed its name to Philadelphia-Baltimore Stock Exchange effective March 7, 1949, as a result of the merger of that exchange with Baltimore Stock Exchange. Upon consummation of the merger, the activities of Baltimore Stock Exchange were terminated and Philadelphia-Baltimore Stock Exchange opened an office in the city of Baltimore. A private wire is maintained between that office and the trading floor of the exchange in the city of Philadelphia for the use of its members in placing orders. In addition, an office of Stock Clearing Corporation of Philadelphia, a wholly owned subsidiary of Philadelphia-Baltimore Stock Exchange, was established in Baltimore for the purpose of facilitating the transfer of securities in that city. A majority of the issuers of securities listed and registered on Baltimore Stock Exchange prior to the merger transferred their listing and registration to Philadelphia-Baltimore Stock Exchange. The two exchanges believed that merger of their activities would result in benefits to issuers of securities traded on the exchanges as well as to the public, due, among other things, to the wider spread membership of the merged exchanges and consolidation of the trading areas involved.

San Francisco Stock Exchange and New York Curb Exchange each adopted an amendment to its rules governing trading by members while acting as brokers. The rule involved, which was contained in the list of rules originally adopted by the exchanges upon recommendation of the Commission in 1935, prohibited members from competing with public orders at all times. The amendment to the rule relaxed this restriction to the extent that a specialist-odd-lot dealer may now compete with public orders to offset positions previously acquired or to offset odd-lot orders to be executed.

**Floor Trading**

The term "floor trading" designates the use of the facilities of the floor of an exchange for trading by members for their own account as distinguished from transactions for customers' accounts.

On January 15, 1945, the Division of Trading and Exchanges recommended the adoption of a rule, pursuant to section 11 (a) (1) of the Securities Exchange Act of 1934, which would prohibit floor trading in stocks on New York Stock Exchange and New York Curb Exchange. This recommendation was accompanied by a report which outlined the legislative background of the Commission's powers with respect to floor trading and described the nature and effects of such trading in considerable detail. A public conference was held on May 16, 1945, to consider the merits of the proposal. Subsequent to the public conference, representatives of the Commission and of New York Stock Exchange met for additional discussions. Finally, at the request of New York Stock Exchange, the Commission agreed to permit the exchanges to adopt certain rules restricting floor trading. The Division of Trading and Exchanges has kept constant watch on the activity of floor traders and their effect on the market. At the request of New York Stock Exchange and after conferences by the Commission with the staff and with exchange officials, the rules were

revised in February 1947 and again in December 1948. Although these revisions permit wider flexibility of action by floor traders, the general policy of the exchanges restrains floor traders from many of the practices which were condemned in the division's report of 1945.

**Disciplinary Actions by Exchanges Against Members**

Pursuant to a request of the Commission, each national securities exchange reports to the Commission any action of a disciplinary nature taken by it against any of its members or against any partner or employee of a member for violation of the Securities Exchange Act, any rule or regulation thereunder, or of any exchange rule. During the year 5 exchanges reported having taken disciplinary action against a total of 46 members, member firms, and partners of member firms.

The nature of the actions taken included fines ranging from $50 to $2,500 in 15 cases, with total fines aggregating $18,275; expulsion of an individual from exchange membership; suspension of an individual and of 3 firms from exchange membership; revocation of the registration of a specialist for a period of 60 days; and censure of individuals or firms for infractions of the rules and warnings against further violation. The disciplinary actions resulted from violations of various exchange rules, principally those pertaining to partnership agreements, capital requirements, handling of customers' accounts, specialists, and conduct inconsistent with just and equitable principles of trade.

## REGISTRATION OF SECURITIES ON EXCHANGES

**Purpose and Nature of Registration**

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

**Examination of Applications and Reports**

All applications and reports filed pursuant to sections 12 and 13 are examined by the staff to determine whether accurate and adequate disclosure has been made of the specific types of information required by the act and the rules and regulations promulgated thereunder. The examination under the Securities Exchange Act, like that under the Securities Act of 1933, does not involve an appraisal and is not concerned with the merits of the registrant's securities. When examination of an application or a report discloses that material information has been omitted, or that sound principles have not been followed in the preparation and presentation of accompanying financial data, the examining staff follows much the same procedure as that developed in its work under the Securities Act in sending to the registrant a letter of comment, or in holding a conference with its

attorneys or accountants or other representatives, pointing out any inadequacies in the information filed in order that necessary correcting amendments may be obtained. Here again, amendments are examined in the same manner as the original documents. Where a particular inadequacy is not material, the registrant is notified by letter pointing out the defect and suggesting the proper procedure to be followed in the preparation and filing of future reports, without insistence upon the filing of an amendment to the particular document in question.

**Statistics of Securities Registered on Exchanges**

At the close of the 1949 fiscal year 2,194 issuers had 3,645 security issues listed and registered on national securities exchanges. These securities consisted of 2,570 stock issues aggregating 2,965,371,336 shares, and 1,075 bond issues aggregating $21,625,697,083 principal amount. This represents increases of 127,874,694 shares and $1,472,803,350 principal amount, respectively, over the aggregate amounts of securities listed and registered on national securities exchanges at the close of the 1948 fiscal year.

During the year 37 issuers not previously having securities registered under the act on national securities exchanges effected such registration and the registration of all securities of 52 issuers was terminated, principally by reason of retirement and redemption and through mergers and consolidations. Included in these 52 issuers are 8 issuers whose securities were removed from registration by reason of the termination of the registration of the Baltimore Stock Exchange on March 5, 1949, such issuers having determined not to transfer the registration of their securities to the Philadelphia-Baltimore Stock Exchange.

The following table shows the number of applications and reports filed during the fiscal year in connection with the registration of securities on national securities exchanges:

| | |
|---|---|
| Applications for registration of securities on national securities exchanges | 425 |
| Applications for registration of unissued securities for "when issued" dealing on national securities exchanges | 74 |
| Exemption statements for trading short-term warrants on national securities exchanges | 62 |
| Annual reports | 2,139 |
| Current reports | 8,766 |
| Amendments to applications and reports | 1,103 |

**Temporary Exemption of Substituted or Additional Securities**

Rule X–12A–5 provides a temporary exemption from the registration requirements of section 12 (a) of the act to securities issued in substitution for, or in addition to, securities previously listed or admitted to unlisted trading privileges on a national securities exchange. The purpose of this exemption is to enable transactions to be lawfully effected on an exchange in such substituted or additional securities pending their registration or admission to unlisted trading privileges on an exchange.

The exchanges filed notifications of admission to trading under this rule with respect to 108 issues during the year. The same issue was

admitted to trading on more than 1 exchange in some instances, so that the total admissions to such trading, including duplications, numbered 139.

## SECURITIES TRADED ON EXCHANGES

### Market Value and Volume of Exchange Trading

Stock sales on all registered stock exchanges in the past five fiscal years, ended June 30, have been as follows:

| Fiscal year— | Number of shares traded | Value of sales |
|---|---|---|
| 1945 | 595, 132, 582 | $13, 142, 289, 881 |
| 1946 | 826, 779. 793 | 18, 935, 182, 748 |
| 1947 | 553, 180, 698 | 13, 747, 185, 467 |
| 1948 | 536, 832, 816 | 12, 901, 422, 308 |
| 1949 | 443, 740, 828 | 10, 322. 019, 935 |

Such stock sales averaged about 591,133,000 shares per year, as compared with an annual average in the preceding 5 years of approximately 372,028,000 shares. Dollar value of sales showed an annual average of about $13,809,620,000 for the latest period, as against $7,846,981,000 for the 5 years ended June 30, 1944.

Share volume and dollar value of all transactions on all stock exchanges for the 1949 fiscal year are shown in appendix table 8.

Share volume and dollar value of stock transactions on the principal exchanges for the calendar years 1935 through 1948 are shown in appendix table 9.

### Special Offerings on Exchanges

Rule X–10B–2 permits special offerings of large blocks of securities to be made on national securities exchanges provided such offerings are effected pursuant to a plan which has been filed with and approved by the Commission. Briefly stated, a security may be the subject of a special offering when it has been determined that the auction market on the floor of the exchange cannot absorb a particular block of a security within a reasonable period of time without undue disturbance to the current price of the security. A special offering of a security is made at a fixed price consistent with the existing auction market price of the security, and members acting as brokers for public buyers are paid a special commission by the seller which ordinarily exceeds the regular brokerage commission. Buyers of the security are not charged any commission on their purchases and obtain the security at the net price of the offering.

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

| | |
|---|---|
| New York Stock Exchange | Feb. 14, 1942 |
| San Francisco Stock Exchange | Apr. 17, 1942 |
| New York Curb Exchange | May 15, 1942 |
| Phila.-Balto. Stock Exchange | Sept. 23, 1943 |
| Detroit Stock Exchange | Nov. 18, 1943 |

| | |
|---|---|
| Chicago Stock Exchange | Mar. 27, 1944 |
| Cincinnati Stock Exchange | June 26, 1944 |
| Los Angeles Stock Exchange | May 28, 1948 |
| Boston Stock Exchange | Sept. 15, 1948 |

Each exchange with a special-offering plan in effect has been requested to report detailed information to the Commission on each offering effected on the exchange under the plan. Such reports were received from the Chicago, San Francisco, and New York Stock Exchanges and New York Curb Exchange during the year with respect to a total of 25 offerings. These offerings involved the sale of 263,700 shares of stock with an aggregate market value of $5,750,000 and ranging in market value from $49,500 to $570,900. Special commissions paid to brokers participating in these 25 offerings totaled $161,000. Further details of special offerings during the year are given in appendix table 13.

The first special offering was effected on New York Stock Exchange on February 19, 1942, and from that time through June 30, 1949, a total of 406 offerings have been effected on 4 of the 9 exchanges having special-offering plans. These offerings totaled 4,915,900 shares with a market value of $144,335,000 and brokers were paid special commissions totaling $2,815,800.

#### Secondary Distributions Approved by Exchanges

A "secondary distribution," as the term is used in this section, is a distribution over the counter by a dealer or group of dealers of a comparatively large block of a previously issued and outstanding security listed or admitted to trading on an exchange. Such distributions take place when it has been determined that it would not be in the best interest of the various parties involved to sell the shares on the exchange in the regular way or by special offering. The distributions generally take place after the close of exchange trading. As in the case of special offerings, buyers obtain the security from the dealer at the net price of the offering, which usually is at or below the most recent price registered on the exchange. It is generally the practice of exchanges to require members to obtain the approval of the exchange before participating in such secondary distributions. Registration of such distributions under the Securities Act of 1933 may also be necessary.

During the 5-year period ending June 30, 1949, 7 exchanges reported having approved a total of 510 secondary distributions under which 31,920,000 shares of stock with a market value of $845,656,000 were sold. Of these, 97 distributions involving the sale of 4,481,000 shares with a market value of $129,014,000 were approved by 4 exchanges during the fiscal year ended June 30, 1949. Further details of secondary distributions of exchange stocks are given in appendix table 14.

#### Securities Traded on Exchanges—Comparative Data

The unduplicated total at the close of 1948 of all securities admitted to trading on 1 or more of the 24 stock exchanges of the United States was $214,616,000,000, composed as follows:

STOCKS

| Exchange | Number of issues | Market value |
|---|---|---|
| New York Stock Exchange | 1,419 | $67,048,000,000 |
| New York Curb Exchange | 819 | 11,884,000,000 |
| Regional exchanges only | 814 | 3,040,000,000 |
| Total | 3,052 | 81,973,000,000 |

BONDS

| | | |
|---|---|---|
| New York Stock Exchange | 911 | $131,306,000,000 |
| New York Curb Exchange | 110 | 1,082,000,000 |
| Regional exchanges only | 50 | 255,000,000 |
| Total | 1,071 | 132,643,000,000 |

Nearly half of the 1,419 stock issues traded on New York Stock Exchange and over one-quarter of the 819 stock issues traded on New York Curb Exchange were also traded on various regional exchanges, and the principal dollar volumes of the leading regional exchanges are in these dually traded stocks. Six of the regional exchanges accounted for over 90 percent of the dollar volume of stock transactions on all 22 such exchanges during 1948. These 6 exchanges—Boston, Chicago, Detroit, Los Angeles, Philadelphia, and San Francisco—reported an aggregate 1948 dollar volume of $858,600,000 in stocks, of which about $750,000,000 was in the issues also traded on New York Stock Exchange or Curb. Only the smaller regional exchanges still accomplish most of their trading in local issues.

No duplication of either stock or bond issues exists between New York Stock Exchange and New York Curb Exchange, and very little duplication of bond issues exists between the New York and regional exchanges, bond trading on the latter having shrunk to negligible proportions since 1929–30. Bonds traded on New York Stock Exchange included $114,572,000,000 United States Government, State, and municipal issues.

### TERMINATION OF REGISTRATION UNDER SECTION 19 (a) (2)

The Commission is empowered, under section 19 (a) (2) of the act, after appropriate notice and opportunity for hearing, to deny, to suspend the effective date of, to suspend for a period of not exceeding 12 months, or to withdraw the registration of a security, if it finds that the issuer of such security has failed to comply with any provision of the act or the rules and regulations thereunder.

During the past year the Commission instituted formal proceedings under section 19 (a) (2) involving four issuers to determine whether to suspend or withdraw the registration of their securities for failure to comply with the reporting requirements of section 13 of the act and the rules and regulations thereunder. Specifically, in three of such cases the issuers had failed to file their annual report for 1947, and in the other case, the Commission alleged the failure to correct serious accounting deficiencies appearing for 3 years in succession in financial statements filed under the act despite repeated efforts of the Commission to obtain correction thereof. Two of these proceedings were dismissed, after the hearings, when the issuers filed their

required annual reports; registration was ordered withdrawn in one case; and the proceedings in the fourth case, instituted in June 1949, were still pending at the close of the fiscal year.

The case in which registration was ordered withdrawn was that of the Assessable Common Capital Stock Ten Cents Par Value of Reorganized Carrie Silver-Lead Mines Corp. listed and registered on the San Francisco Mining Exchange. The brief language of the syllabus of the Commission's findings and opinion in this case, published February 21, 1949,[1] is sufficient to show why this registration was terminated: "Where an issuer having securities listed and registered on a national securities exchange has failed to comply with the Securities Exchange Act of 1934 in that it has generally failed to file its annual reports within the time prescribed for filing said reports; has failed to submit with the annual report for 1946 required financial statements and has failed to file the annual report for 1947 up to the present time, and where, in addition, the company is largely inactive and has practically no assets *held* the securities of such issuer will be withdrawn from registration."

Assertions of more serious violations of the law appear in the case pending at the close of the 1949 fiscal year, involving the registration of Barnhart-Morrow Consolidated Common Capital Stock $1 Par Value. A full statement of issues involved was published by the Commission in its order scheduling a hearing to be held shortly after the close of the year.[2] As set forth therein, the Commission's Division of Corporation Finance asserts, among other things, that the issuer, in its annual reports filed for the years 1945, 1946, and 1947, willfully and knowingly made a false and misleading statement with respect to its assets and net worth. More specifically, the examining staff had discovered that, at about the time the issuer was organized in 1926, capital stock in the amount of $219,120.50 was issued to the two organizers for alleged services and for a lease interest; that such lease interest acquired from the organizers was abandoned and quit-claimed by the issuer to the lessor in the fall of 1927; and that the issuer went into receivership on March 19, 1931, and continued in receivership until November 24, 1936. Nevertheless, the alleged services and lease interest above-mentioned are reflected as "Intangible Assets" in the amount of $219,120.50 under the description "Capital Stock issued for services and leases" in the balance sheets of the financial statements contained in the issuer's annual reports filed on Form 10–K for the fiscal years ended December 31, 1945, 1946, and 1947. In the same balance sheets the net worth of the issuer is reflected as $278,247.88, $395,031 and $396,765.96, respectively.

## UNLISTED TRADING PRIVILEGES ON EXCHANGES

Securities traded on exchanges on an unlisted basis are of two principal varieties. Some are listed and registered on an exchange but are traded unlisted on one or more other exchanges. As to these securities, the public enjoys the protections afforded by the listing and registration under the Securities Exchange Act. A great majority of the issues in this category are listed on New York Stock Exchange and admitted to unlisted trading on various exchanges in other cities.

[1] Securities Exchange Act release No. 4214.
[2] Securities Exchange Act release No. 4264 (1949).

The other category consists of issues not listed or registered on any registered exchange. Most of such issues are admitted to unlisted trading on New York Curb Exchange alone. In their case the public is not protected by any listing agreement with the issuer nor by the financial reporting requirements of section 13, the proxy rules under section 14, and the "trading by insider" reporting and penalty clauses of section 16 of the Securities Exchange Act, except to the extent that the issuers or issues may be registered under other acts administered by the Commission containing similar requirements.

Exchange trading in issues admitted to unlisted trading prior to March 1934 is permitted to continue under section 12 (f) (1) of the Securities Exchange Act. The further admission of issues to unlisted trading, however, has been prohibited except to the extent permitted under section 12 (f) (2) in the case of issues already listed and registered on some registered exchange,[3] and under section 12 (f) (3) in the case of issues not so listed and registered, as more specifically outlined under the next subheading, "Applications for Unlisted Trading Privileges." [4]

Twelve years ago, on June 30, 1937, the status of unlisted issues on the registered exchanges was as follows:

| Status | Stocks | Bonds |
|---|---|---|
| Listed on some other registered exchange | 554 | 42 |
| Not listed on any registered exchange | 737 | 550 |
| Total | 1,291 | 592 |

Total all stocks and bonds, 1,883 issues.

These issues were practically all in the section 12 (f) (1) category of securities which had been admitted to unlisted trading prior to March 1, 1934.

Since the first grant in April 1937 of an application by an exchange under section 12 (f) (2) for unlisted trading in stocks listed on some other registered exchange, there have been 562 admissions of such stocks to the various exchanges. The number of actual issues involved is less than this figure because many issues have been admitted to unlisted trading on 2, 3, or more exchanges. These admissions of stocks under section 12 (f) (2) have, however, barely maintained the number of listed stocks traded unlisted on other exchanges, which has fallen from 554 in 1937 to 539 in 1949. The grants have tended to make the same stocks available on numerous exchanges and to substitute currently active stocks in offset to the many retirements of issues originally admitted to unlisted trading under section 12 (f) (1). Annual trading on the various exchanges in these unlisted issues is shown in appendix table 21.

Only nine stock issues have been admitted to unlisted trading on an exchange (two of them on two exchanges) under section 12 (f) (3). Two of these issues have been removed from this unlisted status on New York Curb Exchange by reason of listing on New York Stock Exchange. One of the issues continues on New York Curb Exchange but has become listed on Philadelphia-Baltimore Stock Exchange.

[3] "Registered exchanges" and "national securities exchanges" are used synonymously in this section.
[4] The subject is treated at length in the Tenth Annual Report under "Unlisted Trading Privileges on Securities Exchanges."

Admissions of bonds under sections 12 (f) (2) and 12 (f) (3) have totaled 52, but retirements have exceeded admissions, and only 23 of the issues are still outstanding. It has become unusual to apply for bond admissions under these sections, except in case of very large and, particularly, convertible issues.

The status of unlisted issues on the registered exchanges as of June 30, 1949 was:

| Status | Stocks | Bonds |
|---|---|---|
| Listed on some other registered exchange | 539 | 7 |
| Not listed on any registered exchange | 344 | 84 |
| Total | 883 | 91 |
| Total all stocks and bonds, 974 issues. | | |

There has been a great diminution of issues, in all except the first category, under the 1937 level. The principal shrinkage has been in stocks and bonds not listed on any registered exchange, and this, as has been frequently stated in these reports, was the expectation of Congress when it authorized continuance of such privileges in 1936.

The 344 stocks admitted to unlisted trading without being listed on any registered exchange aggregated 353,595,077 shares, warrants, and receipts as of June 30, 1949. The reported volume of trading in these stocks for the calendar year 1948 was 23,762,256 units, including 15,882,748 domestic shares, 3,913,708 Canadian shares, 2,598,000 warrants, and 1,367,800 American depository receipts. The 353,595,077 unlisted shares were about 10½ percent of the total of 3,375,691,673 shares admitted to trading on the registered exchanges, and the 23,762,256 reported volume was 4½ percent of the total volume of 540,487,546 shares and warrants on the registered exchanges for the calendar year 1948. Of the 23,762,256 reported volume of trading in units of unlisted securities for 1948, 21,850,060 (92 percent) were on New York Curb Exchange, 1,578,999 (6.6 percent) were on San Francisco Stock Exchange, and 337,197 (1.4 percent) were scattered among 6 other regional stock exchanges. All but 1 of the 84 bond issues admitted to unlisted trading without registration were on New York Curb Exchange.

The single bond issue and all but 1 of the 36 stocks admitted only to unlisted trading on the exempted exchanges were on Honolulu Stock Exchange.

Comprehensive figures with respect to issues and volumes on exchanges will be found in appendix tables 8 to 21, inclusive.

**Applications for Unlisted Trading Privileges**

Section 12 (f) (2) of the act provides that, upon application to and approval by the Commission, a national securities exchange may extend unlisted trading privileges to a security which is listed and registered on another national securities exchange. Pursuant to this section, applications were granted during the year extending unlisted trading privileges to Boston Stock Exchange with respect to 5 stock issues; Chicago Stock Exchange, 3 stock issues; Cleveland Stock Exchange, 6 stock issues; Los Angeles Stock Exchange, 4 stock issues; Philadelphia-Baltimore Stock Exchange, 5 stock issues; Pittsburgh Stock Exchange, 11 stock issues; St. Louis Stock Exchange, 1 stock

issue; San Francisco Stock Exchange, 2 stock issues; and Washington Stock Exchange, 1 stock issue.

Section 12 (f) (3) of the act permits the Commission to grant an exchange's application for the extension of unlisted trading privileges to a security which is not listed and registered on another national securities exchange if investors have, respecting such a security, protections equivalent to those provided for in the act regarding listed securities. Applications were granted under this section, during the year, extending unlisted trading privileges to New York Curb Exchange with respect to three bond issues and two stock issues, one of which (Northern States Power Co. common stock) was later removed upon listing on New York Stock Exchange, while the other (Utah Power & Light Co. common stock) was also admitted to unlisted trading under this section on Salt Lake Stock Exchange.

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

During the year the exchanges filed numerous notifications pursuant to rule X–12F–2 (a) of changes in the title, maturity, interest rate, par value, dividend rate, or amount authorized or outstanding of securities admitted to unlisted trading privileges. Where changes of this nature only are effected in an unlisted security, the altered security is deemed to be the security previously admitted to unlisted trading privileges and such privileges are automatically extended to the altered security. However, when changes more comprehensive than these are effected in an unlisted security, the exchange may file an application with the Commission, pursuant to rule X–12F–2 (b), seeking a determination that the altered security is substantially equivalent to the security previously admitted to unlisted trading privileges. The Commission denied one such application by New York Curb Exchange,[5] and granted two other applications of that Exchange with respect to one of the two securities each involved, denying them with respect to the others.[6] Other applications filed pursuant to this rule were granted by the Commission with respect to four stock issues and one debenture escrow certificate issue on New York Curb Exchange, three stock issues on Philadelphia-Baltimore Stock Exchange, and two stock issues on Boston Stock Exchange.

## DELISTING OF SECURITIES FROM EXCHANGES

**Securities Delisted by Application**

Section 12 (d) of the act provides that upon application by the issuer or the exchange to the Commission, a security may be withdrawn or stricken from listing and registration on a national securities exchange in accordance with the rules of the exchange and subject to such terms as the Commission deems necessary for the protection of investors. In accordance with this procedure 18 securities (3 of which were listed on 2 exchanges each) were stricken from listing and registration as a result of various events which had the effect of practically terminating public interest in the issues involved. These included situations where the issuers were in the process of liquidation and where the issues were greatly reduced in the amount outstanding. In the case of three securities listed and registered on several national

[5] Securities Exchange Act release No. 4172.
[6] Securities Exchange Act releases Nos. 4171 and 4172.

securities exchanges, the issuers applied to have them withdrawn from listing and registration on one of the exchanges, which applications were granted; but they remained listed and registered on the other exchange. An application by an issuer to withdraw one stock issue from listing and registration was granted by the Commission, on the ground that the number of shares remaining in the hands of the public had become reduced to a very small number.

**Securities Delisted by Certification**

Securities which have been paid at maturity, redeemed, or retired in full, or which have become exchangeable for other securities in substitution therefor, may be removed from listing and registration on a national securities exchange if the exchange files a certification with the Commission to the effect that such retirement has occurred. The removal of the security becomes effective automatically after the interval of time prescribed by rule X–12D2–2 (a). The exchanges filed certifications under this rule effecting the removal of 111 separate issues. In some instances the same issue was removed from more than one exchange, so that the total number of removals, including duplications, was 132. Successor issues to those removed became listed and registered on exchanges in many instances.

In accordance with the provisions of rule X–12D2–1 (d), New York Curb Exchange removed five issues from listing and registration when they became listed and registered on New York Stock Exchange. This rule permits a national securities exchange to remove a security from listing and registration in the event trading therein has been terminated pursuant to a rule of the exchange which requires such termination if the security becomes listed and registered and admitted to trading on another exchange. Removal under this rule is automatic, the exchange being required merely to notify the Commission of the removal.

**Securities Removed From Listing on Exempted Exchanges**

A security may be removed from listing on an exempted exchange if such exchange files an appropriate amendment to its exemption statement setting forth a brief statement of the reasons for the removal. Three exempted exchanges removed three issues from listing thereon during the year.

## MANIPULATION AND STABILIZATION

Sections 9, 10, and 15 of the Securities Exchange Act prohibit manipulation of securities. The Commission is empowered to define and regulate manipulative and other fraudulent devices. Section 9 forbids certain specifically described forms of manipulative activity. Transactions which create actual or apparent trading activity or which raise or lower prices are declared to be unlawful if they are effected for the purpose of inducing others to buy or to sell. Certain practices designated as "wash sales" and "matched orders" effected for the purpose of creating a false or misleading appearance of active trading or a false or misleading appearance with respect to the market for a security are declared to be illegal. Persons selling or offering securities for sale are prohibited from disseminating false information to the effect that the price of a security will, or is likely to, rise or fall because of market operations conducted for the purpose of raising or depressing

the price of a security. Persons selling or buying securities are forbidden to make false or misleading statements of material facts, with knowledge of their falsity, or willfully to omit material information regarding such securities for the purpose of inducing purchases or sales. Sections 10 and 15 (the latter applying to the conduct of over-the-counter securities brokers and dealers) empower the Commission to adopt rules and regulations to define and prohibit manipulative practices.

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

**Manipulation**

A principal reason for the adoption of the Securities Exchange Act was the manipulation of securities prices which, prior to 1934, took millions of dollars annually from the public. In the early years of the Commission's existence some large-scale manipulations were detected and as a result various penalties were imposed upon certain market operators, including expulsions from exchanges, jail sentences, and fines.

As a result of the act and its administration manipulation is no longer an appreciable factor in our markets. However, efforts to raise or depress artificially the prices of securities are still encountered. During the past 5 years several notable cases of the type set forth below were detected.

Thornton & Co., a broker-dealer located in New York City, was found to have manipulated the stocks of Lindsay Light & Chemical Co. on the Chicago Stock Exchange and of Northwest Utilities Co. over-the-counter. The registration of Thornton & Co. as a broker-dealer was revoked. The Federal Corp. was enjoined from attempting to manipulate the stock of Red Bank Oil Co. at a time when the company was attempting to register 990,000 shares of stock for sale to the public. Albert B. Windt was sentenced to 6 months in fail and fined $1,000, and the broker-dealer registration of Aurelius F. DeFelice was revoked for their manipulation of the stock of Tonopah Gipsy Queen Mining Co. on the San Francisco Mining Exchange. Serge Rubinstein and Frank Bliss were indicted on February 7, 1949, on charges of fraud and market manipulation in connection with their distribution of Rubinstein's holdings of Panhandle Producing & Refining Co., resulting in an alleged unlawful profit of $3,000,000 to Rubinstein. The *Rubinstein* case was the only one of those enumerated where the public suffered a substantial loss. The above cases, detected by the methods set forth in the next few paragraphs, were investigated by the appropriate regional offices of the Commission. In the cases involving criminal prosecution the results of Commission investigation were referred to the Department of Justice for punitive action.

In administering the anti-manipulation requirements there is a premium on prompt action to prevent harm before it occurs and on

the avoidance of interference with the legitimate functioning of the markets. To accomplish this the Commission has continuously modified and sought to improve its procedures for the systematic surveillance of trading in securities. Methods used to detect manipulation have necessarily been elastic and fluid in character, since techniques employed by manipulators change constantly, increasing in subtlety and complexity.

The staff scrutinizes price movements in approximately 8,500 securities, including 3,500 issues traded on exchanges and 5,000 which have the most active markets over-the-counter. Information maintained concerning these securities includes not only data reflecting the market action of such securities but also includes news items, earnings figures, dividends, options, and other facts which might explain price and volume changes. In addition, periodic observations are made of the price movements of the thousands of other issues which occasionally change hands in our public markets. The markets for securities about to be sold to the public are watched very closely. In this connection, 800 securities were kept under special observation during the 1949 fiscal year for periods ranging from 14 to 90 days.

When no apparent explanation can be found for an unusual movement in a security or for an unusual volume of trading, the matter may be referred to one of the regional offices of the Commission for a field investigation. For reasons of policy the Commission keeps confidential the fact that trading in a given security is under investigation, for it has found that knowledge of the existence of such investigations may unduly affect the market or reflect unfairly upon individuals whose activities are being investigated. As a result, the Commission occasionally receives criticism for failing to investigate in cases when, in fact, it is actually engaged in an intensive investigation.

The Commission's investigations of unusual market activity take two forms. The "flying quiz," or preliminary investigation, is designed to detect and discourage incipient manipulation by a prompt determination of the reason for unusual market behavior. Often the results of a flying quiz point to a legitimate reason for the activity under review and the case is closed. Frequently facts are uncovered which require more extended investigation, and in these cases formal orders of investigation are issued by the Commission. In a formal investigation, members of the Commission's staff are empowered to subpena pertinent material and to take testimony under oath. In the course of such investigation data on purchases and sales over substantial periods of time are often compiled and trading operations involving considerable quantities of securities are scrutinized.

The Commission operates on the premise that manipulation should be suppressed at its inception. Many of the cases investigated never come to the attention of the public because the promptness of the Commission's investigation, through the flying quiz technique, stops the manipulation before it is fully developed. Public losses are seldom recoverable even though the perpetrator of a fraud is brought to justice. Therefore it is believed that these investigatory methods afford more protection to the public than allowing market operations

to continue until it appeared that sufficient evidence for a successful prosecution would be obtainable.

A 5-year tabular summary of the Commission's trading investigations follows:

*Trading investigations*

| | Fiscal year— | | | | |
|---|---|---|---|---|---|
| | 1945 | 1946 | 1947 | 1948 | 1949 |
| Flying quizzes: | | | | | |
| Pending at start of fiscal year | 59 | 163 | 245 | 91 | 138 |
| Initiated during year | 308 | 287 | 66 | 147 | 92 |
| Total to be accounted for | 367 | 450 | 311 | 238 | 230 |
| Changed to formal investigation | 17 | 11 | 4 | 2 | 4 |
| Closed or completed [1] | 187 | 194 | 216 | 98 | 89 |
| Total disposed of | 204 | 205 | 220 | 100 | 93 |
| Pending at end of fiscal year | 163 | 245 | 91 | 138 | 137 |
| Formal investigations: | | | | | |
| Pending at start of fiscal year | 19 | 28 | 31 | 34 | 27 |
| Initiated during year [2] | 14 | 11 | 5 | 2 | 4 |
| Total to be accounted for | 33 | 39 | 36 | 36 | 31 |
| Closed or completed [1] | 5 | 8 | 2 | 9 | 13 |
| Pending at end of fiscal year | 28 | 31 | 34 | 27 | 18 |

[1] Includes referrals to the Department of Justice and others for punitive action.
[2] Several quizzes may be consolidated into 1 formal investigation or formal investigations may be initiated directly.

**Stabilization**

During the 1949 fiscal year the Commission continued the administration of rules X–17A–2 and X–9A6–1. Rule X–17A–2 requires the filing of detailed reports of all transactions incident to offerings in respect of which a registration statement has been filed under the Securities Act of 1933 where any stabilizing operation is undertaken to facilitate the offering. Rule X–9A6–1 governs stabilizing transactions effected to facilitate offerings of securities registered on national securities exchanges, in which the offering prices are represented to be "at the market" or at prices related to market prices.

Of the 455 registration statements filed during the 1949 fiscal year, 188 contained a statement of intention to stabilize to facilitate the offerings covered by such registration statements. Each of the latter filings was examined critically as to the propriety of the proposed method of distribution and market support and the full disclosure thereof. Because a registration statement sometimes covers more than one class of security, there were 209 offerings of securities in respect of which a statement was made, as required by rule 426 under the Securities Act, to the effect that a stabilizing operation was contemplated. Stabilizing operations were actually conducted to facilitate 66 of these offerings, principally the stock offerings. In the case of bonds, public offerings of 2 issues aggregating $86,300,000 in principal amount were stabilized. Offerings of stock issues aggregating 12,186,838 shares with an estimated aggregate public offering price of $297,659,921 were stabilized. In connection with these stabilizing

operations, 9,454 reports were filed with the Commission during the fiscal year. Each of these reports has been analyzed to determine whether the stabilizing activities were within permissible limits.

To facilitate compliance with the Commission's rules on stabilizing and to assist issuers and underwriters to avoid violation of the statutory provisions dealing with manipulation and fraud, many conferences were held with representatives of such issuers and underwriters and many written and telephone requests were answered. It is the Commission's experience that such issuers and underwriters place great value on the immediate service which the Commission is able to render them by being at all times available to give them responsible advice as to problems dealing with proper stabilizing techniques in the offering of securities.

## SECURITY TRANSACTIONS OF CORPORATION INSIDERS

A corporation "insider," by virtue of his position, may have knowledge of his company's condition and prospects which is not available to the general public. Accordingly, any transactions effected by him in the company's securities are of particular interest to other stockholders and investors. For the purpose of providing information with respect to such transactions, sections 16 (a) of the Securities Exchange Act of 1934, 17 (a) of the Public Utility Holding Company Act of 1935, and 30 (f) of the Investment Company Act of 1940 require that corporation "insiders" file reports of certain transactions in the securities of their companies. These reports are required to be filed by every beneficial owner of more than 10 percent of any equity security listed on a national securities exchange and by every officer and director of the issuer of any equity security so listed; every officer or director of a registered public utility holding company; and every officer, director, beneficial owner of more than 10 percent of any class of security (other than short-term paper), member of an advisory board, investment adviser, or affiliated person of an investment adviser of a registered closed-end investment company. The Commission requires the filing of an initial report showing beneficial ownership, both direct and indirect, of the company's securities when one of these relationships is assumed and subsequent reports must be filed for each month thereafter in which any purchase or sale, or other change in such ownership occurs, setting forth in detail each such change, on or before the tenth day following the month in which it occurs.

The staff examines all reports filed to determine whether they comply with applicable requirements. Where inaccuracies or omissions appear amended reports are requested. The reports are available for public inspection from the time they are filed. However, it is manifestly not possible for many interested persons to inspect these reports at the Commission's central office, or at the exchanges where additional copies of section 16 (a) reports are also filed. The Commission therefore publishes a monthly official summary of security transactions and holdings which is widely distributed among individual investors, brokers and dealers, newspaper correspondents, press services, and other interested persons. Files of this summary are maintained at each of the Commission's regional offices and at the offices of the various exchanges.

**Preventing Unfair Use of Inside Information**

For the purpose of preventing unfair use of information which may have been obtained by an insider by reason of his relationship to the issuer, section 16(b) of the Securities Exchange Act provides that any profit realized by an officer, director or principal stockholder from short-term transactions (any sale and purchase or any purchase and sale of any equity security of the issuer within any period of less than 6 months) shall be recoverable by the issuer. If necessary, suit for the recovery of such profits may be instituted by the issuer or by any stockholder of the issuer if it fails or refuses to act within 60 days after request. Similar provisions are contained in sections 17(b) of the Public Utility Holding Company Act and 30(f) of the Investment Company Act. Voluntary payments of short-term profits have been made in a number of instances, and others have been made upon request by the issuer based upon information disclosed in ownership reports filed with the Commission by the insider involved. Further substantial amounts have been recovered through court action. One of the first of such suits under section 16(b) was decided for the plaintiff in 1942, and since that time, particularly during the past 5 years, a growing number of similar actions have been brought in the courts. The Commission has participated as *amicus curiae* in several of these cases.

**Statistics of Ownership Reports**

During the 5-year period ended June 30, 1949, 93,396 security ownership reports were filed with the Commission, compared with 87,000 reports filed during the previous 5-year period. Since these various regulations were put into effect, 309,494 reports have been filed by 45,179 insiders of 2,733 issuers of listed equity securities, of 225 registered public-utility holding companies, and of 234 registered closed-end investment companies. The following table shows the number of reports filed during the past fiscal year:

*Number of ownership reports of officers, directors, principal security holders, and certain other affiliated persons filed and examined during the fiscal year ended June 30, 1949*

| Description of report [1] | Original reports | Amended reports | Total |
|---|---|---|---|
| Securities Exchange Act of 1934: | | | |
| Form 4 | 14,619 | 709 | 15,328 |
| Form 5 | 384 | 23 | 407 |
| Form 6 | 2,187 | 54 | 2,241 |
| Total | 17,190 | 786 | 17,976 |
| Public Utility Holding Company Act of 1935: | | | |
| Form U-17-1 | 95 | 3 | 98 |
| Form U-17-2 | 548 | 29 | 577 |
| Total | 643 | 32 | 675 |
| Investment Company Act of 1940: | | | |
| Form N-30F-1 | 131 | 1 | 132 |
| Form N-30F-2 | 559 | 11 | 570 |
| | 690 | 12 | 702 |
| Grand total | 18,523 | 830 | 19,353 |

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

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## SOLICITATION OF PROXIES, CONSENTS AND AUTHORIZATIONS

Under three of the acts it administers—sections 14 (a) of the Securities Exchange Act of 1934, 12 (a) of the Public Utility Holding Company Act of 1935, and 20 (a) of the Investment Company Act of 1940—the Commission is authorized to prescribe rules and regulations concerning the solicitation of proxies, consents, and authorizations in connection with securities of the companies subject to those acts. Pursuant to this authority, the Commission has adopted regulation X–14, which is designed to protect investors by requiring the disclosure of certain information to them and by affording them an opportunity for active participation in the affairs of their company. Essentially, this regulation makes unlawful any solicitation of any proxy, consent, or authorization which is false or misleading as to any material fact or which omits to state any material fact necessary to make the statements already made not false or misleading. Under the regulation it is necessary, in general, that each person solicited be furnished such information as will enable him to act intelligently upon each separate matter in respect of which his vote or consent is sought. The proxy rules set forth in this regulation also contain provisions which enable security holders who are not allied with the management to communicate with other security holders when the management is soliciting proxies.

### Statistics of Proxy Statements

During the 5-year period from July 1, 1944, to June 30, 1949, the Commission received and examined both the preliminary and definitive material with respect to 8,356 solicitations under regulation X–14, as well as "follow-up" material employed in 1,376 instances.

During the 1949 fiscal year the Commission received and examined both the preliminary and definitive material with respect to 1,702 solicitations under regulation X–14 as well as "follow-up" material used in 191 instances.

The number of proxy statements filed by management and by others than management, and the principal items of business for which stockholders' action was sought in these solicitations, is shown below for each of the past five calendar years:

| | Year ended Dec. 31— | | | | |
|---|---|---|---|---|---|
| | 1944 | 1945 | 1946 | 1947 | 1948 |
| Proxy statements filed by management | 1,523 | 1,570 | 1,664 | 1,613 | 1,648 |
| Proxy statements filed by others than management | 27 | 24 | 21 | 32 | 29 |
| Total number of proxy statements filed | 1,550 | 1,594 | 1,685 | 1,645 | 1,677 |
| For meetings at which the election of directors was one of the items of business | 1,350 | 1,350 | 1,407 | 1,461 | 1,534 |
| For meetings not involving the election of directors | 172 | 213 | 244 | 149 | 115 |
| For assents and authorizations not involving a meeting or the election of directors | 28 | 31 | 34 | 35 | 28 |
| Total number of proxy statements filed | 1,550 | 1,594 | 1,685 | 1,645 | 1,677 |

The items of business other than that of election of directors were distributed among specific proposals of action as follows:

| | Year ended Dec. 31— | | | | |
|---|---|---|---|---|---|
| | 1944 | 1945 | 1946 | 1947 | 1948 |
| Mergers, consolidations, acquisition of businesses, and purchase and sale of property | 59 | 40 | 65 | 69 | 46 |
| Issuance of new securities, modification of existing securities, recapitalization plans other than mergers or consolidations | 144 | 227 | 249 | 223 | 154 |
| Employees pension plans | 105 | 94 | 75 | 66 | 59 |
| Bonus and profit-sharing plans, including stock options | 58 | 51 | 52 | 60 | 32 |
| Indemnification of officers and directors | 31 | 25 | 36 | 22 | 21 |
| Change in date of annual meeting | 33 | 33 | 28 | 27 | 24 |
| Other miscellaneous amendments to bylaws, and miscellaneous other matters | 141 | 217 | 309 | 207 | 215 |
| Stockholder approval of independent auditors | 310 | 296 | 304 | 312 | 365 |
| Number of management's proxy statements containing stockholder proposals | 20 | 14 | 19 | 15 | 38 |
| Number of such stockholder proposals | 38 | 34 | 34 | 29 | 57 |
| Net number of stockholders whose proposals were included in management's proxy statements (each stockholder is counted only once in each year regardless of the number of his proposals or the number of companies that included his proposals in proxy statements) | 17 | 17 | 9 | 13 | 18 |

**Examination of Proxies**

The problems which arise in the Commission's administration of regulation X–14 may be shown by reference to a few actual cases examined by the staff during the 1949 fiscal year.

In a proxy contest in the spring of 1948, a group in opposition to the management of an aircraft company proposed the election of a majority of the board of directors. The first proxy form which was used by the opposition group authorized the proxies named to vote shares at the annual meeting of the company to be held April 21, 1948, and at all adjournments thereof. Just before the annual meeting the opposition group made a resolicitation of proxies. The second proxy form attempted to seek authority to vote "at the annual meeting to be held on April 21, 1948, and all adjournments thereof, and any meeting, regular or special, held up to and including the 1949 annual meeting to be held on or about April 20, 1949, and all adjournments thereof. * * *" Upon objection by the Commission to such indefinite duration of a proxy, the opposition group agreed that proxies received as a result of the latter solicitation would not be used at any stockholders' meeting other than that of April 21, 1948, and any adjournment of this particular meeting. In order to prevent the premature solicitation of proxies and in order to clarify the rule in this respect, amendments to the proxy rules were adopted on November 5, 1948, especially providing that no proxy shall confer authority to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) which is to be held after the date on which the solicitation is made.

In most cases no such proxy contest is involved. Nevertheless, a wide variety of problems may be presented to the examining staff in any particular case. One example illustrates how a public utility company's inadequacy of reserves for its fixed assets was made clear to the investing public as a result of a proxy examination made by the staff. This company filed preliminary copies of proxy solicitation

material to be used in obtaining stockholder approval for an increase in authorized long-term debt, and with such material included certified financial statements. As originally filed, the accountants' certificate contained the qualification: "subject to the adequacy of the reserve for property retirements." To the Commission's examiners this reservation presented some doubt as to whether the accountants had excluded the reserve from the purview of their audit or whether they were of the opinion that the reserve was inadequate. Following informal discussions with the accountants their certificate was revised to state clearly that the reserve was materially inadequate and that they took exception to the financial statements because of such inadequacy. Their resultant certificate, as revised, read in part as follows:

> The company uses the retirement-reserve method of providing for property retirements, the purpose of which is to equalize the burden of retirement losses from year to year. As stated in Note 5 of the notes to the balance sheet, the ratio between the expired life * * * is materially in excess of the ratio between the related retirement reserve and the estimated original cost of such property, and a straight-line depreciation reserve would materially exceed such retirement reserve. * * *

The certificate as revised was used together with the financial statements in a prospectus covering a public offering of securities made shortly thereafter by the issuer under the Securities Act of 1933.

While it is unusual for the Commission to find it necessary to resort to the courts for the enforcement of its proxy regulations, it has been engaged in such litigation during the past year in a case involving the solicitation of proxies by John A. Topping from the stockholders of Certain-Teed Products Corp. The Commission's attention was called to a letter of April 1, 1949, sent by Mr. Topping to stockholders. The Commission in its complaint filed with the court alleged that the letter was not filed as required by the proxy rules and that certain statements contained therein were false and misleading. The Commission therefore sought an injunction prohibiting Mr. Topping from sending further letters of this nature in contravention of these rules. On June 1, 1949, the court denied the defendant's motion to dismiss the Commission's complaint; denied the temporary injunction requested by this Commission without prejudice, on the theory that since the annual meeting had been held no immediate danger existed of further violations of law; and retained jurisdiction in the case. This litigation is still pending and awaiting a ruling by the court on the defendant's motion for summary judgment.

Illustrating the proxy cases which give rise primarily to one or more of a wide variety of accounting problems was that of a chemical manufacturer which filed preliminary proxy material covering a proposed merger between the company and one of its subsidiaries for the purpose of effecting a recapitalization of the parent company. The notes to the financial statements contained in the proxy material revealed that the accumulated unpaid dividends on 213,052.15 shares of preferred stock amounted to $83.50 per share or a total of $17,789,854.53. The surplus shown on the balance sheet amounted to $11,477,570.43.

The company proposed that new first preferred and second preferred stock would be issued in exchange for its outstanding preferred stock,

the effect of which would be to satisfy all dividend arrearages. It proposed also to carry forward its surplus intact without reflecting any deduction arising out of the satisfaction of dividend arrearages. After discussions between the staff and representatives of the company of the results sought to be obtained by the proposed merger, the main purpose of which was to eliminate preferred dividend arrearages, and of the accounting procedure proper under the circumstances, the company's financial statements were revised to indicate that the entire surplus of $11,477,570.43 remaining, after routine adjustments, would be eliminated and treated as capital upon consummation of the merger.

The method used by a company in the valuation of its inventories becomes significant to stockholders in many cases, as may be illustrated by still another actual proxy examination conducted by the staff. An oil company submitted copies of proxy solicitation material with respect to a proposed merger with another oil company. This proxy material contained financial statements of both companies. In reviewing the financial statements, the staff noted that the companies used different methods of valuing their principal inventories; e. g., last-in, first-out method; first-in, first-out method; and the average-cost method. Both companies used the last-in, first-out method for valuing inventories of crude oil and of crude oil content of refined and semirefined products at refineries, which constituted a substantial portion of total inventories.

It should be noted that in the determination of net income, the last-in, first-out method of valuing inventories has the effect of deducting from sales the cost of recent products purchased, instead of the cost of such products on hand at the beginning of the year (based on the first-in, first-out or average cost methods) plus purchases during the year. Therefore, generally, in a period of rising prices the effect of the last-in, first-out method is to show earnings and inventories in the balance sheet substantially lower than they otherwise would have been if other generally recognized methods had been used. In a period of declining prices, earnings would normally be greater on the last-in, first-out basis. It was deemed particularly pertinent in this case, as frequently occurs in many other instances, that the financial statements should disclose to stockholders the valuation on a current cost basis of inventories carried on the last-in, first-out basis. These financial statements were amended to indicate that with respect to one company's inventories valued on the last-in, first-out method ($3,067,611.03) the approximate current cost aggregated $6,000,000, and with respect to the other company's inventories stated on the last-in, first-out method ($1,999,756) the approximate current cost aggregated $3,750,000. This disclosure, obtained for the benefit of stockholders, enabled them more adequately to appraise their respective equities.

## REGULATION OF BROKERS AND DEALERS IN OVER-THE-COUNTER MARKETS

### Registration

Brokers and dealers using the mails or other instrumentalities of interstate commerce to effect transactions in securities on over-the-counter markets are required to be registered with the Commission

pursuant to section 15 (a) of the Securities Exchange Act of 1934; exemption, however, is granted to those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. The following tabulation reflects certain data with respect to registration of brokers and dealers during the fiscal year ended June 30, 1949:

*Registration of brokers and dealers under section 15 (b) of the Securities Exchange Act—fiscal year ending June 30, 1949*

| | |
|---|---|
| Effective registrations at close of preceding fiscal year | 4,006 |
| Effective registrations carried as inactive | [1] 72 |
| Registrations placed under suspension during preceding fiscal year | 0 |
| Applications pending at close of preceding fiscal year | 29 |
| Applications filed during fiscal year | 429 |
| Total | 4,536 |
| Applications withdrawn during year | 19 |
| Applications cancelled during year | 0 |
| Registrations withdrawn during year | 443 |
| Registrations cancelled during year | 41 |
| Registrations denied during year | 0 |
| Registrations suspended during year | 0 |
| Registrations revoked during year | 16 |
| Registrations effective at end of year | 3,924 |
| Registrations effective at end of year carried as inactive | [1] 70 |
| Applications pending at end of year | 23 |
| Total | 4,536 |

[1] Registrations on inactive status because of inability to locate registrant despite careful inquiry. Two such registrations were cancelled, withdrawn, or restored to active status during the year.

**Administrative Proceedings**

Section 15 (b) of the act provides that registration may be denied for specific types of misconduct on the part of an applicant, and that, once allowed, registration may be revoked for such misconduct if the Commission finds after an appropriate record has been made that such denial or revocation is necessary in the public interest. The Commission's staff, therefore, examines all applications for registration and numerous other available sources of information to determine whether the applicant has engaged in any violations of law which would constitute a statutory basis for challenging the propriety of giving him the privilege incident to registration. When indications of such misconduct are discovered, the Commission orders proceedings to establish the facts and to afford the applicant full opportunity to be heard on the specified charges so that an appropriate determination may be made. Similar procedures are followed in revocation proceedings against registered brokers and dealers and in proceedings to determine whether to suspend or expel a broker or dealer from membership in a national securities exchange or association. The following tabulation reflects the number of proceedings instituted under sections 15 (b) and 15A during the 5-year period ending June 30, 1949, and the disposition thereof.

*Cumulative record of broker-dealer registration proceedings and proceedings to suspend or expel from membership in a national securities association instituted pursuant to section 15 of the Securities Exchange Act for each of the fiscal years 1945–49*

| | 1945 | 1946 | 1947 | 1948 | 1949 | Total (5-year period) |
|---|---|---|---|---|---|---|
| Proceedings pending at start of fiscal year to— | | | | | | |
| Revoke registration | 4 | 2 | 2 | 4 | 10 | 4 |
| Revoke registration and suspend or expel from NASD [1] | 11 | 5 | 4 | 2 | 9 | 11 |
| Deny registration to applicants | | | 2 | 1 | | |
| Total proceedings pending | 15 | 7 | 8 | 7 | 19 | 15 |
| Proceedings instituted during fiscal year to— | | | | | | |
| Revoke registration | 6 | 6 | 15 | 13 | 10 | 50 |
| Revoke registration and suspend or expel from NASD | 2 | 4 | 3 | 9 | 6 | 24 |
| Deny registration to applicants | 5 | 5 | 2 | 6 | 7 | 25 |
| Total proceedings instituted | 13 | 15 | 20 | 28 | 23 | 99 |
| Total proceedings current during fiscal year | 28 | 22 | 28 | 35 | 42 | 114 |
| DISPOSITION OF PROCEEDINGS | | | | | | |
| Proceedings to revoke registration: | | | | | | |
| Dismissed on withdrawal or cancellation of registration | 1 | | 4 | 0 | 3 | 8 |
| Dismissed—registration continued in effect | 1 | | 1 | 0 | 2 | 4 |
| Registration revoked | 6 | 6 | 8 | 7 | 10 | 37 |
| Total | 8 | 6 | 13 | 7 | 15 | 49 |
| Proceedings to revoke registration and suspend or expel from NASD: | | | | | | |
| Dismissed on withdrawal or cancellation of registration | 0 | 0 | 1 | 0 | 1 | 2 |
| Dismissed—registration and membership continued | 1 | 1 | 0 | 0 | 0 | 2 |
| Registration revoked and firm expelled from NASD | 0 | 1 | 1 | 0 | 6 | 8 |
| Firm suspended from membership in NASD | 4 | 1 | 1 | 0 | 0 | 6 |
| Registration revoked—no action taken on NASD membership | 3 | 2 | 2 | 2 | 0 | 9 |
| Total | 8 | 5 | 5 | 2 | 7 | 27 |
| Proceedings to deny registration to applicants: | | | | | | |
| Dismissed on withdrawal of application | 1 | 2 | 1 | 3 | 2 | 9 |
| Dismissed—registration permitted | 2 | | 1 | 2 | 4 | 9 |
| Registration denied | 2 | 1 | 1 | 2 | 0 | 6 |
| Total | 5 | 3 | 3 | 7 | 6 | 24 |
| Total proceedings disposed of | 21 | 14 | 21 | 16 | 28 | 100 |
| Proceedings pending at end of fiscal year to— | | | | | | |
| Revoke registration | 2 | 2 | 4 | 10 | 5 | 5 |
| Revoke registration and suspend or expel from NASD | 5 | 4 | 2 | 9 | 8 | 8 |
| Deny registration to applicants | | 2 | 1 | | 1 | 1 |
| Total proceedings pending at end of fiscal year | 7 | 8 | 7 | 19 | 14 | 14 |
| Total proceedings accounted for | 28 | 22 | 28 | 35 | 42 | 114 |

[1] The National Association of Securities Dealers, Inc., is the only national securities association registered with the Commission.

As shown in the foregoing tabulation, seven proceedings involving the denial of registration as an over-the-counter broker or dealer were ordered during the 1949 fiscal year. Two applications were withdrawn after the Commission had given notice of hearing thereon. Four were granted registration. One proceeding was pending at the end of the year. Of the 16 revocation proceedings against registered

brokers and dealers ordered during the fiscal year and the 19 proceedings pending at the beginning of the year,[7] the Commission disposed of 22 as follows:

| | |
|---|---|
| Registration revoked | [1] 10 |
| Registration revoked and firm expelled from NASD | [1] 6 |
| Proceedings dismissed and registration cancelled or withdrawn | 4 |
| Proceedings dismissed and registration continued in effect | 2 |

[1] Registrations revoked (* indicates expulsion from NASD was also ordered):

| Firm | *Securites Exchange Act Release No.* |
|---|---|
| Thornton & Co.* | 4115 |
| Hammill & Co | 4189 |
| Southeastern Securities Corp | 4274 |
| Meyer & Ewell Co. Inc | 4156 |
| J. Omer Hebert | 4126 |
| Edward R. Parker Co. Inc.* | 4157 |
| Morris T. Sitkoff | 4155 |
| Roy Culp | 4203 |
| William Monroe Layton | 4204 |
| Harold G. Wise* | 4270 |
| Aurelius F. De Felice | 4272 |
| Lewis Ankeny & Co | 4265 |
| Carter H. Corbrey & Co. (not incorporated)* | 4244 |
| Strouse, Thomas and Whelan, Inc | 4248 |
| J. S. Lockaby, & Co.* | 4237 |
| American Canadian Enterprises, Ltd.* | 4273 |

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

During the last five fiscal years revocation proceedings have been instituted against seven brokers and dealers for manipulation of the market in particular securities. Two proceedings of this nature were decided during the 1949 fiscal year and the registrations of Aurelius F. De Felice and Thornton & Co. were revoked on findings that they had manipulated the market in willful violation of law.

In the first case, De Felice and one Windt undertook a manipulation of the market which raised the price of the common stock of Tonopah Gipsey Queen Mining Co. from 40 cents on March 15, 1946, to 75 cents on March 26, 1946, at which level it was maintained until April 10, 1946. This was accomplished by artificial trading generated by De Felice and Windt and by their contraction of the available trading supply in the security.

By obtaining option agreements from one Christiansen, who owned 1,091,191 of the 1,243,715 shares of Tonopah's outstanding stock (in connection with which Christiansen agreed to deposit 750,190 of his shares in escrow until November 1, 1947), Windt removed from the market all except 41,001 of Christiansen's shares, thus removing an overhang from the market and facilitating the manipulation. Despite the fact that DeFelice was informed by the board of governors of the San Francisco Mining Exchange that it would be necessary for Christiansen to make available a sufficient amount of stock to prevent an unduly narrow market, DeFelice effectively removed from trading 20,000 of the 40,000 shares offered by Christiansen by placing such shares with a customer off the exchange. The Commission found that DeFelice had followed a course of conduct for the manifest purpose of raising the price of the stock in order to induce the purchase of the stock by others, and that he aided and abetted Windt,

[7] Some of these proceedings included the question of suspension or exclusion from the NASD.

who he had reason to believe was effecting like transactions with a similar purpose. DeFelice thereby violated section 9 (a) (2) of the Securities Exchange Act.

In the second case, Charles J. Thornton was the active and controlling partner in Thornton & Co. Thornton entered matched orders and effected wash transactions on the Chicago Stock Exchange in the common stock of Lindsay Light & Chemical Co. from June 1, 1946, to July 31, 1946, and in the 7 percent cumulative preferred $100 par value stock of Northwest Utilities Co. from February 9, 1946, to July 2, 1946, for the purpose of creating a false and misleading appearance of active trading in these securities. This raised the price of the Lindsay common from approximately $32 to $35.50 per share and the price of the Northwest preferred from approximately $152 to approximately $184 per share and was done for the purpose of inducing the purchase of these securities by others.

In the course of the manipulation of the market in each of these securities Thornton made sales to the public both on the Exchange and over-the-counter markets within the range of the fictitious prices it had created directly and at levels achieved in public transactions which followed Thornton's substantial participation in the market. To screen his operations Thornton placed buy and sell orders with numerous brokers, none of whom was ever on both sides of a transaction. Thornton admitted that he had entered large numbers of matched orders and consummated a substantial volume of wash transactions, 116 in all. He contended, however, that they were not for the purpose prescribed by statute but rather to delay payment for securities which he had purchased and could not finance, in other words a "kiting" of securities. He further contended that he was endeavoring to accumulate an inventory in such securities.

The Commission found that his public sales and the mechanics of his trading were not only inconsistent with his assertions, but also that, granting the truth of his contentions, the asserted financing objective was in any event accompanied by a manipulative purpose. Thornton's activities on the Chicago Stock Exchange in the two securities were found to violate section 9 (a) (1) and (2) of the Securities Exchange Act. Since he had sold such securities over-the-counter as well without disclosing to the purchasers that the prices charged were determined by prices established by a manipulated market on the Exchange, the Commission found also that Thornton had violated sections 10 (b) and 15 (c) (1) of the act and rules X-10B-5 and X-15C1-2 (a) and (b) thereunder. On a petition for review filed by Thornton, the Commission's order was affirmed by the United States Court of Appeals and *certiorari* was denied by the United States Supreme Court. Litigation aspects of the case are discussed later in the report of litigation activities.

Ten other proceedings which resulted in revocation of registration pertained to the more common types of fraudulent practices involving other people's money, such as violation of fiduciary obligations, misrepresentations, and misappropriation of customers' funds and securities. Two of them, Southeastern Securities Corp. and Hammill & Co., involved shocking abuse of the trust and confidence reposed by certain customers of these firms.

The proceedings against Hammill & Co. concerned the utter betrayal of the trust and confidence reposed in Albert L. Hammill, the controlling partner of the firm, by a customer, Mrs. G., a widow without business experience. At a time when the financial condition of his firm was precarious, Hammill advised and induced Mrs. G. to sell certain securities on the representation that the proceeds would be reinvested in another security which would be of greater advantage to her. Hammill, however, did not reinvest the proceeds, aggregating $4,534.69, in such security but persuaded Mrs. G. to accept his personal promissory note in the amount of $4,000. The Commission, pointing out the confidential relationship that existed between Hammill and Mrs. G., observed that, at a minimum, Hammill was under an obligation to disclose to this customer all pertinent information, including the particulars of his own financial condition and the fact that by accepting his note for her claim against the firm she could assert her claim only against Hammill and not against Hammill and his partner. Later, Hammill's partner withdrew from the firm because of its distressed financial condition. In order to return the securities which this partner had invested in the firm and which were pledged as collateral for a bank loan, it was necessary for Hammill to substitute new securities. On the promise that she would receive 4-percent interest on her money and that her securities would be deposited with a bank where they would be safe, Hammill induced Mrs. G. to invest all of her securities, aggregating about $15,000, in a new partnership in which he and Mrs. G. would be the partners. Six months thereafter the business collapsed.

The Commission based its order revoking registration on findings that Hammill had willfully violated section 17 (a) of the Securities Act and sections 10 (b) and 15 (c) (3) and rules X–10B–5 and X–15 (c) (3)–1 of the Securities Exchange Act.

The facts in the proceedings against Southeastern Securities Corp. were similar in some respects to the facts in the Hammill proceedings. Here there were three women customers into whose trust and confidence Luck, president and controlling stockholder, had insinuated himself and whose trust and confidence he betrayed. His conduct of the affairs of one of these customers, a patient bedridden at a nursing institution, was especially shocking and reprehensible. Luck maintained that this customer had executed a power of attorney authorizing him to trade for her account, but a handwriting expert of the Federal Bureau of Investigation testified that in his opinion the customer's signature on the power of attorney was a forgery. It is the first instance in any administrative proceeding against brokers and dealers in which the Commission has introduced expert testimony to challenge handwriting.

Another aspect of these proceedings related to the financial condition of the company. The evidence disclosed that the company and Luck had made false entries on Southeastern's books purporting to remove certain liabilities for the purpose of giving the appearance of solvency, when in fact the company was insolvent. Thus it was found, in part, that entries were made on Southeastern's books debiting certain accounts of directors and customers with the amounts of their credit balances and crediting the capital surplus account of Southeastern in those amounts. On one day there were thus elim-

inated credit balances aggregating more than $145,800 and the same amount was added to surplus. The evidence adduced at the hearing clearly established that certain of the creditors whose balances were thus transferred expected the money to be repaid. The device of false and fictitious entries was employed by Luck to enable the company to continue in business while it was actually insolvent.

The Commission found on the foregoing facts that Southeastern and Luck willfully violated section 10 (b) and rule X–10B–5 of the act, that Southeastern, aided and abetted by Luck, violated section 15 (c) (1) of the act and rule X–15C1–2 (a) and (b) thereunder, and that Southeastern violated section 17 (a) of the act and rule X–17A–3 thereunder.

Of the remaining revocations several involved different types of violations. Three were based on findings of willful failure to file financial reports and one was based on the filing of a false financial report and on the willful violation of rule X–15C3–1, which requires brokers and dealers to maintain net capital of not less than 5 percent of their aggregate indebtedness.

**Broker-Dealer Inspections**

The broker-dealer inspection program, initiated by the Commission in 1940 under section 17 (a) of the Securities Exchange Act, which authorizes the Commission to make periodic, special and other examination of the books and records of brokers and dealers, is one of the Commission's important implements in the detection and prevention of violations of law by broker-dealers. These inspections are conducted by the staff of the Commission's regional offices. They are sometimes limited to a particular phase of a firm's operations, such as its financial condition or its method of handling particular accounts, but generally they involve full scale examination of all characteristic activities, culminating in a report on the extent to which its operations are in compliance with the standards established by the act and rules. During the last 5 years a total of 3,621 broker-dealer inspections were made:

| Fiscal year— | *Number of inspections* |
|---|---|
| 1945 | 825 |
| 1946 | 603 |
| 1947 | 587 |
| 1948 | 841 |
| 1949 | 765 |
| Total | 3,621 |

Irregularities of varying degrees of seriousness [8] were reported in 399 [9] of the 772 inspections made during the 1949 fiscal year. Noncompliance with regulation T (relating to margins) continues to be reflected in a large number of examinations, this year in a total of 214. Improper hypothecation of customers' securities was reported in 62 inspections and secret profits in 11. Questions of compliance with the rule relating to the capital of registered firms (rule X–15C3–1) and in some instances even more serious matters relating to financial

[8] Not including infractions of rule X–17A–3, which requires brokers to make and keep current certain books and records.

[9] Three hundred and thirty of these were inspections of members of National Association of Securities Dealers, Inc., an association of over-the-counter firms registered with the Commission under sec. 15A of the Securities Exchange Act. A total of 540 inspections were of members of that association.

condition were reported in 33 inspections. Investigations of 18 firms were undertaken as a result of information obtained during these examinations. Two of these have gone out of business, the registrations of 2 others have been revoked, and 1 has been enjoined from engaging in certain fraudulent practices and ordered by the court to establish and maintain the books and records required by rule X–17A–3.

In addition to inquiry into the various matters referred to above, the inspection procedures call for a test check to determine whether the firm inspected deals fairly with customers at prices reasonably related to the current market. These tests checks have a dual purpose—first to enforce the principle, judicially established in *Charles E. Hughes & Co., Inc.* v. *S. E. C.*, that it is fraudulent for a dealer to sell securities to customers, or buy from them, at prices not reasonably related to the market unless he discloses the variation from the market,[10] and second to determine the effectiveness of the rules of the NASD relating to fair prices and fair and equitable principles of trade.[11]

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

| | NASD members | Others |
|---|---|---|
| Number of inspections | 540 | 225 |
| Number of inspections reporting sales to customers in which the customer paid more than 5 percent above the current market [1] | 235 | 28 |
| Number of sales reported | 15,746 | 1,323 |
| Number of sales analyzed [2] | 12,999 | 1,176 |
| Number of sales in which the customer paid more than 5 percent above the current market | 1,658 | 304 |

[1] For test purposes in the case of unlisted securities the high offer on the professional market as of the date of the sale is employed; on exchange securities the high sale on the date of sale, or if there was no sale, the asked price, as reported by the exchange on which the security is traded.

[2] Market prices as of the date of sale are not readily available in all instances. This is often true of securities inactively traded and generally true of securities having only a local market. There were 1,738 transactions reported in these inspections on which no market prices were readily available.

A further break-down of the last item in the above tabulation shows substantial concentration of the 1,962 sales made at more than 5 percent mark-up. As noted in the table, 263 firms made such sales. One hundred and forty-eight of these firms made a total of 500 such remaining 115 firms, and the number of sales at above the 5 percent sales out of 7,831 of their sales analyzed. The concentration was in the mark-up made by each of these firms represented over 10 percent of their analyzed sales, as indicated below:

| | NASD members | Others |
|---|---|---|
| Number of inspections in which the sales to customers at mark-up of more than 5 percent over the current market represented more than 10 percent of the sales analyzed | 96 | 19 |
| Number of sales analyzed in such inspections | 5,547 | 807 |
| Number of such sales made at mark-up of more than 5 percent over the current market | 1,250 | 282 |

[10] 139 F. 2d 434 (C. C. A. 2, 1943), *cert. den.* 321 U. S. 786 (1944).

[11] On November 25, 1944, the board of governors of the NASD adopted an interpretation of sec. 1 of art. III of its Rules of Fair Practice holding that transactions by dealers at prices not reasonably related to the market constitute conduct inconsistent with just and equitable principles of trade.

During the 5 years prior to the decision in *Charles E. Hughes & Co., Inc.* v. *S. E. C.* in 1944 the Commission revoked the registrations of nearly a score of brokers and dealers for fraudulent transactions in securities at prices not reasonably related to the current market. While the number of such proceedings has diminished there are still some indications of overreaching and some evidence that it has taken a new form. The NASD is vitally interested in the problem and the Commission is encouraged to believe that with the association's continued cooperation a practical and effective solution will be found.

**Inspections of Broker-Dealers in Hawaii**

The Commission has received occasional complaints over the years from citizens residing in Hawaii, alleging securities frauds and sales of securities without registration. Recently the complaints have increased in volume and acerbity, and at the request of the Territorial Government of Hawaii, the Better Business Bureau, and other organizations and individuals, the Commission sent two staff members to investigate these charges. An attorney and an accountant arrived early in 1949 and promptly found evidences of fraud in the sale of securities, and sales of securities without registration, by a score of persons and organizations. The attorney then returned to Washington to report on the situation, and the accountant remained to follow up additional leads and to inspect broker-dealers whose activities had not been checked in the 15 years' existence of the Commission.

The accountant's investigations disclosed that several broker-dealers were engaged in business without registration. In a number of instances complete audits were made of registered broker-dealers and necessary changes were effected to meet the requirements of the securities laws. The accountant was also instrumental in causing several organizations to increase their capital for the safety of investors.

The Commission's representatives were able to aid in the tightening of Hawaiian securities laws by assisting in the preparation of amendments to the existing laws. It is hoped that the amendments enacted will increase the protection of the Hawaiian public with respect to securities matters.

The survey in Hawaii indicates a need for the establishment of an office or, in the alternative, occasional trips by staff members from the mainland in order to enforce compliance with the securities laws. The Commission has appealed for funds in order to protect the citizens of Hawaii adequately against fraudulent securities practices and sales of unregistered issues.

**Financial Reports**

Brokers and dealers are required by rule X–17A–5 to file reports of financial condition during each calendar year. During the 1949 fiscal year a total of 3,659 financial reports were filed. Each report is examined to determine, among other things, whether there has been any violation of rule X–15C3–1, which provides that the aggregate indebtedness of a broker or dealer shall not exceed 20 times his net capital. When deficiencies are found steps are taken immediately to secure compliance. This is an important phase of the Commission's activities in affording protection to customers.

Failure to file the reports as required is an infraction of the rule and may lead to disciplinary proceedings. Frequently, small firms doing relatively little or no business fail to file reports on time. These are handled by a procedure for cancellation of registration when the registrant's inactivity is established. Informal procedures are frequently used to procure filing by those who do not furnish reports on time. In some instances action becomes necessary to revoke registration.

## SUPERVISION OF NASD ACTIVITY

### Membership

National Association of Securities Dealers, Inc. (NASD) has been the only securities association registered as such with the Commission under section 15A of the Securities Exchange Act. In the 5-year period ended June 30, 1949, membership in the NASD increased by 502, as shown below:

| As of June 30— | Membership | Gain |
|---|---|---|
| 1945 | 2,281 | 88 |
| 1946 | 2,514 | 233 |
| 1947 | 2,614 | 100 |
| 1948 | 2,677 | 63 |
| 1949 | 2,695 | 18 |

The gain of 18 members in the last fiscal year was the balance of 177 terminations of membership and the admission of 195 new members.

### Disciplinary Actions

During the 1949 fiscal year the Commission received from the NASD reports of final action in seven disciplinary cases involving formal complaints against members, in addition to various interim reports or reports of informal action. In six of these seven cases the NASD committee having jurisdiction had found violations of rules of fair practice and imposed various penalties on the firms, and in one instance on a registered representative also named in the complaint. In the remaining case the committee had found that no violations had occurred and dismissed the complaint. The penalties included expulsion in two cases; two firms were each fined $500, one of which was also censured; two firms were censured and a registered representative of one of them was fined $100. Such disciplinary decisions are subject to review by the Commission, on its own motion or upon application by any aggrieved person, but no such review was undertaken in any of these cases in the 1949 fiscal year nor was any such matter pending before the Commission at the year's end.[12]

Comparative data on the number and outcome of disciplinary cases, final decisions on which were received by the Commission in each of the last five fiscal years, appear below in tabular form:

[12] As recited in some detail in the annual reports identified below, the Commission, within the last five fiscal years, reviewed three disciplinary decisions by the Association: *National Association of Securities Dealers, Inc.*, Securities Exchange release No. 3700 and Tenth and Eleventh Annual Reports; *Thomas Arthur Stewart*, Securities Exchange Act release No. 3720 and Eleventh and Twelfth Annual Reports; and *Herrick Waddell & Company, Inc.*, Securities Exchange Act release No. 3935 and Twelfth and Thirteenth Annual Reports.

| Fiscal year | Final decisions received | Complaints dismissed or withdrawn | Violations found and penalties imposed | | | |
|---|---|---|---|---|---|---|
| | | | Expelled | Fined | Censured | Miscellaneous |
| 1945 | 21 | 6 | 2 | 9 | 3 | [1] 1 |
| 1946 | 19 | 6 | 0 | 9 | 4 | 0 |
| 1947 | 8 | 3 | 0 | 5 | 0 | 0 |
| 1948 | 10 | 3 | 0 | 2 | 3 | [2] 2 |
| 1949 | 7 | 1 | 2 | 3 | 1 | 0 |
| Total | 65 | 19 | 4 | 28 | 11 | 3 |

[1] In 1 case the committee accepted in settlement a statement from the firm named in the complaint pledging future compliance with, and observation of, the rules of fair practice.
[2] Includes suspension for 30 days in 1 instance; in another, a complaint was dismissed as to a member firm but the registration of a registered representative, also named as a party to the complaint, was revoked.

The Commission continued its practice of referring to the NASD facts disclosed in the course of its broker-dealer inspection program which would indicate a possible violation of the NASD rules of fair practice. Occasionally, independent investigations by the NASD result in the filing of formal complaints against members. More often, such matters are settled by informal means, such as a critical discussion with the firm involved and the receipt of assurance that the business practices of the firm would be altered to comply with NASD and Commission requirements. In other instances additional investigation indicates that no disciplinary action is appropriate. Data on the number and disposition of references in the past five years appear below:

| | Fiscal year | | | | |
|---|---|---|---|---|---|
| | 1945 | 1946 | 1947 | 1948 | 1949 |
| Pending at beginning of fiscal year | 0 | 3 | 7 | 1 | 2 |
| Referred during year | 6 | 11 | 7 | 7 | 3 |
| Total | 6 | 14 | 14 | 8 | 5 |
| Dispositions received during years: | | | | | |
| By formal complaint | 2 | 1 | 3 | 2 | 0 |
| By informal means | 1 | 6 | 10 | 4 | 4 |
| Pending at end of fiscal year | 3 | 7 | 1 | 2 | 1 |
| Total | 6 | 14 | 14 | 8 | 5 |

**Registered Representative Rule**

The NASD adopted rules, effective January 15, 1946, which in effect require the registration with the NASD as "registered representatives" of all partners, officers, and other employees of broker-dealer firms who, generally, do business directly with the public.[13] The broad purpose of these rules was to bind all registered represent-

[13] Although the amendments were approved by the board of governors and by the affirmative vote of the requisite majority of the NASD membership, the program was attacked by individuals and groups in the securities industry as inconsistent with the language of the Securities Exchange Act and on the ground that it would create a form of substandard membership in which the obligations, but not the benefits of membership, were forced on persons who had no voice in the NASD. After public hearing, the Commission held the proposed amendments to be consistent with the statutory requirements and announced that it would not disapprove them. In so acting, the Commission took the position that when it failed to exercise its veto power over proposed amendments to NASD rules, the statute did not require the issuance of a reviewable order, a position sustained by the courts in subsequent litigation. *National Association of Securities Dealers, Inc.*, Securities Exchange Act release No. 3734.

atives by the articles of incorporation, bylaws and rules of the NASD and duly authorized rules, orders, directions, decisions and penalties.

Data on "registered representatives" since the effective date of the rules follow:

| | *Number registered* | | *Number registered* |
|---|---|---|---|
| Jan. 15, 1946 | 21, 351 | June 30, 1948 | 26, 228 |
| June 30, 1946 | 23, 374 | June 30, 1949 | 27, 249 |
| June 30, 1947 | 25, 573 | | |

The increase of 1,021 registrations in the 1949 fiscal year was the balance of 3,599 terminations of registration, 1,634 re-registrations, and 2,986 initial registrations.

**Commission Review of Actions on Membership**

The qualifications for registered representative status under NASD rules are identical with the statutory qualifications for membership. Both provide that a petition for admission to or continuation in membership can be brought before the Commission by or on behalf of any NASD applicant or member who controls or is controlled by a disqualified partner, officer, or employee. Such a petition may raise the question whether it is in the public interest for the Commission to approve, or direct, admission to or continuation in membership notwithstanding control of the petitioner of or by a disqualified person.

In the 1949 fiscal year six such "approval or direction" cases were decided by the Commission.[14] Five cases, involving six individuals, were decided on findings by the Commission that each person was validly disqualified because he had been the "cause" of an order of revocation of broker-dealer registration by the Commission, but that the individuals need not be permanently excluded from the securities business due to the nature of their proposed employment and the degree of supervision to be exercised over them. On this basis the Commission, by order, approved the continuation in membership of the member firms even though they employed the disqualified persons.[15]

The sixth case concerned J. A. Sisto & Co. The controlling partner, Joseph A. Sisto, was disqualified from membership because of expulsion from the New York Stock Exchange in 1938 for conduct inconsistent with just and equitable principles of trade.[16] A petition was filed on

[14] Other cases on similar or related questions decided within the last five fiscal years and discussed in the respective annual reports include:

| *Case* | *Securities Exchange Act release No.* |
|---|---|
| John L. Godley | 3823 |
| Greene Co | 3836 |
| Foelber-Patterson, Inc | 3847 |
| Republic Investment Co | 3866 |
| L. R. Leeby & Co | 3898 |
| Leason & Co | 3937 |
| E. E. Trost | 3955 |
| Minnesota Securities Corp | 4033 |
| John J. Bell | 4034 |
| Dewitt Investment Co | 4076 |
| [15] W. L. Johnson | 4116 |
| H. L. Ruppert and J. H. Lynch | 4117 |
| G. M. Peterson | 4118 |
| Joseph Loeb | 4119 |
| H. L. Brocksmith | 4120 |

[16] Two earlier petitions filed directly by J. A. Sisto & Co., without NASD sponsorship or approval, had requested the Commission to direct the NASD to admit the firm to membership. *J. A. Sisto & Co.*, 7 S. E. C. 647, 1102 (1940); and Securities Exchange Act release No. 3614.

behalf of the firm by the NASD, together with its affirmative recommendation that the Commission approve the firm's admission to membership. In considering the petition the Commission noted the period of time which had elapsed since the earlier petitions and that neither Sisto nor his firm had been involved in any proceedings respecting their conduct in the securities business in the interim period. Under these circumstances, and having given weight to the findings and recommendation of the NASD, the Commission approved the admission of the firm to membership.[17]

## CHANGES IN RULES, REGULATIONS, AND FORMS

During the 5 years since July 1, 1944, the Commission has amended and revised various rules, regulations, and forms under the Securities Exchange Act of 1934 as changing circumstances have required. The principal changes made during this period or now under consideration are summarized below:

### Changes Made During the 1949 Fiscal Year

*Revision of registration and reporting rules.*—A thoroughgoing revision of the rules governing the preparation, form, content and filing of applications for registration and annual and other reports under the Act was published on December 17, 1948. These rules are applicable to registration and reporting by issuers having securities listed on a national securities exchange and also to reporting by registrants under the Securities Act of 1933 which are subject to the reporting requirements of the Securities Exchange Act of 1934. The revision clarified and brought up to date all of the rules pertaining to registration and reporting. The revision also abolished certain obsolete rules and integrated into the General Rules and Regulations certain general requirements previously contained in the several forms with respect to the preparation, form, content, and filing of applications for registration and annual and other reports.

Prior to the revision of these rules registrants under the Securities Act of 1933 which were subject to reporting requirements were required to file only annual reports if they had no securities listed and registered on a national securities exchange.[18] The revised rules put such registrants on the same reporting basis as issuers having securities listed and registered on an exchange, so that such registrants now file in addition to annual reports the same current and quarterly reports as are filed by listed companies.

*Rule X–16B–3.*—On March 6, 1949, the Commission published an amended rule X–16B–3 which provides an exemption from section 16 (b) of the act with respect to the acquisition of certain equity securities issued to directors and officers as a part of their remuneration.

Section 16 (b) of the act provides, in general, that where any director or officer of the issuer of a registered equity security, or any beneficial owner of more than 10 percent of such security, has realized a profit from any purchase and sale, or sale and purchase, of any equity security of the issuer within any period of less than six months such profits may be recovered by the issuer.

[17] *J. A. Sisto & Co.*, Securities Exchange Act release No. 4142.

[18] Under sec. 15 (d) of the Securities Exchange Act, the Commission has the power to require that annual and other reports be filed by certain registrants under the Securities Act of 1933.

The exemption provided by the amended rule is subject to several conditions designed to limit it to bona fide bonus, profit-sharing and similar remuneration plans. These conditions are, briefly, that the plan must have been approved by security holders; that the security must have been acquired solely in consideration of services; that the amount of securities acquired by each director or officer must have been determined by an independent committee of three or more persons or by the board of directors; and finally, that the exemption is not available unless the amount of funds or securities distributed or set aside for a fiscal year pursuant to the plan is related to the net profits of the issuer and its subsidiaries for such fiscal year.

**Changes Made During the 1945–48 Fiscal Years**

A summary of the more significant rule changes in the 1945–48 fiscal years follows.

*Adoption of Rule X–16B–4.*—Another exemption from section 16 (b) of the act is provided by rule X–16B–4, which was published by the Commission on August 28, 1946. This rule exempts certain transactions by public utility holding companies and their subsidiaries from the civil liability provisions of section 16 (b). The new rule exempts from section 16 (b) any transaction by a holding company registered under the Public Utility Holding Company Act of 1935 or by any subsidiary of such a company where both the purchase and sale have been approved or permitted by the Commission under that act.

*Adoption of Rule X–16C–2.*—An exemption from section 16 (c) of the act was adopted by the Commission on March 20, 1946. This section makes it unlawful under certain circumstances for any beneficial owner of more than 10 percent of any class of any equity security which is registered on a national securities exchange, or for any director or officer of the issuer of any such security, to sell any equity security of that issuer if he does not own the security sold or owns the security but does not deliver it against the sale within a specified time. The new rule is designed to exclude from the prohibition of section 16 (c) certain technical short positions which arise purely as an incident to participation by one of the specified classes of persons (or some dealer firm with which such a person is connected) in either a primary or secondary distribution by a person in a control relationship with the issuer.

*Revision of Proxy Rules.*—On December 17, 1947, the Commission published a completely revised edition of its proxy rules under section 14 (a) of the act and of regulation X–14. These rules are applicable to the solicitation of proxies, authorizations, and consents with respect to any security listed and registered on a national securities exchange. They also apply to the solicitation of proxies by public utility holding companies registered under the Public Utility Holding Company Act of 1935 and their subsidiaries and to investment companies registered under the Investment Company Act of 1940. The purpose of the revision was to clarify and simplify the rules and to make certain changes in the requirements which the Commission's experience in administration had shown to be desirable without making any fundamental departure from the principles of the rules as previously in effect.

Certain further amendments to these rules, adopted on November 5, 1948, effected principally a reduction in the amount of information

called for with respect to the remuneration of directors and officers of issuers subject to the rules.

*Quarterly Reports.*—On July 23, 1945, the Commission adopted a new rule which required listed companies whose war business amounted to more than 25 percent of total sales in the last preceding fiscal year to file a quarterly report on Form 8–K disclosing the total volume of unfilled orders at the beginning and end of each fiscal quarter, and the total amount of sales during the quarter showing separately sales made pursuant to war contracts. This rule was intended primarily to inform the public of the effect upon listed companies of declining war business.

By 1946 the rule had served its purpose as a temporary postwar measure. It was then replaced, on March 28, 1946, by a new rule which required all listed companies to file regular quarterly reports of their gross sales and operating revenues. These requirements were extended on December 17, 1948, to registrants under the Securities Act of 1933 who are required to file annual and other reports pursuant to section 15 (d) of the Securities Exchange Act of 1934. This extension of the requirement was made in connection with the general revision, referred to above, of the rules governing the preparation, form, content and filing of applications for registration and annual and other reports.

**Proposed Revision of Registration and Reporting Forms**

The Commission presently has under consideration a broad program for the revision of all of its forms for registration and reporting under the act. The purpose of this revision is to bring the requirements of the various forms up to date and to abolish a number of forms which are no longer necessary in the administration of the act. Several of these forms were published in preliminary draft form on March 11, 1949, for the purpose of obtaining informed comments and suggestions thereon. The comments and suggestions received are now being studied.

## LITIGATION UNDER THE SECURITIES EXCHANGE ACT

The issues involved in the Commission's court activities during the last five years were somewhat different from those which had predominated during the first ten years of its existence. Some of the early problems were solved by court determinations which crystallized the application of the statutes to various activities. New issues were presented by rules adopted by the Commission; primarily by rule X–10B–5, which defines the scope of the anti-fraud provision of section 10 of the act, and regulation X–14, establishing standards relating to the solicitation of proxies under section 14 (a) of the act.

Court actions during this period included: (1) Injunction actions brought by the Commission in the Federal district courts to restrain broker-dealers and others from violating those provisions of the act and the Commission's rules designed to protect securityholders and the customers of broker-dealers; (2) appellate court actions on petitions to review orders of the Commission; and (3) actions between private parties involving the acts administered by the Commission in which the Commission participated as *amicus curiae* to express its views on questions of construction. The substantive problems in-

volved are discussed below under the following headings: (1) The regulation of broker-dealers; (2) section 16 (b), the recovery of insiders' short-swing profits; (3) rule X–10B–5, the antifraud provision; and (4) regulation X–14, the proxy rules. In addition there is reported separately below the Commission's investigation of an offering of Kaiser-Frazer stock and litigation with Otis & Co. which arose therefrom.

**Broker-Dealer Cases**

As a result of the Commission's broad regulatory duties with respect to approximately 4,000 registered broker-dealers the largest single category of judicial proceedings under the act involved breaches of obligations to customers by such persons and by others who engaged in business as brokers and dealers without being registered as required by the statute.

A number of injunction actions were obtained against broker-dealers who were doing buiness while insolvent, thereby jeopardizing customers' funds and securities.[19] Wherever feasible, in insolvency cases, the Commission has sought the appointment of a receiver in order to preserve assets for customers.[20] In one such case the family of the broker, who had died, made an assignment of $30,000 for the benefit of creditors.[21]

Other cases in which the Commission obtained injunctions involved secret profits made by a broker-dealer professing to act as agent for his customers;[22] charging prices which bore no reasonable relationship to the current market prices;[23] wrongfully hypothecating or converting customers' securities;[24] making misrepresentations to customers or omitting to state material facts in connection with purchases and sales of securities;[25] and failing to keep required books and records,[26] or refusing to permit them to be examined by the Commission's representatives.[27] The Commission has also obtained judgments against a number of persons to enjoin them from engaging in business as brokers or dealers without being registered.[28]

A very important case from the standpoint of the relationship of the securities dealer and his customer was *Arleen W. Hughes* v. *S. E. C.*

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[19] See *S. E. C.* v. *Greene & Co.*, Civil No. 44C1252, N. D. Ill. Nov. 11, 1944; *S. E. C.* v. *Financial Service, Inc.*, Civil No. 253, S. D. Ind., Aug. 28, 1945; *S. E. C.* v. *Raymond, Bliss, Inc.*, Civil No. 5999, D. Mass., Sept. 12, 1947; and *S. E. C.* v. *H. P. Carver Corp.*, Civil No. 7860, D. Mass., Sept. 27, 1948, *Cf. S. E. C.* v. *Light, Wofsey & Benesch, Inc.*, Civil No. 3645, D. Md., April 7, 1948, where an injunction was entered for violation of the Commission's rule X–15C3–1, which prohibits a broker-dealer from permitting his aggregate indebtedness to exceed his net capital by more than 20 times.

[20] See *S. E. C.* v. *Greene & Co.*, supra; *S. E. C.* v. *Financial Service, Inc.*, supra; *S. E. C.* v. *Raymond, Bliss, Inc.*, supra; and *S. E. C.* v. *H. P. Carver Corp.*, supra.

[21] *S. E. C.* v. *Raymond, Bliss, Inc.*, supra.

[22] See *S. E. C.* v. *Bates*, Civil No. 213, N. D. Iowa, Mar. 7, 1946; *S. E. C.* v. *Atlas Investment Co.*, Civil No. 469, W. D. Mo., June 24, 1948. *S. E. C.* v. *Financial Service, Inc.*, supra; and *S. E. C.* v. *Fiscal Service Corp.*, Civil No. 47C408, N. D. Ill., Mar. 5, 1947.

[23] See *S. E. C.* v. *Rose*, Civil No. 1866, S. D. Ind., Apr. 13, 1949; *S. E. C.* v. *Greene & Co.*, supra; and *S. E. C.* v. *Bates*, supra.

[24] See *S. E. C.* v. *Walters & Co.*, Civil No. 1231, D. Del., July 6, 1949; *S. E. C.* v. *Greening*, Civil No. 1271, W. D. Wash., June 30, 1945; *S. E. C.* v. *Greene & Co.*, supra; *S. E. C.* v. *Fiscal Service Corp.*, supra; and *S. E. C.* v. *Raymond, Bliss, Inc.*, supra.

[25] See *S. E. C.* v. *Trapp*, Civil No. 1288, D. N. Dak., June 4, 1947; *S. E. C.* v. *Rose*, supra; *S. E. C.* v. *Bates*, supra; *S. E. C.* v. *Greene & Co.*, supra; *S. E. C.* v. *Fiscal Service Corp.*, supra; *S. E. C.* v. *Financial Service, Inc.*, supra; *S. E. C.* v. *Greening*, supra; and *S. E. C.* v. *Atlas Investment Co.*, supra.

[26] See *S. E. C.* v. *Sharkey*, Civil No. 1378, W. D. Wash., 1945; *S. E. C.* v. *Walters & Co.*, supra; and *S. E. C.* v. *Atlas Investment Co.*, supra.

[27] See *S. E. C.* v. *Nevada Oil Co.*, Civil No. 1142, N. D. Tex., Oct. 5, 1946 and Feb. 25, 1947; *S. E. C.* v. *Sharkey*, supra.

[28] See *S. E. C.* v. *Burmeister & Co., Inc.*, M. D. Tenn., June 27, 1947; *S. E. C.* v. *Kirby*, Civil No. 25742, N. D. Ohio, Apr. 28, 1949; *S. E. C.* v. *Bates*, supra; *S. E. C.* v. *Trapp*, supra; *S. E. C.* v. *Greening*, supra; *S. E. C.* v. *Fiscal Service Corp.*, supra; and *S. E. C.* v. *Atlas Investment Co.*, supra.

This case arose on a petition to the Court of Appeals for the District of Columbia to review an order of the Commission revoking the petitioner's registration as a broker-dealer. The Commission had held that it was fraud for Mrs. Hughes, who was registered both as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, to sell her own securities to her investment advisory clients without fully disclosing that her interests were in some respects adverse to their interests. This disclosure, the Commission held, should have included the capacity in which she acted, i. e., whether as principal (dealer) or agent (broker), the cost of the securities to her, and the current market price of such securities. Another point raised on the appeal was whether it was lawful for the Commission to impose greater duties of disclosure on a broker-dealer who is also a registered investment adviser than would otherwise be the case. The Commission withheld the entry of its order of revocation for a reasonable time to permit Mrs. Hughes to correct her methods of doing business. Changes which she thereupon proposed were deemed inadequate as a matter of law, however, and the order of revocation was entered, from which the appeal was taken. The court of appeals sustained the Commission on all the points involved.[29]

Another case related to the revocation of the broker-dealer registration of Norris and Hirshberg, Inc., of Atlanta, Ga. The Commission found that the firm had engaged in activities which were illegal under the antifraud provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934. The firm had fixed prices for a group of securities whose market it controlled without disclosing that fact to customers, had dealt as a principal with uninformed customers and customers who had given it powers of attorney, and had traded excessively for accounts for which it had discretionary powers. The firm appealed the Commission's action to the Court of Appeals for the District of Columbia in 1946. Various procedural matters were litigated at length before the Court reached the case on its merits. The most significant of the procedural questions was an attempt by the petitioner to compel the Commission to include in the transcript of record a summary of the evidence which, it alleged, the Commission's independent staff of opinion writers had prepared for the use of the individual commissioners. The petitioners sought also to inquire into the decisional processes of the Commission to determine how various items in the record to which it objected had been treated by the Commission. The Court of Appeals denied these requests and an application by the petitioner to the Supreme Court for a writ of *certiorari* was also denied.[30] After hearing argument on the merits, the court affirmed the decision of the Commission, and pointed out that the statutes involved were not designed to require the Commission, in disciplining broker-dealers for fraudulent activities, to find every element of common law fraud.[31] This case was also the first court review of a Commission finding of manipulation

[29] 174 F. 2d 969 (C. A. D. C., May 9, 1949).
[30] *Norris & Hirshberg, Inc.* v. *S. E. C.*, 163 F. 2d 689 (C. A. D. C. 1947), *cert. den.*, 333 U. S. 867 (1948).
[31] *Ibid.*, 177 F. 2d 228 (C. A. D. C., September 6, 1949).

in the over-the-counter market as distinguished from the markets on the national securities exchanges.[32]

Two other cases initiated by the Commission during the past 5 years involved the manipulation of prices on securities exchanges. In *Thornton & Co.* v. *S. E. C.* the Commission revoked the firm's broker-dealer registration upon finding that it had violated the anti-manipulation provisions of section 9 (a) of the act in effecting "wash sales" in two stocks traded on the Chicago Stock Exchange, raising their prices and creating apparent trading activity, which was followed by sales of the stocks in the over-the-counter market at prices based on the false exchange market prices in violation of sections 10 (b) and 15 (c) (1) of the act. The Court of Appeals for the Second Circuit, on a petition for review, affirmed the Commission's order during the 1949 fiscal year.[33] In *S. E. C.* v. *Bennett and Federal Corp.* the Commission sought an injunction to restrain the defendants from manipulating the exchange market for a security while a registration statement was pending under the Securities Act of 1933 with respect to a proposed offering of a large block of the stock "at the market." [34] A preliminary injunction was denied, but Bennett thereafter consented to a permanent injunction against Federal Corporation (which he controlled) and the Commission concurred in the dismissal of the complaint against Bennett individually.

*Acker* v. *Schulte* and *Schmolka* v. *Schulte*, which did not involve broker-dealers, were actions under section 9 (a) of the act instituted by stockholders of Park and Tilford, Inc. against its former president for damages resulting from the alleged manipulation of the stock of the company on the New York Stock Exchange. These cases resulted in the first judicial construction of that clause of section 9 (e) which provides that the court may require an undertaking for the payment of costs from either party in a civil action by a person damaged as a result of a violation of section 9. The Commission, in its brief, argued as *amicus curiae* that in order to preclude the statutory provision from operating as a barrier to suits under section 9, the party seeking security for costs should be required to show by clear evidence that the suit had been brought in bad faith. The court adopted this position.[35]

Another new development in the broker-dealer field during the past 5 years was a series of actions brought by the Commission alleging violation of regulation T, the regulation promulgated by the Board of Governors of the Federal Reserve System under section 7 (c) of the act for the purpose of preventing excessive use of credit in purchasing or carrying securities. The first cases of this category were three companion actions filed by the Commission in the United States District Court at Cleveland which involved firms in Youngstown and Cleveland, Ohio, Pittsburgh, and New York City, and several individuals and an investment company. Final judgments were entered against all the defendants.[36]

A significant case during the last 5 years in the field of oil and gas

[32] An appeal from a broker-dealer registration based on over-the-counter manipulation was also taken in *Lann* v. *S. E. C.*, No. 9460, C. A. D. C., November 15, 1947, discussed at p. 63 of the 14th Annual Report. After the expiration of a year from the date of the revocation order the Commission permitted Lann to become registered in consideration of his record. The action was then dismissed by stipulation.
[33] 171 F. 2d 703 (C. A. 2, 1948).
[34] 62 F. Supp. 609 (S. D. N. Y. 1945) and S. D. N. Y., December 30, 1946.
[35] 74 F. Supp. 683 (S. D. N. Y. May 26, 1947). See 13 SEC Ann. Rep. 64 (1947).
[36] See 13 SEC Ann. Rep. 59 (1947) and *S. E. C.* v. *Schultz* at p. 60.

securities was *S. E. C.* v. *Trapp*, an injunction action brought against an individual who was selling oil royalties after the Commission had revoked his broker-dealer registration. In that case the district court in North Dakota entered an injunction which judicially established: (1) That it is fraudulent for a dealer to sell oil royalties at prices in excess of the probable returns to purchasers, as computed on the basis of reasonable estimates of the recoverable oil underlying the tracts covered by the royalties; and (2) that, as the Commission had held in an earlier administrative proceeding, it is fraudulent for a dealer to sell oil royalties at prices bearing no reasonable relationship to his contemporaneous cost. Such practices were held to be in violation of section 15 (c) (1) of the Securities Exchange Act and sections 17 (a) (2) and (3) of the Securities Act of 1933.[37]

Among the frauds uncovered in the course of the Commission's routine inspection of broker-dealers' books and records was that enjoined in *S. E. C.* v. *Caplan, Junger, Anderson & Co.*[38] The following scheme was employed by the defendants: The securities trader for a large investment company would advise accomplices in brokerage offices in advance when the company was about to make substantial purchases and sales of securities. On purchases, the accomplices would use dummy accounts to buy up the securities in question and as a result would be in a position to resell them to the investment company at higher prices when it sought to make its purchases; on sales, reverse steps were taken. Through this scheme, which was operated without the knowledge of the investment company, the individuals involved profited to the extent of approximately $300,000 from trading profits and commissions.

**Cases Based on Section 16 (b) of the Act**

The past 5 years have seen the emergence of section 16 (b) of the Securities Exchange Act as an important protection to the small stockholder against trading abuses by corporate insiders. Under that section a stockholder of a corporation may sue in its behalf to recover profits made by insiders as a result of short-term trading in that corporation's equity securities. Until the decision in *Smolowe* v. *Delendo Corporation*[39] the constitutionality of section 16 (b) was undetermined. That case not only upheld the constitutionality of the section but provided as a touchstone for the solution of problems of construction of the section the determination whether all "tendency to evil" would be removed. Most of the litigation arising under section 16 (b) has been resolved in accordance with that criterion.

Although the Commission is not responsible for the enforcement of section 16 (b), it has participated as *amicus curiae*, either at the request of the court or on its own initiative, in actions involving important questions of interpretation of the section. Thus, in *Park & Tilford, Inc.* v. *Schulte*[40] it urged upon the court the necessity for construing the act to prevent holders of convertible preferred stock from profiting from inside information by converting their stock into

[37] Civil No. 1288, D. N. Dak., June 4, 1947, *Cf. S. E. C.* v. *LeDone*, Civil No. 40-347, S. D. N. Y., March 26, 1947. A criminal action based on these theories of fraud is *U. S.* v. *Grayson*, discussed herein under "Criminal Proceedings."
[38] Civil No. 49-138, S. D. N. Y., May 3, 10, and 17, 1949.
[39] 136 F. 2d 231 (C. A. 2, 1943), *cert. den.*, 320 U. S. 751.
[40] 160 F. 2d 984 (C. A. 2, 1947), *cert. den.*, 332 U. S. 761.

common stock prior to an expected rise in the market and thereafter selling the common stock after the anticipated rise took place. The question before the court was phrased in terms of whether the conversion of preferred stock into common stock by a controlling stockholder was a "purchase" within the meaning of section 16 (b). The court held that it was a purchase, and over $400,000 was paid to the corporation as profits realized from the trading.

In one case the court asked the Commission whether it considered stock disposed of by gift to constitute a "sale" within the meaning of section 16 (b). The Commission, in a letter, expressed the view that Congress did intend to include gifts within the scope of section 16 (b), but that no profit would be recoverable unless the stock were subsequently sold by the donee at a price higher than that which the donor had paid for the stock. The court did not adopt the reasoning of the Commission and held that the gift was not a sale.[41]

On several occasions, participation by the Commission in actions under section 16 (b) has been necessary in order to clarify the construction of other sections of the act challenged by one of the parties in the action. Thus, it has urged that section 27 of the act should be construed to give the federal courts exclusive jurisdiction over all actions arising under the Securities Exchange Act and to urge that the venue provisions be broadly construed, permitting section 16 (b) actions to be brought wherever the transactions occurred. In these respects the construction advanced by the Commission has been adopted by the courts.[42]

The information upon which private actions under section 16 (b) are based as a rule comes from the reports of changes in ownership which corporate insiders are required to file with the Commission under section 16 (a). During the last 5 years the Commission for the first time had to resort to its authority under section 21 (f) to obtain mandatory injunctions to enforce compliance with the reporting requirements of section 16 (a).[43] These cases also constituted the first actions brought to enjoin violations of section 20 (c), which section makes it unlawful for corporate insiders to hinder the corporations' filing of reports regarding changes in their holdings.

The Commission has also appeared in a section 16 (b) action, where section 16 (a) reports had not been filed within the specified time, to support the right of a stockholder to sue more than 2 years after the profits were realized by the insider even though the statute provides that the cause of action is barred after 2 years. The Commission successfully contended that the Congress did not intend that the statute of limitations begin to run until the insider has disclosed his profits, and, since the suit was brought within 2 years after the disclosure had been made in that case, that the action had been instituted in time.[44]

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[41] *Truncale* v. *Blumberg*, 80 F. Supp. 387 (S. D. N. Y. 1948);
[42] *American Distilling Co.* v. *Brown*, 184 Misc. 431, 51 N. Y. S. (2d) 614 (Sup. Ct. 1944); *Grossman* v. *Young*, 70 F. Supp. 970 (S. D. N. Y. 1947); *Gratz* v. *Claughton*, CCH Fed. Sec. L. Rep. Par. 90,373 (S. D. N. Y. 1947);
[43] *S. E. C.* v. *L. A. Young, et al.*, E. D. Mich., February 26, 1945; *S. E. C.* v. *Metropolitan Mines Corp, Ltd.*, Civil No. 664, E. D. Wash., July 18, 1947.
[44] *Grossman* v. *Young*, 72 F. Supp 375 (S. D. N. Y. 1947).

**Cases Based on the Anti-fraud Provisions of Rule X–10B–5**

In 1942 the Commission adopted rule X–10B–5, which implements section 10 of the Securities Exchange Act by prohibiting fraud in the purchase or sale of securities. During the past 5 years this rule has been the subject of frequent construction by the courts both in actions instituted by the Commission and in private civil actions, in a number of which the Commission participated as *amicus curiae*. The most frequent situation in which the rule has been invoked has been that in which controlling stockholders or the management of an issuer sought to take advantage of smaller stockholders by purchasing their securities from them while suppressing pertinent information concerning the corporation's business, the market value of its securities, or other vital information.

Wherever feasible the Commission has sought to restrain such fraudulent transactions before full consummation, to curtail injury to minority stockholders, and in some instances this has resulted in agreement by the wrongdoing insiders to rescind the transactions.[45] Nevertheless, in many cases the transactions are consummated before discovery by the Commission.[46]

One injunction obtained by the Commission during the 1949 fiscal year involved an unusual scheme which operated as a fraud on brokers and dealers.[47] The defendant entered orders for purchases and sales with various brokers and dealers with no intention either to pay for the securities ordered to be purchased or to deliver the securities ordered to be sold. If, on purchase orders, the securities increased in value before the settlement date he would order them sold and demand the profit; otherwise he would default. On sale orders, he would do the opposite. As a result, losses were incurred by the brokers and dealers on the defaulted transactions.

A significant private action during the period involving rule X–10B–5 was that of *Kardon* v. *National Gypsum Co.*, in which the Commission participated as *amicus curiae*.[48] The Commission filed a brief in which it argued that there is an individual right of action for damages resulting from a violation of rule X–10B–5, (1) on the basis of the general common law rule that members of a class for whose protection a statutory duty is created may sue for injury resulting from its breach and that the common law will supply a remedy if the statute gives none, or, (2) under section 29 (b) of the act, which provides that contracts in violation of the act shall be void. The Commission argued also that Congress intended that section 10 of the act apply to the securities of a small, closely held corporation, as well as to those of large corporations whose securities are widely held. The district court

[45] See *S. E. C.* v. *Mueller*, Civil No. 2022, E. D. Wis., April 20, 1945; *S. E. C.* v. *Oils and Industries, Inc.* Civil No. 27–450, S. D. N. Y., April 4, 1945; and *S. E. C.* v. *Greenfield*, Civil No. 5361, E. D. Pa., April 2, 1946.

[46] See *S. E. C.* v. *Boyd Transfer & Storage Co.*, Civil No. 1548, D. Minn., December 5, 1945; *S. E. C.* v. *Gentile*, Civil No. 34–700, S. D. N. Y., January 30, 1946; *S. E. C.* v. *Cohen*, Civil No. 5461, E. D. Pa., December 11, 1945; *S. E. C.* v. *Mitchell*, Civil No. 23097, N. D. Ohio, August 6, 1945; and *S. E. C.* v. *Standard Oil of Kansas*, Civil No. 2552, S. D. Tex., February 26, 1947.

[47] *S. E. C.* v. *Landberg*, S. D. N. Y., February 4, 1949.

[48] 69 F. Supp. 512 (E. D. Pa. 1946) and 73 F. Supp. 798 (E. D. Pa. 1947).

adopted the positions taken by the Commission, and the *Kardon* decision has since been followed in a number of private actions.[49]

Another private fraud action based on this rule is the pending case of *Speed* v. *Transamerica Corp.*[50] In connection with a motion for summary judgment the Commission urged that there is a violation of the rule when a controlling stockholder buys stock from minority holders without disclosing to them material facts affecting the value of the stock (here the greatly augmented value of the corporation's principal asset, its tobacco inventory).

**Cases Based on Regulation X–14—The Proxy Rules**

The second substantial group of cases based on rules of the Commission are those involving regulation X–14, which prescribes rules concerning the solicitation of proxies, consents, and authorizations in connection with securities of companies subject either to the Securities Exchange Act, the Investment Company Act of 1940, or the Public Utility Holding Company Act of 1935. While several questions of construction of the regulations were brought to the courts before the period under review, a number of important questions have been adjudicated during the past few years. One was the principle established in *Okin* v. *S. E. C.*[51] that the proxy rules apply to a letter which is written as the first step in a plan ending in a solicitation and which prepares the way for its success, even though the letter itself does not request proxies. This principle was also applied during the current year in *S. E. C. v. Topping.*[52] In another case the principle was established that the Commission can obtain an injunction to restrain the use of proxies obtained in violation of the proxy rules.[53]

An especially significant proxy case during the period was that of *S. E. C.* v. *Transamerica Corp.*, an action brought by the Commission to compel the defendant corporation to resolicit proxies originally obtained as a result of solicitations which failed to include proposals which a minority stockholder sought to have brought before the annual meeting. It was ultimately held by the Court of Appeals for the Third Circuit that the management's attempt to block the stockholder's proposals by declining to include them in the notice of meeting was contrary to the purpose of Congress in the Securities Exchange Act to prevent the control of corporations by a very few persons.[54]

The question whether a stockholder, rather than the Commission, may bring an action for an injunction based on violation of the proxy rules was raised in *Phillips* v. *The United Corporation.* The Commission filed a brief as *amicus curiae* taking the position that the court had jurisdiction to entertain such an action founded upon alleged violations of the Commission's proxy rules promulgated under the

[49] *Slavin* v. *Germantown Fire Insurance Co.*, Civil No. 6564, E. D. Pa., December 5, 1946; *Fifty Third Union Trust Co.* v. *Block*, Civil No. 1507, S. D. Ohio, December 11, 1946; and *Fry* v. *Schumacher*, Civil No. 6418, E. D. Pa., January 10, 1947; *Montague* v. *Electronic Corporation of America*, S. D. N. Y., February 14, 1948; *Rosenberg* v. *Globe Aircraft Corp.*, E. D. Pa., January 17, 1948 *Osborne* v. *Mallory*, S. D. N. Y., July 13, 1949; *Hawkins* v. *Clayton Securities Corp.*, 81 F. Supp. 1014 (D. Mass., 1949); *Appel* v. *Levine*, S. D. N. Y., November 11, 1948; *Acker* v. *Schulte*, 74 F. Supp. 683 (S. D. N. Y. 1947); *Speed* v. *Transamerica*, 67 F. Supp. 326 (D. Del. 1946); and *Grand Lodge of International Association of Machinists* v. *Highfield*, Civil No. 3661–48, January 24, 1949.

[50] 71 F. Supp. 457 (D. Del. 1947).

[51] 132 F. 2d 784, 786 (C. A. 2, 1943).

[52] 85 F. Supp. 63 (S. D. N. Y., May 24, 1949).

[53] *S. E. C.* v. *Okin*, 58 Fed. Supp. 20 (S. D. N. Y. 1944). *Cf. S. E. C.* v. *McQuistion*, Civil No. 41–47, S. D. N. Y., May 16, 1947; and *S. E. C.* v. *Metropolitan Mines Corp., Ltd.*, Civil No 664, E. D. Wash., July 18, 1947.

[54] 163 F. 2d 511 (C. A. 3, 1947), *cert. den.* 332 U. S. 847 (1948). See 14 SEC Ann. Rep. 53–4 (1948).

Public Utility Holding Company Act of 1935, but that in the light of the Commission's primary responsibility for the enforcement of its rules any injunction action it might bring should take precedence and an injunction action by a stockholder should not be entertained unless he had exhausted his administrative remedy by first bringing his complaint to the Commission. The court accepted this construction of the act.[55] Another action involving the Commission's proxy rules under the Public Utility Holding Company Act of 1935, *North American Utility Securities Corporation* v. *Posen*, is discussed elsewhere in this report in the section on litigation under that statute.

The position of the Commission was sustained in a number of additional actions on the proxy rules during the last 5 years. In one of these the Commission argued that a proxy statement is not false or misleading simply because it fails to state all possible alternatives to a course of action for which the management seeks approval.[56] In another, the New York Supreme Court sustained the Commission's contention that a proxy solicitation was defective when it did not disclose that the directors elected had agreed prior to the solicitation to resign in favor of another slate of candidates.[57]

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

One of the most extensive litigations in the history of the Commission, from the standpoint of sheer number of court proceedings involved, has been the litigation with Otis & Co. arising out of an investigation of a stock offering of Kaiser-Fraser Corp.

During February of 1948, a public offering of some 1,500,000 shares of common stock of Kaiser-Frazer Corp. was withdrawn after Kaiser-Frazer had expended about $2,500,000 in an unsuccessful effort to stabilize the market. By the terms of the underwriting contract, the 3 underwriters who were participants in the offering had agreed to take 900,000 of the shares outright and the rest on a "best efforts" basis. One of the conditions of the contract was that there should be no material litigation pending against Kaiser-Frazer as of 10 a. m. on February 9, which was the settlement date under the contract. Shortly before 10 a. m. on February 9—several days after the withdrawal of the offering—one James F. Masterson, a Kaiser-Frazer stockholder and Philadelphia attorney, filed a lawsuit in Detroit charging mismanagement on the part of the officers and directors of Kaiser-Frazer and demanding, among other things, an injunction against the sale of the stock. On the basis, at least in part, of this lawsuit, two of the underwriters—Otis & Co. and First California Corp.—refused to go through with the contract.

Thereafter the Commission instituted a private investigation, and soon a public investigation, into the general subject of the Kaiser-Frazer stock offering. The purpose of the public investigation, as set forth in the Commission's order, was to determine whether there had been any violations of the securities acts and whether there was any basis for the formulation of new rules by the Commission or for the recommendation of new legislation to the Congress. During the

[55] See 14 SEC Ann. Rep. 55 (1948).
[56] *Doyle* v. *Milton*, 73 F. Supp. 281 (S. D. N. Y. 1947).
[57] *Wyatt* v. *Armstrong*, 59 N. Y. S. (2d) 502 (N. Y. Sup. Ct., 1945).

spring and summer of 1948 hearings were held in various cities during which some 5,000 pages of testimony were taken and numerous exhibits introduced.

One of the first lawsuits filed was instituted in the United States District Court for the Southern District of Ohio by Portsmouth Steel Corp. (the chairman of the board of this corporation is Cyrus S. Eaton, who is also controlling stockholder of Otis & Co.) in an attempt to enjoin The Ohio Consolidated Telephone Co. from complying with a Commission subpoena directing the production of certain long-distance telephone slips. The Commission intervened, and after the service of an amended subpoena the complaint was dismissed.[58]

Another action was instituted at about the same time, this one by the Commission, when two Cleveland attorneys named Harrison and Hull, who were shown during the investigation to have inquired about the Masterson suit at the courthouse in Detroit before the suit was filed refused to identify their client on the ground of the attorney-client privilege. When the United States District Court for the Eastern District of Michigan indicated it would enter an order against the attorneys unless they testified,[59] they revealed that their client was Eaton.

In subsequent hearings in Washington, however, Harrison and Hull declined to divulge their actual communications with Eaton, again on the ground of the attorney-client privilege. The Commission instructed its presiding officer at the investigation to rule that the privilege was unavailable because the evidence theretofore adduced during the investigation showed *prima facie* that the attorneys had been retained for a fraudulent purpose. Upon the continued refusal of Harrison and Hull to testify, the Commission applied to the United States District Court for the District of Columbia for an order compelling their testimony. The entire record of the investigation to date was introduced as an exhibit. Otis & Co. and Eaton intervened in this proceeding, without objection by the Commission, and filed a counterclaim in which they demanded that the Commission be enjoined from continuing with its public investigation. Judge Morris of the District Court dismissed the counterclaim, but also denied the enforcement order sought by the Commission on the ground that the record of the investigation did not show *prima facie* that the Masterson suit had been inspired by Eaton.[60] In his opinion Judge Morris emphasized that, in the absence of cross-examination in the record of the investigation, he had subjected the record "to the strictest scrutiny for possible ambiguity and equivocation." [61] No appeal from this decision was taken by either side.

On August 11, 1948, while Judge Morris still had the subpoena case under consideration, the Commission instituted a proceeding under sections 15 (b) and 15A (l) (2) of the Securities Exchange Act to determine whether the registration of Otis & Co. as a broker-dealer should be revoked and whether the firm should be suspended or expelled from the National Association of Securities Dealers for possible violations of the securities acts. Thereupon Otis & Co., arguing that the Commission proceeding would interfere with the

[58] *Portsmouth Steel Corporation* v. *Ohio Consolidated Telephone Company* (No. 1892, S. D. Ohio, 1948).
[59] *SEC* v. *Harrison* (No. 7332, E. D. Mich., 1948).
[60] *SEC* v. *Harrison*, 80 F. Supp. 226 (D. D. C., 1948).
[61] *Ibid.*, at p. 232.

jurisdiction of the District Court in the pending subpoena action, obtained from Judge Letts of the United States District Court for the District of Columbia a temporary injunction restraining the Commission from conducting the revocation proceeding pending Judge Morris' decision in the subpoena case.[62]

When Judge Morris refused to compel Harrison and Hull to testify, the Commission decided to pursue the revocation proceeding—in which its final order, if adverse to Otis & Co., would be subject to judicial review in an appropriate court of appeals—rather than to appeal Judge Morris' ruling. Thereupon Otis & Co. and Eaton instituted a new action in the District Court for the District of Columbia to enjoin the holding of this proceeding to the extent that it might be concerned with the filing of the Masterson suit, on the ground that the decision in the subpoena case was *res judicata* on this question. This new action also came before Judge Morris, who, on November 12, 1948, dismissed the complaint from the bench.[63] On the same day Otis & Co. appealed to the Court of Appeals for the District of Columbia Circuit and obtained from that court an injunction against the Commission's proceeding pending the outcome of the appeal.

On June 1, 1949, the Court of Appeals held that, because the complaint alleged that the Commission had no evidence that had not already been considered by Judge Morris, and because this allegation was admitted for purposes of the Commission's motion to dismiss the complaint, the doctrine of *res judicata* was applicable. Accordingly, the case was remanded with instructions that the injunction be granted unless the Commission should deny the allegation that no new evidence would be introduced at the hearing.[64] On August 9, 1949, the Solicitor General, on behalf of the Commission, filed a petition for a writ of *certiorari* in the Supreme Court, and Otis & Co. filed a brief in opposition in due course. On October 17, 1949, the Supreme Court took the unusual step of rendering a *per curiam* decision [65] in which it granted the petition for a writ of *certiorari* and at the same time reversed the judgment of the Court of Appeals, on the authority of *Myers* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41 (1938), and similar cases.

Concurrently there had been in progress considerable litigation in which the Commission and the National Association of Securities Dealers, Inc. (NASD) had been joined as defendants. The NASD is an association of securities dealers registered under provisions of the Securities Exchange Act designed to promote just and equitable principles of trade in the securities industry. The Cleveland District Business Conduct Committee of the association, of which Otis & Co. is a member, had instituted its own investigation of the circumstances surrounding the Kaiser-Frazer stock offering shortly after the failure of the offering, and had demanded that Otis & Co. and Eaton disclose the communications between Eaton and his attorneys concerning the Masterson suit.

[62] *SEC* v. *Harrison* (No. 2617-48, D. D. C., 1948). The Commission appealed this injunction to the United States Court of Appeals for the District of Columbia Circuit, but Judge Morris' decision in the subpoena case of a few weeks later rendered the appeal moot. A motion by the Commission that the judgment of the District Court be vacated as moot has been resisted by the appellees and has not yet been passed upon by the Court. *SEC* v. *Harrison* (No. 10,043, C. A. D. C.).

[63] *Otis & Co.* v. *SEC* (No. 4613-48, D. D. C.).

[64] *Otis & Co.* v. *S. E. C.*, 176 F. 2d 34 (C. A. D. C.).

[65] — U. S. — (No. 244, October Term, 1949).

After this demand was refused, the NASD's district issued a complaint charging Otis & Co., Eaton and William R. Daley, president of Otis & Co. (the individual respondents in their capacity as representatives of Otis & Co. registered with the NASD) with violation of a rule of the NASD which provides that refusal of a member or registered representative to submit any required reports with regard to a matter under investigation shall of itself be sufficient cause for suspending or cancelling membership.

At this point Otis & Co. and Eaton, instead of filing an answer to this complaint, went to the United States District Court for the District of Columbia, where the Commission's subpena-enforcing action was pending before Judge Morris, and obtained from Judge Keech and Judge Letts of that court, respectively, a restraining order and a preliminary injunction making the NASD a party to the subpena action for the purpose of restraining it from attempting to obtain such communication. The subsequent decision of Judge Morris automatically terminated this injunction. A hearing on the complaint followed, after which the district committee ordered the respondents suspended for a period of 2 years, unless they should furnish the desired information sooner.

Otis & Co., Eaton, and Daley thereupon instituted a new action in the District Court for the District of Columbia, the third in that court. In this action they sought to compel vacation of the district committee's suspension order and to enjoin the NASD and the Commission from taking any action to compel the disclosure of the communications in question, again on the ground that the decision of Judge Morris in the subpena action had rendered the subject matter *res judicata*. The Commission was joined as a defendant on the theory that it had conspired with the NASD. The Commission and the NASD separately moved to dismiss this new complaint on the ground that the plaintiffs had not followed the procedure for review of NASD disciplinary proceedings which is specifically set forth in the Securities Exchange Act and in the NASD rules adopted thereunder. Under the act and the NASD rules any person disciplined by a district committee of the NASD may appeal to the board of governors of the NASD, thence to the Commission, and thence to the appropriate court of appeals. There are provisions for automatic stays of the district committee's action pending review by the board of governors and the Commission and a further stay may be sought from the court of appeals pending judicial review of the Commission's final order, if any. Thus, the Commission and the NASD contended, the plaintiffs would remain in good standing in the NASD pending a final determination by the proper court of appeals, but they could not short-circuit the statutory method of review by seeking an injunction in the district court.

The plaintiffs obtained postponement of the argument on the motion to dismiss, and in the meantime took depositions on the merits of the case over the opposition of the Commission and the NASD and obtained a temporary restraining order against certain alleged "publicity" on the part of the NASD.[66] The motion to

[66] *Otis & Co.* v. *NASD* (No. 329-49, D D. C., 1949).

dismiss finally came before Judge Morris, who granted it on June 6, 1949 (distinguishing the earlier opinion of the court of appeals in *Otis & Co.* v. *SEC*),[67] and reaffirmed his decision after reargument on July 11, 1949.[68] The plaintiffs appealed to the Court of Appeals for the District of Columbia Circuit and sought an injunction pending the outcome of this appeal, which was denied from the bench, one judge dissenting, on September 7, 1949.[69] Subsequently, a motion for reargument was denied and the court ordered that the argument on the merits be expedited. It was at this juncture that the Supreme Court rendered its decision in *S. E. C.* v. *Otis & Co.*, discussed above.

An aftermath of the failure of the Kaiser-Frazer stock offering was the institution of an action for damages by Kaiser-Frazer Corp. against Otis & Co.,[70] as well as the filing of a number of stockholders' derivative actions against the officers and directors of Kaiser-Frazer Corp. on the basis of alleged improprieties in connection with the attempted market stabilization and on other charges of misconduct.[71] In one of these cases the Commission submitted its views as *amicus curiae* on the construction of various provisions of the Securities Exchange Act, including the provisions relating to manipulation and stabilization.[72]

[67] *Otis & Co.* v. *NASD*, 84 F. Supp. 395.
[68] *Otis & Co.* v. *NASD* (No. 329-49, D. D. C.).
[69] *Otis & Co.* v. *NASD* (No. 10,397, C. A. D. C.).
[70] *Kaiser-Frazer Corporation* v. *Otis & Co.* (Civil No 45-564, S. D. N. Y.). Otis & Co. also filed counterclaims and cross-claims in the Masterson suit, which has been removed to the United States District Court for the Eastern District of Michigan.
[71] *Stella* v. *Kaiser* (Civil No. 45-750, S. D. N. Y.); *Pergament* v. *Frazer* (Civil No. 7354, E. D. Mich); *Fleming* v. *Kaiser* (No. 377,779, Calif. Super. Ct.).
[72] See *Stella* v. *Kaiser*, 82 F. Supp. 301 (S. D. N. Y. 1948).

# PART III

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

The Public Utility Holding Company Act of 1935 was passed by the Seventy-fourth Congress following an investigation by the Federal Trade Commission. The Federal Trade Commission's investigation, considered by many one of the most extensive ever made, disclosed a variety of abuses in public-utility holding company finance and operations. The more significant of these abuses are enumerated in section 1 (b) of the act: (1) Inadequate disclosure to investors of the information necessary to appraise the financial position and earning power of the companies whose securities they purchase; (2) the issuance of securities against fictitious and unsound values; (3) the over-loading of the operating companies with debt and fixed charges thus tending to prevent voluntary rate reductions; (4) the imposition of excessive charges upon operating companies for various services such as management, supervision of construction and the purchase of supplies and equipment; (5) the control by holding companies of the accounting practices and rate, dividend and other policies of their operating subsidiaries so as to complicate or obstruct State regulation; (6) the control of subsidiary holding companies and operating companies through disproportionately small investment; (7) the extension of holding company systems without relation to economy of operations or to the integration and coordination of related properties.

The jurisdiction of the statute embraces public-utility holding company systems which are engaged in the electric utility business or in the retail distribution of natural or manufactured gas. Fundamentally the regulatory provisions of the act fall into two basic categories. The first deals with supervision of the financing and operations of holding company systems. These regulations, however, are carefully designed not to conflict with, but to supplement and strengthen local regulation. Thus, the jurisdiction of the act does not extend to local rate making and does not authorize the Commission to prescribe accounting systems for operating subsidiaries, except in a comparatively few instances where there are neither State nor other Federal laws prescribing such accounting systems. The second area of regulatory jurisdiction under the act provides for the geographical integration and corporate simplification of holding company systems.

### THE PUBLIC UTILITY INDUSTRY UNDER THE ACT

The properties subject to the statute at this time represent an important segment of the electric and gas industry of the United States, despite the divestment under section 11 of several hundred companies during the past 14 years. On June 30, 1949, there were registered with the Commission 46 holding company systems with aggregate consolidated system assets of approximately $14,263,000,000. These systems included 46 top holding companies, 26 subholding

companies, 274 electric and gas utility companies and 296 nonutility companies. This made a total of 642 companies subject to the statute on that date. At the close of the preceding fiscal year there were 46 registered public-utility holding company systems comprising 46 top holding companies, 27 holding companies, 309 electric and gas utility companies and 323 nonutility companies or a total of 705 companies with total system assets of $14,680,000,000.[1] The decrease in assets of some $417,000,000 represents for the most part the difference between additions, due primarily to plant expansion, on the one hand, and the divestment during the year of nonretainable companies and properties, on the other. Viewed from the standpoint of the electric utility industry alone, it may be noted that of the 315 class A and class B electric utility companies [2] in operation on December 31, 1948, with aggregate assets of $17,347,000,000, 146 companies with assets of $7,106,000,000 are presently subject to the Holding Company Act. Ninety-eight companies with assets of $6,188,000,000 were formerly subject to the Holding Company Act, but are no longer under the Commission's jurisdiction as a result of divestment under section 11. Seventy-one of the 315 companies with assets aggregating $4,053,000,000 have never been subject to the Holding Company Act.

## REGULATION OF FINANCING AND OPERATIONS OF HOLDING COMPANY SYSTEMS

Fourteen of the 33 sections of the act deal specifically with the regulation of finances and operations of the holding company systems. These provisions cover a wide range of activities and they are geared to correction of the abuses enumerated by the Congress in section 1 (b) of the act.

### Registration of Holding Companies

Sections 4 and 5 require that holding company systems register with the Commission and file periodic reports containing detailed data with respect to their organization, financial structure, and operations. This provides a background of necessary information for supervision of specific transactions under other sections of the act and enables the Commission to keep abreast of significant trends and developments in that segment of the utility industry which is subject to the act. When a holding company registers with the Commission it files a basic "registration statement." Each year thereafter "annual supplements" are filed setting forth important changes during the year. In the twelve months ended June 30, 1949, 91 "annual supplements" were filed and examined by the staff of the Commission.

It is necessary to take appropriate steps for registration of a holding company under section 5 before jurisdiction can be exercised over the company under other sections of the act.

### Exemption from the Act

Holding companies and subsidiaries which are able to comply with certain standards of the act may be released from the Commission's jurisdiction. Under section 3 if a holding company system is pre-

[1] The data on assets subject to the act as represented in previous annual reports have been revised during the past year. The figures shown above are on a comparable basis.
[2] As classified by the Federal Power Commission.

dominantly intrastate in character, it may be exempted from the obligations of the statute. The same applies to systems where the holding company itself is predominantly an intrastate operating utility company, or is only incidently or only temporarily a holding company. Likewise, a holding company which derives no material part of its income from sources within the United States may be exempted from the statute. In section 2 the mechanics are established whereby the Commission, upon application, may declare that a company is not an "electric utility company" under section 3 (a) (3), not a "gas utility company" under section 3 (a) (4), not a "holding company" under section 3 (a) (7) or not a subsidiary of a holding company under section 3 (a) (8). Actions under these sections are in the nature of declarations of status and have the effect of releasing the applicant companies from the obligations of the act. Under section 5 (d) a company registered as a holding company with the Commission may, after it ceases in fact to be a holding company, have its registration terminated by order of the Commission.

During the 14 years of the Commission's administration of the statute, 637 applications for exemption under section 3, declarations for status under section 2 and applications for termination of registration under section 5 (d) have been filed with the Commission. Of this number 200 have been granted, 349 have been withdrawn or dismissed and 53 have been denied. As of June 30, 1949, 35 cases were pending. Beginning about 1940 a substantial number of these applications were allowed to continue in pending status for indefinite periods awaiting the outcome of reorganization plans under section 11, the consummation of which subsequently operated to render the exemption questions moot. Sections 2 and 3 expressly provide that the applicant shall be exempt from the obligations of the act during pendency of the application before the Commission. This policy resulted in substantial savings of expense on the part of both the Commission and the applicant companies, and accounts for the comparatively large number of applications withdrawn or dismissed during the period.

**Acquisitions**

Under sections 9 and 10 the acquisition of securities and utility assets by holding companies and their subsidiaries may not be authorized by the Commission unless the following standards are met: (1) the acquisition must not tend toward interlocking relations or concentration of control to an extent detrimental to the public interest or the interest of investors or consumers; (2) any consideration paid for the acquisition, including fees, commissions, and other remuneration, must not be unreasonable; (3) the acquisition must not complicate the capital structure or holding company system; (4) the acquisition must not be otherwise detrimental to the public interest or the interest of investors or consumers, or to the proper functioning of the holding company system; (5) the acquisition must tend toward the economic and efficient development of an integrated public-utility system.

The bulk of operations under sections 9 and 10 are represented by determination of questions arising under clauses (1), (2), and (3) of section 10 (a). During the 14 years of the Commission's adminis-

tration of the act 1,625 questions under this section have been determined. Applications were granted with respect to 1,452 of the matters presented, 159 were withdrawn or dismissed and 14 denied. During the fiscal year applications raising 203 questions under this section were filed. Applications with respect to 160 were approved and 73 matters were still pending determination on June 30, 1949. For the most part these transactions are represented by holding company acquisitions of the securities of their subsidiaries in connection with financing and reorganizations.

**Transactions within Holding Company Systems**

Section 12 of the act extends Commission jurisdiction to a wide variety of activities. It covers regulation of dividend payments, intercompany loans and the solicitation of proxies, authorizations, and consents. It also covers sales by one company of its holdings of the securities of other companies, sales of utility assets, capital contributions, the acquisitions by companies of their own securities and various transactions between affiliates. In this section "upstream" loans from subsidiaries to their parents and "upstream" or "cross-stream" loans from public utility companies to any holding company in the same holding company system are expressly forbidden. Prior to passage of the act these loans and other intrasystem transactions resulted in widespread abuses in holding company systems. Activities of this character, moreover, were entirely beyond the scope of local and State regulation.

Since passage of the act 3,825 questions under paragraphs (b), (c), (d), and (f) of section 12 have been determined. Of this number 3,537 were decided in favor of the declarant companies, 247 were withdrawn or dismissed and 41 were denied. During the past fiscal year 388 questions of this character were presented in declarations filed with the Commission. Declarations raising 294 questions were approved, 4 dismissed and 1 denied. Two hundred and seventeen matters under these sections were pending June 30, 1949.

**Servicing Operations**

As noted above one of the principal abuses of holding company systems which is expressly described in section 1 (b) of the act was the loading of excessive service charges by holding companies, or their controlled service companies, upon the operating utility subsidiaries. Prior to passage of the act this problem imposed a very burdensome task upon state commissions in their endeavors to analyze the operating expenses of local utilities in rate-making proceedings. The solution of this question was specifically provided in section 13. The act expressly forbids holding companies to render services to their subsidiaries for a charge, and it requires that all services performed for any company in a holding company system by a mutual or subsidiary service company in that system be rendered at cost fairly and equitably allocated.

During the 14-year span of the administration of the act 77 proposals for servicing arrangements in holding company systems pursuant to section 13 have been presented to the Commission for consideration. Fifty-two were approved, 1 was denied, 12 were either withdrawn or dismissed and 12 were pending on June 30, 1949. Actions upon proposals for servicing arrangements, however, constitute only a

part of the mechanism for regulation of service charges. Every servicing company in a registered holding company system must file with the Commission a comprehensive annual report of activities. These reports are examined by the Commission's staff in order to detect any irregularities. During the past fiscal year 49 of these reports were filed. This device plus the statutory power of the Commission to reopen any proceeding in which servicing arrangements were approved has been successful in preventing a recurrence of the abuses described in section 1 (b) of the act.

**Issues of Securities, Assumptions of Liability, and Alterations of Rights**

The issue and sale of securities by holding companies and their subsidiaries are regulated under sections 6 and 7 of the act. Assumptions of liability on securities and alterations of rights of security holders are covered by section 7. The tests which a proposed security issue, assumption of liability or alteration of rights must meet are set forth in section 7: (1) The security must be reasonably adapted to the security structure of the issuer and of other companies in the same holding company system; (2) the security must be reasonably adapted to the earning power of the company; (3) the proposed issue must be necessary and appropriate to the economical and efficient operation of the company's business; (4) the fees, commissions and other remuneration paid in connection with the issue must not be unreasonable; (5) the terms and conditions of the issue or sale of the security must not be detrimental to the public interest or the interest of investors or consumers.

During the fiscal year 372 applications and declarations covering issues of securities under sections 6 and 7 and assumptions of liability and alterations of rights under section 7 were filed with the Commission. Action was completed in 317 cases, all of which were approved. From the date of passage of the act to June 30, 1949, 2,260 applications were approved, 150 withdrawn or dismissed and 16 denied. These actions dealt both with securities issued for financing purposes and with securities issued in connection with reorganizations of holding company systems under section 11.

The most important aspect of the administration of sections 6 and 7 in recent years has been the financing of an unprecedented expansion program for the electric and gas utility industries. It is estimated that construction expenditures approached $2,300,000,000 during the past fiscal year, exclusive of natural gas pipe lines. Of this total, more than 80 percent is represented by growth of the electric utilities. The rate of increase in electric energy sales in 1949 has slowed down somewhat, although that output has remained consistently above the levels of 1948, which suggests that construction expenditures are likely to continue at a very high level for many months to come. To provide the necessary funds for this tremendous expansion the industry maintained the heavy financing program in evidence last year. This is demonstrated by the following tabulation showing security sales for cash plus exchanges for refunding purposes for the fiscal years 1948 and 1949.

*Total security issues sold for cash and issued in exchange for refunding purposes by electric and gas utilities [1]—fiscal years 1948 and 1949 (includes all issues subject to provisions of the Public Utility Holding Company Act of 1935 and to registration requirements under the Securities Act of 1933)*

| | July 1, 1947, to June 30, 1948 | July 1, 1948, to June 30, 1949 |
|---|---|---|
| Bonds | $1,087,266,075 | $899,434,729 |
| Debentures | 146,307,321 | 241,238,500 |
| Preferred stock | 229,443,828 | 192,779,280 |
| Common stock | 226,439,063 | 364,016,666 |
| Total [2] | 1,689,456,287 | 1,697,469,175 |

[1] As defined in secs. 2 (a) (3) and 2 (a) (4) of the act.
[2] In addition, companies subject to the Holding Company Act sold notes with maturities of 5 years or more in the amounts of $79,200,000 in fiscal year 1948 and $62,090,000 in 1949. Comparable data for companies not subject to the Holding Company Act are not available.

This table embraces a high proportion of the total financing within the industry. It will be noted that during the 2-year period financing volume has continued unabated at the annual rate of approximately $1,700,000,000. In addition, securities of companies not subject to the Public Utility Holding Company Act, which were privately placed and hence do not become a matter of record with the Commission, would probably increase this figure by approximately $200,000,000.

Data for the fiscal year 1948 reflect the fact that approximately 25 percent of funds derived through security sales was employed for refunding purposes. In contrast, during the fiscal year just closed, refunding took only 5 percent of net proceeds, with the balance employed for construction purposes. Thus the general industry program for refunding debt and preferred stock issues with lower coupon issues which had reached very large proportions in the early post war period seems to be approaching termination and the period from July 1, 1948, to June 30, 1949, saw financing geared almost exclusively to new money needs. With this growth problem in the fore, management has been faced with the basic problem of maintaining a proportion of equity capital sufficient to safeguard the financial strength of the industry. Figures for the latest fiscal year provide an encouraging answer to this responsibility, for while the aggregate of bond and debenture financing declined about $93,000,000 as compared with fiscal year 1948, common stock sales advanced by more than $135,000,000.

Although the proportion of security sales falling within the orbit of the Public Utility Holding Company Act is steadily diminishing as integration under section 11 proceeds, the volume of issues approved remains a substantial segment of total security sales in the industry. The following two tables set forth in summary form security sales approved under sections 6(b) and 7 of the act for the fiscal years 1949 and 1948. Information is provided with respect to electric and gas utilities, registered holding companies and nonutility subsidiaries of registered holding companies. These totals include all cash sales and refundings accomplished by direct exchanges. Excluded from these figures are sales from portfolios and issues offered as part of a reorganization under section 11.

*Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1948, to June 30, 1949* [1]

| | Number of issues | Total security sales [2] | Application of net proceeds [2] | | |
|---|---|---|---|---|---|
| | | | New money purposes | Refinancing of short-term bank loans [3] | Refunding |
| Sales by electric and gas utilities: | | | | | |
| Bonds | 56 | $368,209,514 | $246,174,609 | $95,620,052 | $17,955,072 |
| Debentures | 5 | 106,551,165 | 46,615,225 | 41,358,800 | 17,303,000 |
| Notes [4] | 31 | 62,090,000 | 44,793,050 | 14,850,000 | 2,100,000 |
| Preferred stock | 17 | 74,859,040 | 43,062,350 | 26,254,700 | 4,000,000 |
| Common stock | 74 | 197,610,057 | 146,218,297 | 30,713,805 | 18,730,750 |
| Total | 183 | 809,319,776 | 526,863,531 | 208,797,357 | 60,088,822 |
| Sales by holding companies: | | | | | |
| Debentures | 2 | 33,878,815 | 20,646,890 | | 12,850,000 |
| Notes [4] | 6 | 18,272,500 | 3,272,500 | | 15,000,000 |
| Common stock | 8 | 69,893,184 | 68,546,045 | | |
| Total | 16 | 122,044,499 | 92,465,435 | | 27,850,000 |
| Sales by nonutility companies: | | | | | |
| Bonds | 4 | 49,295,080 | 43,807,210 | 5,000,000 | |
| Common stock | 8 | 9,875,000 | 9,279,301 | | 575,000 |
| Total | 12 | 59,170,080 | 53,086,511 | 5,000,000 | 575,000 |

[1] Data limited to sales by issuing companies; offerings from portfolio are not included.
[2] Difference between total security sales and total proceeds is represented by flotation costs to the issuing companies.
[3] Bank loans of less than 5 years maturity for construction purposes.
[4] With maturities of not less than 5 years.

*Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1947, to June 30, 1948* [1]

| | Number of issues | Total security sales [2] | Application of net proceeds [2] | | |
|---|---|---|---|---|---|
| | | | New money purposes | Refinancing of short-term bank loans [3] | Refunding |
| Sales by electric and gas utilities: | | | | | |
| Bonds | 66 | $786,791,945 | $389,312,601 | $107,067,524 | $282,005,752 |
| Debentures | 8 | 70,749,427 | 41,736,919 | 15,809,564 | 12,298,313 |
| Notes [4] | 33 | 79,200,000 | 52,647,766 | 9,895,289 | 16,587,465 |
| Preferred stock | 14 | 94,818,311 | 59,178,977 | 10,480,143 | 22,156,037 |
| Common stock | 69 | 154,109,294 | 121,997,179 | 12,948,447 | 17,566,053 |
| Total | 190 | 1,185,668,977 | 664,873,442 | 156,200,967 | 350,613,620 |
| Sales by registered holding companies. | | | | | |
| Bonds (collateral trust) | 1 | 5,225,000 | 5,204,000 | | |
| Debentures | 3 | 80,830,514 | 75,209,739 | 561,000 | 4,231,000 |
| Notes [4] | 2 | 13,500,000 | | | 13,500,000 |
| Common stock | 1 | 692,854 | 583,354 | 77,000 | |
| Total | 7 | 100,248,368 | 80,997,093 | 638,000 | 17,731,000 |
| Sales by nonutility subsidiaries: | | | | | |
| Bonds | 4 | 34,804,500 | 29,436,706 | | 5,280,000 |
| Notes [4] | 1 | 150,000 | | | 148,000 |
| Common stock | 3 | 1,583,000 | 1,196,938 | 380,629 | |
| Total | 8 | 36,537,500 | 30,633,644 | 380,629 | 5,428,000 |

[1] Data limited to sales by issuing companies; offerings from portfolio are not included.
[2] Difference between total security sales and total proceeds is represented by flotation costs to the issuing companies.
[3] Bank loans of less than 5 years maturity for construction purposes.
[4] With maturities of not less than 5 years.

A comparison of the totals for fiscal years 1948 and 1949 shows that security sales by electric and gas utilities subject to the act declined from $1,186,000,000 to $809,000,000. In view of the fact that total industry financing has varied little in size during the 2-year period, the contraction in the amount of approved financing is considered attributable principally to the continuing divestment of operating utilities. Total number of issues approved, including holding company and nonutility offerings showed, much less of a percentage decline, however, the number being 211 in 1948 and 205 in 1949.

Of considerable significance is the noticeable change in the proportions of financing media as between the two periods. The prior period, July 1, 1947, to June 30, 1948, reflected utility company sales of bonds, debentures and long-term notes in the amount of $936,000,000 or 79.0 percent of total utility offerings. However, in the period ended June 30, 1949, sales of these types of securities declined to $536,000,000 or 66.3 percent of the total. On the other hand, common stock sales were sharply increased from 13.0 percent of the total in the earlier period to 24.4 percent in the fiscal year just closed. There is some indication that the high point of bond financing related to earlier urgent needs for capacity has now been passed. The increase in common stock financing is in direct accord with the policy of the Commission which has consistently urged operating companies under its jurisdiction to pace their bond offerings with a sufficient amount of equity financing to preserve financial stability and a sound capitalization to assure adequate facilities for financing in future years.

A significant feature of utility financing during the fiscal year has been the extensive employment of the rights offering procedure in the marketing of common stocks. The practice has been followed most frequently by companies which are now free from holding company control and must turn to their public stockholders for equity capital. Companies which are still holding company subsidiaries sold most of their common stock directly to their respective parents for cash without resort to public offering. However, from July 1, 1948, to June 30, 1949, electric and gas utilities under jurisdiction of the Holding Company Act did make 15 public rights offerings involving an amount in excess of $63,000,000. In addition, registered holding companies employed the rights procedure in 5 offerings aggregating approximately $48,000,000. Ability of the utility industry to go back to its stockholders for an important segment of its capital requirements is, in a sense, a tribute to the financial strength and investor confidence which it now enjoys.

Registered holding companies have played the major role in the common stock financing of electric and gas utilities under the act; they purchased shares to the extent of $135,000,000 in the fiscal year 1948 and $150,000,000 in the past year. By thus increasing the equity of its operating utility subsidiaries a holding company performs one of the important functions contemplated by the statute. In part, funds employed by holding companies for investment in their subsidiaries have been derived from the sale of portfolio securities found by the Commission to be nonretainable under section 11. Additional funds have been obtained by holding companies through the offering of their own securities to the public. These offerings

totaled $122,000,000 during the past fiscal year. Of this amount 57 percent was represented by common stock and most of the balance by debentures.

The following table sets forth purchases of subsidiary common stocks and capital donations or contributions by holding companies to their subsidiaries during the period from March 1, 1937, to March 15, 1946:

| | |
|---|---|
| Cash purchases of common stock of subsidiaries by parent holding companies | $47, 673, 171 |
| Purchases by parent holding companies of additional common stock of subsidiaries with assets other than cash | 1, 358, 300 |
| Aggregate purchases of subsidiaries' common stocks by holding companies | 49, 031, 471 |
| Cash donations by parent holding companies to their subsidiaries | 128, 500, 743 |
| Donations of subsidiaries' senior securities by parent holding companies to their subsidiaries | 114, 218, 996 |
| Conversions by parent holding companies of subsidiaries' senior securities held by the parent into subsidiaries' common stock | 48, 118, 982 |
| Donations of other securities and assets by parent holding companies to their subsidiaries | 19, 381, 823 |
| Forgiveness by parent holding companies of preferred dividend arrearages on preferred stocks of subsidiaries held by the parent | 2, 405, 613 |
| Total capital contributions and donations by holding companies | 312, 626, 157 |
| Total common stock purchases and capital donations | 361, 657, 628 |

In addition to the foregoing, capital contributions were made by registered holding companies to their subsidiaries in the following amounts:

| | |
|---|---|
| 1947 | $15, 000, 000 |
| 1948 | 67, 100, 000 |

Historical records covering transactions between holding companies and their subsidiaries prior to enactment of the statute are incomplete but the available data presents a sharp contrast between the practices of recent years and the methods employed by holding companies in the financing of their subsidiaries prior to enactment of the statute. During the period from 1924 to 1930, inclusive, public utility holding companies sold approximately $4,856,000,000 of their securities to the public. The funds received from this financing were devoted almost entirely to the purchase of already outstanding corporate securities. Only a negligible portion went into the construction of plant and equipment of operating utility subsidiaries.[3] For a period of many years up to 1928, it was the general practice of holding companies to furnish capital to their subsidiaries through the mechanism of demand notes or open-account advances. Interest was often charged on these short-term loans at rates ranging from 6 to 8 percent and in some large systems the holding companies followed the regular practice of compounding interest monthly.[4]

In its investigation the Federal Trade Commission found that in many instances the book value of holding companies' investments in common stocks of their subsidiaries represented highly inflationary

[3] S. Rep. No. 621, 74th Cong., 1st sess., p. 15.
[4] S. Doc. 92, 70th Cong., 1st sess., pt. 72-A, chs. 5 and 6. S. Doc. 92, 70th Cong., 1st sess., pts. 23 and 24, pp. 218 *et seq.*

valuations. This condition stemmed both from the "write-ups" in the investment book values on the books of holding companies and large scale "write-ups" in the property accounts of underlying subsidiaries. During the 14 years of its administration of the Holding Company Act, the Commission, working jointly with the Federal Power Commission and state and local regulatory bodies, in proceedings arising under sections 6, 7, and 11 (b) (2) has aided in the removal from the plant accounts of subidiaries of registered holding companies' "write-ups" aggregating approximately $1,423,000,000.

Under the terms of rule U–27, adopted April 21, 1941, every registered holding company and subsidiary thereof, which was a public utility company and which was not required by either the Federal Power Commission or a state commission to conform to a classification of accounts has been required by the Commission to keep its accounts in accordance with the designated systems adopted by this Commission for electric and/or gas utilities. These systems specifically provide that plant and property accounts shall be stated at original cost.

While some field examinations were undertaken in 1945, it was not until the latter part of 1946 that a section of original cost studies was organized and the review of the field studies, including field examinations, was undertaken on an intensive scale. At June 30, 1949, field examinations had been completed with respect to 10 companies, 6 of which were located in the State of Texas, and 1 in each of the States of New York, Delaware, Mississippi, and Florida. Definitive orders of the Commission approving disposition of adjustment items have already been issued for the following companies:

| | |
|---|---|
| Texas Power & Light Co. | Mississippi Power & Light Co. |
| Texas Electric Service Co. | Delaware Power & Light Co. |

The adjustments to the accounts of the remaining companies are now being processed. Field examinations with respect to 6 additional companies, located in the States of Texas, Iowa, Nebraska, and Minnesota are either pending or are now being conducted.

Completed field studies for the 10 companies which have already been examined disclose that the total properties, prior to reclassification, were recorded on their books at $372,159,252. The original cost of such properties was determined to be only $245,672,325, leaving a balance of $126,486,927 subject to adjustment. Of this latter amount it was determined that $101,116,546 should be classified to Account 107—Plant Adjustments—and required to be written off the books of account. The balance of $25,370,381 was classified in Account 100.5—Plant Acquisition Adjustments—and is thus subject to amortization over a period of years. These eliminations of items not representing original cost are included in the total of $1,400,000,000 set forth above.

In section 1 (b) of the act the Congress found that "* * * investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; * * *," that "* * * such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercom-

pany transactions * * *," and that "such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions; * * *."

The strengthening of capital structures of operating companies and holding companies, the restoration of subsidiary companies' equities through capital contributions by holding companies and the elimination of "write-ups" from the plant accounts of utility subsidiaries, as accomplished through the administration of sections 6, 7, and 11 (b) (2), all have operated to bring about the effective correction of these abuses.

**Competitive Bidding**

Sales of securities under these two sections and sales by holding companies under section 12 of securities held in their investment portfolios are generally required to be offered at competitive bidding. This requirement is embodied in rule U–50, which was promulgated in 1941 as a means of meeting the Commission's statutory responsibility for passing upon the reasonableness of fees and expenses and the maintenance of competitive conditions. The events and considerations which led to the adoption of the rule were set forth in some detail in the Seventh Annual Report.

To June 30, 1949, more than $5,320,000,000 of securities had been sold pursuant to rule U–50, $4,360,000,000 of which were sold within the past five fiscal years. Further analysis of this latter amount indicates that all types of securities have been sold in substantial volume and upon many occasions:

*Competitive sales under rule U–50—1944–49*

| | Amount | Number of issues |
|---|---|---|
| Bonds | $2,962,509,000 | 183 |
| Debentures and notes | 433,688,000 | 27 |
| Preferred stock | 565,464,700 | 56 |
| Common stock | 399,881,744 | 42 |
| Total | 4,361,543,444 | 308 |

It was anticipated that the use of competitive bidding would bring about a reduction in underwriting costs or "spreads," and this expectation has been amply fulfilled. A study of underwriting spreads prevailing during the 5-year period ended January 1, 1940, revealed that slightly over one-half of the 159 utility mortgage bond issues studied had been sold on the basis of a 2-point spread; in only four cases was a smaller spread found. The average spread for these 159 issues, which had been sold by traditional methods of private negotiation, was 2.49 points; i. e., $2.49 per $100 face amount of bonds. The sharply contrasting picture under competitive bidding is shown in the following compilation of spreads on bond issues during the past 5 years:

| Spread per $100 of bonds | Number of issues | Aggregate amount |
|---|---|---|
| Under $0.25 | 7 | $51,500,000 |
| $0.25 to $0.50 | 58 | 683,379,000 |
| $0.50 to $0.75 | 69 | 1,480,701,000 |
| $0.75 to $1 | 21 | 208,411,000 |
| $1 to $1.25 | 16 | 421,380,000 |
| $1.25 and over | 8 | 90,400,000 |
| Total | [1] 179 | [1] 2,935,771,000 |

[1] Exclusive of 4 issues reported in the preceding tabulation for which an insurance company bid successfully, retaining the security in portfolio.

Spreads on competitively sold preferred issues have averaged just under two points while those on common stocks have averaged 5.4 percent of the public offering price.

A primary consideration in the adoption of rule U–50 was the necessity of overcoming the influence of traditional relationships between particular investment banking houses and public utility companies. These relationships seriously hindered arms-length bargaining and led, as noted above, to relatively standardized underwriting costs on a high level. The extent to which the competitive bidding procedure has diversified the management of security offerings is therefore a matter of considerable importance. The table shown below covers 24 companies whose securities have been marketed at competitive bidding on at least 4 occasions during the past 5 fiscal years and shows the number of managing underwriters who have been successful in purchasing the securities of these companies.

| | Number of companies which, during fiscal years 1945 to 1949, inclusive, sold— | | | |
|---|---|---|---|---|
| | 4 issues | 5 issues | 6 issues | 7 issues |
| All issues purchased by same manager | 1 | | | |
| Issues purchased by 2 managers | | 1 | | |
| Issues purchased by 3 managers | 7 | 3 | 1 | |
| Issues purchased by 4 managers | 6 | 3 | 1 | 1 |
| Total number of companies | 14 | 7 | 2 | 1 |

It will be noted that in only one instance was a single manager able to win all securities offered by a particular company over this 5-year period. This manager had not been the traditional banker of the company in question, and numerous other bids were submitted for each of the issues. In only one other of the 24 companies studied was any manager successful in purchasing as many as half of the issues offered. Examination of the membership lists of underwriting syndicates reveals also that individual banking firms participate in offerings under widely diverse leadership. Over a period of time, nearly all such firms have been in competition with each other.

Rule U–50 is kept flexible by the various provisions for exemption written into its terms. Some of these are automatic exemptions,

such as those covering security issues not exceeding $1,000,000 or certain debt issues of less than 10 years' maturity. In addition, the Commission may exempt any particular issuance of securities by order at its discretion. The great bulk of cases granted exemption on this latter basis have involved non-underwritten sales to other companies, individuals, stockholders, or institutional investors. There were 69 security sales in this category. During the past 5 years only 28 underwritten sales have been exempted; 23 of these were issues of common and preferred stock.

Acceptance of competitive bidding for public utility securities has become considerably more widespread during the period since rule U-50 was adopted. Competitive bidding is now regularly required by the Interstate Commerce Commission and by 15 State regulatory commissions. It has been employed, moreover, by a number of utility companies under no regulatory compulsion to do so. It has been tested under widely varying conditions and, although there are sometimes circumstances which make other methods of sale advisable, it has been demonstrated to be highly effective in general application.

## INTEGRATION AND SIMPLIFICATION OF HOLDING COMPANY SYSTEMS

The physical integration and corporate simplification provisions of the act are embodied principally in section 11. Section 11 (b) (1) requires that the operations of a holding company group be limited to one or more "integrated utility systems" and to such additional businesses as are reasonably incidental or economically necessary or appropriate to the operations of such systems. In section 2 (a) (29) an "integrated utility system" is defined as one capable of economic operation as a single coordinated system confined to a single area or region in one or more States and not so large as to impair the advantages of localized management, efficient operation, and effectiveness of regulation. These, in substance, are the principal statutory requirements of physical integration. The standards covering corporate simplification are found in section 11 (b) (2), which requires action to insure that the corporate structure or continued existence of any company in a holding company group does not unduly or unnecessarily complicate the structure or unfairly or inequitably distribute voting power among security holders of such holding company system. Several years ago the Commission instituted proceedings with respect to all of the major holding companies subject to its jurisdiction. The orders and tentative conclusions handed down in connection with these proceedings set forth in general terms the changes necessary to meet the requirements of sections 11 (b) (1) and 11 (b) (2).

The mechanics necessary to effectuate compliance with these standards are contained in sections 11 (d), (e), and (f). Under section 11 (d) the Commission may apply to a court for an order compelling compliance, in which case the court may, to the extent neces-

sary, take exclusive jurisdiction and possession of the company. Where a holding company is under the control of the courts in proceedings in bankruptcy or receivership, the debtor's plan for reorganization is required to be approved by the Commission under section 11 (f) before action is taken thereon by the court. A holding company may comply with the act on a voluntary basis under section 11 (e), which requires that the Commission approve a voluntary reorganization plan submitted pursuant to this section if it finds that the plan is (1) necessary to effectuate the provisions of section 11 (b), and (2) fair and equitable to the persons affected thereby. Nearly all of the reorganizations passed upon by the Commission have been voluntary plans filed under section 11 (e). The more drastic procedure provided by section 11 (d) has been employed in the instance of only one holding company and, in that case, such action was requested by the company. A few cases have been processed under section 11 (f).

Prior to enactment of the statute an overwhelming majority of the electric and gas utility companies in the United States were enmeshed in one or more holding company systems. The independents included a few large metropolitan companies, certain long-established utilities in New York and New England, and the barest scattering over the rest of the Nation. Through holding company control the electric and gas utility companies became affiliated with an almost limitless variety of unrelated business activities. Among these were water, telephone, ice, street railway, coal, oil, real estate, and investment companies. There were manufacturers of brick and tile, iron fence, wood products, and paper. There were companies operating farms, quarries, gas stations, parking lots, theaters, and amusement parks. There was one coal-storage plant in Alaska and the New Orleans Baseball Co., Inc. Furthermore, most of the electric and gas utility companies of these holding company systems were widely scattered among many States with little or no functional relationship with one another. This problem of scatteration and unrelated businesses constituted one of the major abuses enumerated by the Congress in section 1 (b) of the act, which states "* * * the growth and extension of holding companies bears no relationship to the economy of management and operation or the integration and coordination of related operating properties; * * *"

During the period from June 15, 1938, to June 30, 1949, 2,152 companies at one time or another have been subject to the jurisdiction of the Commission under the Holding Company Act. Of this number 210 were holding companies, 918 were electric and gas utility companies and 1,024 were nonutility companies. Reflecting primarily the divestment of nonretainable properties under section 11, but also mergers, consolidations, and exemptions from the act, there were subject to the statute on June 30, 1949, only 642 companies. Of this number 72 were holding companies, 274 were electric and gas utilities, and 296 were nonutility companies. These changes, to-

gether with the eliminations which have taken place in each of the fiscal years 1948 and 1949, are set forth in the following tabulations:

FISCAL YEAR ENDED JUNE 30, 1949

| | Total companies subject to act during period [1] | Eliminations | | | | | Companies subject to act as of June 30, 1949 |
|---|---|---|---|---|---|---|---|
| | | Absorbed by merger or consolidation | Sales, dissolutions and other divestments | Exemption by rule or order | Other disposals | Total | |
| Holding companies | 78 | | 3 | 3 | | 6 | 72 |
| Electric and/or gas companies | 315 | 9 | 31 | | 1 | 41 | 274 |
| Nonutilities plus utilities other than electric and/or gas companies | 328 | 3 | 19 | 5 | 5 | 32 | 296 |
| Total companies | 721 | 12 | 53 | 8 | 6 | 79 | 642 |

FISCAL YEAR ENDED JUNE 30, 1948

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Holding companies | 87 | | 13 | 1 | | 14 | 73 |
| Electric and/or gas companies | 345 | 1 | 33 | 1 | 1 | 36 | 309 |
| Nonutilities plus utilities other than electric and/or gas companies | 421 | 3 | 92 | | 3 | 98 | 323 |
| Total companies | 853 | 4 | 138 | 2 | 4 | 148 | 705 |

FOR PERIOD JUNE 15, 1938, TO JUNE 30, 1949

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Holding companies | 210 | 23 | 72 | 34 | 9 | 138 | 72 |
| Electric and/or gas companies | 918 | 136 | 399 | 60 | 49 | 644 | 274 |
| Nonutilities plus utilities other than electric and/or gas companies | 1,024 | 102 | 471 | 63 | 92 | 728 | 296 |
| Total companies | [2] 2,152 | 261 | 942 | 157 | 150 | 1,510 | 642 |

[1] Reflects company additions and classification adjustments during the fiscal year.
[2] A few companies have been subject and not subject to the Public Utility Holding Company Act at various times during the period. These instances contribute some duplication to the reported company totals.

In response to the physical integration standards of section 11 (b) (1) and the corporate simplification requirements of section 11 (b) (2), holding companies divested themselves of 44 companies having assets of $1,749,000,000 during the past fiscal year. These companies are no longer subject to the provisions of the act. In the previous year 111 companies, with assets of $1,244,000,000, were divested by registered holding companies. The substantial decrease in the number of companies divested in 1949 as compared with the number divested in the preceding fiscal year, without corresponding change in aggregate assets divested, reflects for the most part the divestment in October 1947 of 77 water subsidiaries of the American Water Works & Electric Co. system. Since December 31, 1935, 661 companies, with assets of $7,965,000,000, have been removed from the jurisdiction of the act through divestment. The following tables present a complete record of all companies and partial segments of utility properties which have been divested during the period December 1, 1935, to June 30, 1949, and which, as of June 30, 1949, were not subject to the Holding Company Act.

*Electric, gas, and nonutility companies divested under the Public Utility Holding Company Act of 1935 (no longer subject to act as of June 30, 1949)*

| | Dec. 1, 1935, to June 30, 1949 | | July 1, 1948, to June 30, 1949 | | July 1, 1947, to June 30, 1948 | |
|---|---|---|---|---|---|---|
| | Number of companies | Assets [1] | Number of companies | Assets [1] | Number of companies | Assets [1] |
| Companies: | | | | | | |
| Electric utility | 213 | $6,534,845,360 | 22 | $1,545,671,312 | 22 | $989,933,810 |
| Gas utility | 134 | 558,168,598 | 10 | 106,024,850 | 5 | 51,864,622 |
| Nonutility | 314 | [2] 871,750,579 | 12 | [2] 97,182,665 | 84 | 201,929,731 |
| Total | 661 | 7,964,764,537 | 44 | 1,748,878,827 | 111 | 1,243,728,163 |

[1] Assets as of divestment date or year end next preceding date of divestment
[2] A small percent of the assets of nonutility companies were included in the consolidated assets of the electric and/or gas utilities.

*Divestments by sales of partial segments of properties under the Public Utility Holding Company Act of 1935 (no longer subject to act as of June 30, 1949)*

| | Dec. 1, 1935, to June 30, 1949 | | July 1, 1948, to June 30, 1949 | | July 1, 1947, to June 30, 1948 | |
|---|---|---|---|---|---|---|
| | Number of companies involved | Consideration received | Number of companies involved | Consideration received | Number of companies involved | Consideration received |
| Electric | 57 | $89,130,744 | 1 | $430,000 | 2 | $6,367,500 |
| Gas | 19 | 11,140,516 | 4 | 3,112,356 | 2 | 2,085,000 |
| Nonutilities | 31 | 27,808,355 | | | | |
| Total | 107 | 128,079,615 | 5 | 3,542,356 | 4 | 8,452,500 |

NOTE.—It will be observed that the divestments in the "no longer subject" category for the fiscal year ended June 30, 1948, differ substantially from the data covering the same period appearing at p. 58 of the Commission's fourteenth annual report. This difference reflects primarily 2 major revisions in the method of reporting "no longer subject" divestments:
(*a*) A small amount of duplication has been eliminated;
(*b*) Under the method of reporting shown in the fourteenth annual report a company with 10 subsidiaries with consolidated assets of $12,000,000 divested in 1 operation would appear in the table as 1 company with assets at time of divestment of $12,000,000. Under the revised method of reporting, set forth above, this divestment would be reported as 11 companies with assets of $12,000,000. The divestment example cited above to illustrate the change in method of compilation is hypothetical.

These data represent for the most part the severance from holding company systems of companies and properties found by the Commission to be non-retainable under the standards contained in section 11 (b) (1) of the act.

Aside from the "no longer subject" divestments, 206 companies with assets of $3,781,000,000 have been divested by one or more holding companies, but remain subject to the statute by reason of their relationship to another registered holding company. One hundred and forty-three of these companies with assets of approximately $3,355,000,000 are expected to remain under the Commission's jurisdiction indefinitely as systems which, it is presently anticipated, will ultimately complete compliance as fully integrated holding company systems under the standards of section 11 (b). Some $28,000,000 of assets representing partial segments of utility properties formerly owned by nine companies likewise are expected to remain under the Holding Company Act as parts of integrated systems. The following tables summarize these "still subject" divestments.

*Companies and assets divested from holding companies Dec. 1, 1935, to June 30, 1949, still subject to Public Utility Holding Company Act of 1935 as of June 30, 1949*

| Estimated future status of companies and assets under act | Companies divested | | | | Assets divested | | | |
|---|---|---|---|---|---|---|---|---|
| | Electric | Gas | Non-utility | Total | Electric | Gas | Nonutility | Total |
| A. Companies continuing in existence: | | | | | | | | |
| 1 Companies and assets expected to remain under act | 97 | 32 | 14 | 143 | $2,285,394,429 | $970,265,671 | $99,114,950 | $3,354,775,050 |
| 2 Companies and assets expected to be released from jurisdiction of act | 7 | 9 | 9 | 25 | 161,771,337 | 109,224,015 | 32,484,996 | 303,430,348 |
| 3. Future status of companies and assets under act cannot be estimated at this time | 1 | | 20 | 21 | 168,466 | | 71,286,165 | 71,454,631 |
| Total companies still under act | 105 | 41 | 43 | 189 | | | | |
| B. Companies dissolved or expected to dissolve assets sold to other companies: | | | | | | | | |
| 1. Assets expected to remain under act | 7 | 1 | 1 | 9 | 27,030,552 | 415,000 | 339,162 | 27,784,714 |
| 2. Assets expected to be released from jurisdiction of act | 4 | 2 | | 6 | 9,686,172 | 1,667,194 | | 11,353,366 |
| 3. Future status of assets under act cannot be estimated at this time | 2 | | | 2 | 12,516,195 | | | 12,516,195 |
| Total companies | 118 | 44 | 44 | 206 | 2,496,567,151 | 1,081,571,880 | 203,175,273 | 3,781,314,304 |
| Summary—total assets divested still subject to act: | | | | | | | | |
| 1. Total assets expected to remain under act | | | | | 2,312,424,981 | 970,680,671 | 99,454,112 | 3,382,559,764 |
| 2. Total assets expected to be released from jurisdiction of act | | | | | 171,457,509 | 110,891,209 | 32,484,996 | 314,783,714 |
| 3. Total assets—Future status under act cannot be estimated at this time | | | | | 12,684,661 | | 71,286,165 | 83,970,826 |
| Grand total | | | | | 2,496,567,151 | 1,081,571,880 | 203,175,273 | 3,781,314,304 |

*Partial divestments of electric and gas utility properties by companies still subject to the Public Utility Holding Company Act of 1935 as of June 30, 1949*

| | Companies whose properties were sold | | | Consideration received by selling companies | | |
|---|---|---|---|---|---|---|
| | Electric | Gas | Total | Electric | Gas | Total |
| DEC. 1, 1935, TO JUNE 30, 1949 | | | | | | |
| Companies: | | | | | | |
| In | [1] 5 | 4 | 9 | $2,185,407 | $1,411,323 | $3,596,730 |
| Out | 1 | 2 | 3 | 317,969 | 638,000 | 955,969 |
| Undetermined | 2 | 2 | 4 | 2,407,899 | 2,237,500 | 4,645,399 |
| Total | 8 | 8 | 16 | 4,911,275 | 4,286,823 | 9,198,098 |
| JULY 1, 1948, TO JUNE 30, 1949 | | | | | | |
| Companies: | | | | | | |
| In | | 1 | 1 | | 1,500 | 1,500 |
| Out | | 1 | 1 | | 573,000 | 573,000 |
| Undetermined | | | | | | |
| Total | | 2 | 2 | | 574,500 | 574,500 |
| JULY 1, 1947, TO JUNE 30, 1948 | | | | | | |
| Companies: | | | | | | |
| In | | | | | | |
| Out | | | | | | |
| Undetermined | | | | | | |
| Total | | | | | | |

[1] Central States Power & Light Corp. sold 2 distribution systems for $29,500 and $95,238 respectively the first to a company no longer subject to the act and the latter to a company subject to the act.

GENERAL NOTE.—Attention is invited to the fact that the data for "still subject" divestments appearing in the above table have been compiled on a substantially different basis from the data appearing in the fourteenth annual report at pp. 58 and 59. The revised method of reporting eliminates certain substantial duplications and is basically designed to show only the present status as to jurisdiction of the statute for companies or systems which have undergone one or more complete divestment operation in the past. In this table only the most recent divestment operation is reflected. Data in the fourteenth annual report included all complete divestment operations affecting a company or system.

Contrary to popular conception, the Holding Company Act does not contemplate the elimination of all holding companies. Sections 2 (a) (29) and 11 (b) (1) prescribe standards for the continued operation of compact and well-integrated public-utility holding company systems subject to regulation by the Commission under other sections of the act, as more fully described in the preceding sections of this report, after they have completed compliance with the provisions of the statute.

While it is too early to determine precisely which companies or even which systems will remain subject to the Commission's continuing jurisdiction, it is estimated that some 6 or 7 billion dollars of assets (including electric, gas, and retainable nonutility assets) may remain subject to the act after integration proceedings have been completed. Present indications are that the following systems, among others, are likely to continue under the act in this manner:

American Gas & Electric Co.
American Natural Gas Co.
Allegheny Gas Co.
Central & South West Corp.
Columbia Gas System, Inc.
Consolidated Natural Gas Co.
Delaware Power & Light Co.
Derby Gas & Electric Corp.
Interstate Power Co.
Middle South Utilities, Inc.
National Fuel Gas Co.
New England Electric System.
Northern States Power Co.
North American Co. (or Union Electric Co. of Missouri).
Ohio Edison Co.

Philadelphia Electric Power Co.
The Southern Co.
Utah Power & Light Co.
West Penn Electric Co.
Wisconsin Electric Power Co.

As noted above, many companies have been eliminated from holding company systems as a result of proceedings designed to meet the corporate simplification standards. These standards have also required simplification of the security structures of many holding companies. Some of the most complex, prolonged and bitterly contested cases before the Commission have been those in which senior securities, particularly those of holding companies were replaced, with common stock of a new holding company or of one or more subsidiary companies. In these cases the rights of each class of security holder must be carefully evaluated and the equitable equivalent of such rights must be allotted to them in cash or in new stock. Many outstanding examples of corporate simplification have already been brought to completion; a number of these are discussed in the following sections of this report in connection with the narratives relating to individual systems.

## STATUS OF HOLDING COMPANY SYSTEMS

The over-all impact of both the geographical integration provisions of section 11(b)(1) and the corporate simplification provisions of section 11(b)(2) upon the major holding company systems is illustrated by the following reports tracing developments in the individual holding company groups listed below.

Cities Service Co.
The Commonwealth & Southern Corp.
Electric Bond & Share Co.
Engineers Public Service Co.
General Public Utilities Corp.
International Hydro-Electric System-New England Electric System.
Midland United Co.-Midland Utilities Co.
The Middle West Corp.
New England Gas & Electric Association.
New England Public Service Co.
The North American Co.
Northern States Power Co.
Ogden Corp.
Standard Power & Light Corp. and Standard Gas & Electric Co.
The United Light & Railways Co.
United Corp.
West Penn Electric Co.

### Cities Service Company

Cities Service Co. at the time of its registration in 1941 was the top holding company in a system containing 125 companies, of which 49 were electric and gas utility companies, with consolidated assets of approximately $1,000,000,000. This system owned or operated properties in each of the 48 States and in several foreign countries. Utility properties were held by three subholding companies, Cities Service Power & Light Co., Federal Light & Traction Co., and Arkansas Natural Gas Corp., each controlling one or more utility systems.

In proceedings under section 11(b) of the act, the Commission found that Cities should be limited in its operations to those of a single integrated gas utility system and required Cities to dispose of its other interests.[5] However, Cities expressed a desire to retain instead its nonutility businesses and accordingly the Commission modified its 11(b)(1) order so as to permit Cities to effect compliance by disposing of all of its utility interests.[6]

[5] Holding Company Act releases Nos. 4489 and 4551.
[6] Holding Company Act release No. 5350.

Cities Service Power & Light Co., pursuant to a plan approved on March 14, 1944,[7] simplified its corporate structure by eliminating its debentures and preferred stock. In August 1946, Power & Light liquidated and dissolved, transferring to Cities its portfolio holdings.[8] These consisted of an interest of approximately 65 percent in Federal Light & Traction Co., the common stocks of Ohio Public Service Co., Spokane Gas & Fuel Co., The Toledo Edison Co., Doniphan County Light & Power Co. (all operating utility companies) and other miscellaneous holdings.

Federal Light & Traction Co. has likewise completed liquidation proceedings. A number of its smaller properties were sold to individuals or other private purchasers and the stock of Tucson Gas, Electric Light & Power Co. was sold to underwriters for public distribution. Federal also merged four of its subsidiaries to form Public Service Co. of New Mexico and the stock of this company was distributed to Federal's common stockholders in the course of the liquidation. Federal distributed to its preferred stockholders $100 per share plus accrued and unpaid dividends and deposited in escrow an amount equivalent to the full premium of $10 per share plus interest for a period of approximately 3 years on the aggregate premium pending the determination of whether or not the preferred stockholders are entitled to receive more than par plus accrued dividends.

Arkansas Natural Gas Corp. has filed an application to comply with the Commission's outstanding order under section 11(b)(1) providing for the disposition of the gas distribution properties of its only gas utility subsidiary, Arkansas Louisiana Gas Co.[9] This application, filed in May 1948, is still pending and has since been consolidated with a proceeding instituted by the Commission to determine what action, if any, is required to be taken by Arkansas Natural Gas Corp. to comply with the requirements of section 11(b)(2).

On April 24, 1947, the Commission approved a section 11(e) plan filed by Cities Service Co. for the simplification of its corporate structure which provided for the issuance of approximately $115,000,000 principal amount of new debentures to the holders of Cities' outstanding preferred and preference stocks representing a principal amount equivalent to the redemption prices of the three series of preferred and preference stocks plus accumulated dividend arrears of approximately $50,000,000.[10] In addition, provision was made for the immediate retirement of approximately $40,000,000 of the company's outstanding long term debt and for the application of anticipated proceeds from the disposition of utility subsidiary companies to the retirement of the remaining long term debt and toward the reduction in the amount of the new debentures. Since the consummation of that plan in June 1947, Cities has disposed of its interest in the common stock of Public Service Co. of New Mexcio (acquired through liquidation of Federal Light & Traction Co.) and used the proceeds together with cash to retire approximately $9,000,000 of its outstanding debt. On April 12, 1949, Cities disposed of a portion of its interest in Ohio Public Service Co., an electric utility subsidiary. These

[7] Holding Company Act release No. 4944.
[8] Holding Company Act release No. 6865.
[9] File No. 70-1704.
[10] Holding Company Act release No. 7368, plan approved and enforced 71 F. Supp. 1003 (Del. 1947).

proceeds are likewise required to be applied toward reduction of Cities' debt.

**The Commonwealth & Southern Corporation.**

At the time of its registration as a public utility holding company in March 1938 The Commonwealth & Southern Corp. controlled a holding company system consisting of some 43 companies. Its principal subsidiaries were 11 public utility comapnies, all of which rendred electric service and some of which also furnished gas, transportation, and other services. These companies conducted their operations in 5 northern and 6 southern States. Although some of the electric properties in the South were interconnected, the northern electric properties for the most part were situated in separate and distinct areas. The publicly-held securities of the subsidiaries, consisting primarily of bonds and preferred stocks, aggregated about $711,000,000, while Commonwealth's own debt securities and preferred stock totaled about $52,000,000 and $150,000,000, respectively. Thus the system had outstanding an extremely large amount of senior securities ranking ahead of Commonwealth's common stock. Dividends on this common stock had not been paid since March 1932 and dividends on the cumulative preferred stock had been paid at a reduced rate for several years, resulting in dividend arrearages of about $18,000,000.

Since 1938 all of the transportation companies and nearly all of the small nonutility companies have been eliminated from the holding company system. Commonwealth also has sold its interests in three former public utility subsidiaries which conducted operations in Tennessee, South Carolina, and Indiana. A section 11(e) plan approved by this Commission on August 1, 1947,[11] resulted in the creation of The Southern Co. as a public utility holding company, and the transfer to it of Commonwealth's investments in the utility subsidiaries which conduct integrated electric utility operations in Georiga, Alabama, Florida, and Mississippi. In its order approving that plan, the Commission, among other things, ordered Commonwealth to dispose of its interest in all the northern subsidiary companies.

Another section 11 plan of Commonwealth, dated July 30, 1947, provides for the retirement of Commonwealth's preferred stock by exchanging for it the common stocks of Consumers Power Co. and Central Illinois Light Co. together with $1 per share in cash. This plan also provides that Commonwealth's remaining assets, chiefly consisting of the common stocks of The Southern Co. and a substantial portion of the common stock of Ohio Edison Co., be distributed to Commonwealth's common stockholders and that Commonwealth be dissolved. The last-mentioned plan was approved by this Commission [12] and by the District Court of the United States for the District of Delaware which directed that the plan be consummated.[13] Commonwealth has indicated its intention to make the initial distribution under this plan on or about October 1, 1949.

Upon the consummation of this plan, Commonwealth will have disposed of all its investments in subsidiary companies and will have been dissolved. As contrasted with its holding company system of 43

[11] Holding Company Act release No. 7615.
[12] Holding Company Act release No. 8633.
[13] Unreported (D. Del. No. 1175, 7-15-49).

companies in 1938, there will remain a number of independent companies and two nonaffiliated holding company systems: one consisting of Ohio Edison Co. with Pennsylvania Power Co. as its subsidiary; the other consisting of The Southern Co. with five subsidiary companies.

**Electric Bond & Share Co.**

The Electric Bond & Share Co. ("Bond and Share") system is the largest which has registered under the Holding Company Act. At the time of its registration under the act in 1938, it controlled 121 domestic subsidiaries including 5 major subholding companies with combined assets of nearly 3½ billion dollars. These subholding companies were American & Foreign Power Co., Inc. (Foreign Power), American Gas & Electric Co. (American Gas), American Power & Light Co. (American), Electric Power & Light Corp. (Electric), and National Power & Light Co. (National). Of these, American Gas ceased to be a subsidiary of Bond and Share in March 1947, National has disposed of substantially all of its interest in electric and gas utility subsidiaries and Electric as of the end of the 1949 fiscal year was in the process of dissolution pursuant to a plan approved by the Commission. In addition, Bond and Share has filed plans providing for the retirement of its preferred stocks and the divestment of all of its public utility investments in the United States in order to become, prospectively, an investment company.

Pursuant to plans filed in 1945 and 1946 and approved by the Commission and by the district court, Bond and Share has paid $100 per share, or an aggregate amount of $104,328,000, to the holders of its $5 and $6 preferred stocks and in addition has delivered to each of such holders a certificate evidencing the right to receive any additional amounts which the Commission or the courts may approve or direct.[14] On April 7, 1947, Bond and Share filed plan II–B in which it proposed that no further payment be made to holders of the preferred stock certificates.[15] Hearings on this plan have been completed, the matter has been briefed and argued and is presently before the Commission for decision. A portion of the funds required for the payments to preferred stockholders was derived from the disposition by Bond and Share of its holdings in American Gas and in Pennsylvania Power & Light Co. Both of these companies thereupon ceased to be subsidiaries of Bond and Share. In the latter part of 1948, Bond and Share also disposed of its holdings of the common stock of Carolina Power & Light Co., through a sale to the public and distribution to its common stockholders.[16]

**National Power & Light Co.**

On August 23, 1941, pursuant to proceedings instituted by the Commission, National was ordered to dissolve because it constituted an undue and unnecessary complexity in the Bond and Share system.[17] At the time of the issuance of this order, National had 27 subsidiaries, 9 of which were public utility companies. Substantial progress has been made in bringing about National's dissolution. All of its long-term debt has been retired through the use of treasury cash and its

[14] Holding Company Act releases Nos. 6121 and 6879–1, plan approved and enforced, 73 F. Supp. 426 (S. D. N. Y., 1946).
[15] Holding Company Act release No. 6768.
[16] Holding Company Act release No. 8694.
[17] 9 S. E. C. 978.

preferred stock was retired at $100 per share, partly through a voluntary exchange for common stock of Houston Lighting & Power Co. and in part by cash derived from sale of the Houston stock.[18] In May 1946, the Commission approved a plan for the settlement of all suits and claims against Bond and Share by or on behalf of National, its subsidiaries and certain former subsidiaries through payment of $750,000 by Bond and Share.[19] This settlement was subsequently approved by the United States district court and in August 1946 National distributed the common stocks of Pennsylvania Power & Light Co., Carolina Power & Light Co., and Birmingham Electric Co., its remaining principal subsidiaries, pro rata to its common stockholders. Thus Bond and Share, which owned 46 percent of National's common stock, received 46 percent of the stocks distributed. In preparation for these distributions Pennsylvania, Carolina, and Birmingham were reorganized to conform their accounts and structures to the requirements of the act. After the distribution of these companies, National's only remaining subsidiaries were Lehigh Valley Transit Co., The Memphis Street Railway Co. (Memphis) and Memphis Generating Co. (Memphis Generating). On August 17, 1948, the Commission approved a plan for the reorganization of Lehigh Valley,[20] which was subsequently approved by the United States district court.[21] Under the plan, Lehigh Valley's debt was retired by the payment of its principal amount and its capital stocks were reclassified into a new common stock. On March 22, 1949, the Commission approved a plan for the reorganization of Memphis,[22] which was subsequently approved by the United States district court.[23] Under this plan, National was paid approximately $327,000 for its interest in the common stock and Memphis' preferred stock was reclassified into a new class of common stock. A plan for the reorganization and disposition of Memphis Generating is pending.

**American Power & Light Co.**

On August 22, 1942, American and Electric were ordered to dissolve on grounds similar to those set forth with respect to National.[24] The Commission order was appealed by both American and Electric and subsequently affirmed by the United States Circuit Court of Appeals for the First Circuit on May 17, 1944, and by the United States Supreme Court on November 25, 1946.

At the time of the issuance of the dissolution order, American controlled directly or indirectly 35 subsidiaries, 16 of which were public utility companies. American's capital structure consisted of long-term debt, 2 classes of cumulative preferred stock with dividend arrearages of more than $35,000,000, and common stock. Considerable progress has also been made in resolving American's problems under section 11. All of American's long-term debt has been retired. In addition, American has disposed of its interest in Nebraska Power Co., Central Arizona Light & Power Co. and New Mexico Electric Service Co. plus certain minor properties. Plans for the sale in

[18] Holding Company Act release No. 4811
[19] Holding Company Act release No. 6663, plan approved and enforced, 80 F. Supp. 795 (S. D. N. Y., 1948).
[20] Holding Company Act releases Nos. 8445 and 8467.
[21] Unreported (E. D. Pa., No. 8812, 9-28-48).
[22] Holding Company Act release No. 8942.
[23] Unreported (N. D. Tenn., No. 1559, 4-22-49).
[24] 11 S. E. C. 1146.

July 1949 of all of American's interest in Kansas Gas & Electric Co. were completed at the close of the fiscal year. Its remaining subsidiaries, with the sole exception of Portland Gas & Coke Co., have been recapitalized to conform their accounts and structures to the requirements of the act in order to be ready for disposition. In October 1945, the Commission approved the formation by American of a new Texas holding company which acquired from American its interest in Texas Electric Service Co. and Texas Power & Light Co. and, from Electric, the latter's interest in Dallas Power & Light Co.[25] On April 24, 1947, the Commission authorized the merger of two of American's subsidiaries; namely, Northwestern Electric Co. and Pacific Power & Light Co. and the retirement of the two companies' preferred stocks through a new preferred stock issue by Pacific, the survivor.[26] Subsequently Pacific refunded its debt and the debt of Northwestern which had been assumed under the merger agreement.[27]

American and Bond and Share have filed a joint plan providing for the reorganization of American.[28] This plan is in substitution for an earlier plan which was withdrawn because of a change in market conditions. The present plan, in summary, provides for the settlement of all suits and claims against Bond and Share by and on behalf of American, its subsidiaries and certain former subsidiaries for a cash payment of $2,500,000 and the allocation of American's assets among its preferred and common stockholders in the ratio of 82 percent to the preferred and 18 percent to the common. The division of assets is proposed to be effected, under the plan, through the direct distribution of the common stocks of four of American's direct subsidiaries and the reclassification of American's present stocks into a single class of common stock. Hearings on this plan have been completed and the plan, as of the end of the fiscal year, was under consideration by the Commission. The plan had the support of all representatives of American stockholders who participated in the proceedings.

**Electric Power & Light Corp.**

At the time of the issuance of the Commission's dissolution order, Electric controlled directly or indirectly 24 subsidiary companies, 10 of which were public utility companies under the act. Electric's capital structure consisted of long-term debt, three classes of cumulative preferred stock with aggregate arrearages in excess of $53,000,000, common stock and option warrants entitling the holders, without limitation as to time, to purchase shares of common stock at $25 a share. The resolution of Electric's problems under section 11 has been substantially completed. Electric has disposed of its holdings in Idaho Power Co.[29] and Dallas Railway & Terminal Co.[30] through sales to the public and its holdings in Dallas Power & Light Co. were sold to the new Texas holding company organized by American. Its holdings in Utah Power & Light Co. were disposed of pursuant to a plan of reorganization of the latter company which provided, in part, for the reclassification of Utah's preferred and common stocks into

[25] Holding Company Act release No. 6158.
[26] Holding Company Act release No. 7369.
[27] Holding Company Act release No. 7564.
[28] File No. 54-168.
[29] 14 S. E. C. 167.
[30] Holding Company Act releases Nos. 6363 and 6377.

a new common stock.[31] United Gas Corp., Electric's principal subsidiary, was reorganized under section 11 in a proceeding which resolved all claims of United and Electric against Bond and Share arising out of the formation and financing of United.[32] In 1945 Electric retired its outstanding long-term debt with the proceeds derived from the disposition of properties described above and from retained earnings. In addition, the accounts and structures of Electric's remaining subsidiaries have been brought into compliance with the requirements of the act.

On March 2, 1949, the Commission approved a plan of dissolution filed by Electric.[33] This plan was filed in substitution for a joint plan filed by Electric and Bond and Share in July 1946 and subsequently withdrawn because of changed market conditions. The present plan provides in summary for the creation of a new holding company to acquire and hold the common stocks of the electric utility subsidiaries of Electric, subject to a reservation of jurisdiction under section 11 (b) (1) as to what properties of the subsidiaries may ultimately be retainable; the settlement of all suits and claims against Bond and Share by and on behalf of Electric, its subsidiaries, and certain former subsidiaries for a cash payment of $2,200,000; the distribution of Electric's assets among its security holders; and the dissolution of Electric. This plan was approved by the United States District Court for the Southern District of New York and is in the process of consummation.

**American Gas & Electric Co.**

At the time American Gas registered under the act its properties were divided, generally speaking, into three groups; namely, the Central System, operating in Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia, and West Virginia, the South Jersey System and the Northeast Pennsylvania System. Proceedings on an application filed by American Gas requesting approval of the continuance of its Central System together with the South Jersey and Northeast Pennsylvania Systems were consolidated with proceedings instituted by the Commission under section 11 (b) (1) in 1939. On December 28, 1945, the Commission concluded that the properties comprising the Central System formed an integrated electric system and were retainable under the act but that other properties must be divested if the Central System were to be retained.[34] Accordingly, in April 1946 American Gas sold to the public its holdings of the common stock of Scranton Electric Co.[35] and subsequently disposed of its holdings of the common stock of Atlantic City Electric Co., partly through a sale to the public and partly through dividend distributions to its common stockholders.[36] As a result of these dispositions, American Gas has fully complied with the Commission's order. The Commission has approved the acquisition by American Gas of the common stock of Indiana Service Co.[37] and, in August 1948, the acquisition of

[31] Holding Company Act release No 6212, plan approved and enforced, unreported (D. Utah, No. 901, 1-14-46).
[32] Holding Company Act release No. 5271, plan approved and enforced, 58 F. Supp. 501 (Del. 1944).
[33] Holding Company Act releases Nos 8889 and 8906, plan approved and enforced (S. D. N. Y., No. 49,547, April 22, 1949), appeal pending in United States Court of Appeals for Second Circuit.
[34] Holding Company Act release No. 6333.
[35] Holding Company Act release No. 6565.
[36] Holding Company Act release No. 7335 :
[37] Holding Company Act release No. 7054.

all of the outstanding securities of Citizens Heat, Light & Power Co.[38] The Commission held that the electric properties of both companies might properly be considered a part of the Central System. In 1946 American Gas was denied authority to enter a bid for Continental Gas & Electric Corp.'s holdings of 99.17 percent of the common stock of Columbus & Southern Ohio Electric Co. The stock was sold to the public shortly thereafter for $39,900,000. The Commission concluded that the holding company system of American Gas would exceed the limits of "bigness" permitted by sections 10 and 11 if the proposed acquisition of Columbus and Southern was approved.

**American & Foreign Power Co., Inc.**

Foreign Power controls a mutual service company and 70 subsidiary companies located in Central and South America, Cuba, Mexico, China, and India. Since the operations of all Foreign Power's subsidiaries are in foreign countries, the Commission's principal concern is with respect to the simplification of the company's corporate structure and its relationship to Bond and Share. Foreign Power's capital structure at December 31, 1948, consisted of debentures, serial notes, three classes of preferred stock with dividend arrearages of some $390,000,000, common stock, and option warrants. Bond and Share holds all the serial notes and substantial blocks of the junior securities.

On October 24, 1944, Foreign Power and Bond and Share filed a plan for the reorganization of Foreign Power. After extensive hearings, this plan was amended by the two companies and on November 19, 1947, the Commission approved such amended plan after the filing of certain additional modifications.[39] The plan, as approved by the Commission, was subsequently approved by the United States District Court for the District of Maine.[40] However, because the company could not effectuate the financing necessary to consummate the plan, both the district court and the Commission vacated their orders approving it. On May 2, 1949, the Commission issued an order pursuant to section 11(b)(2) of the act requiring Bond and Share and Foreign Power to take steps to reorganize Foreign Power in such a manner that its resulting capital structure will consist only of common stock plus such amount of debt as will meet the applicable standards of the act.[41]

At the end of the fiscal year there was pending before the Commission an application by Foreign Power and Bond and Share in which it was proposed that Bond and Share would transfer to Foreign Power $19,500,000 principal amount of past due 6 percent debentures of Cuban Electric Co., a subsidiary of Foreign Power, in exchange for a $19,500,000 note of Foreign Power to bear interest at the rate of 6 percent per annum.[42] The stated purpose of the application is to facilitate the carrying out of a reorganization plan for foreign Power's Cuban subsidiaries and to provide Foreign Power with marketable securities which it could sell to obtain cash to meet the needs of its subsidiaries.

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[38] Holding Company Act release No. 8453.
[39] Holding Company Act releases Nos. 7815 and 7849.
[40] 80 F. Supp. 514 (Me., 1947).
[41] Holding Company Act release No. 9044.
[42] File No. 54-111.

**Engineers Public Service Company**

Events in the current fiscal year have brought substantially to a close the problems confronting this major public-utility holding company system. At the time of registration, Engineers Public Service Co. was a conspicuous example of geographical scatteration. Through its 20 subsidiaries, including 2 intermediate holding companies, it carried on operations in the States of Virginia, North Carolina, Georgia, Florida, Louisiana, Texas, New Mexico, Wyoming, South Dakota, Nebraska, Kansas, Missouri, Iowa, and Washington, and in Canada and Mexico. Operations included not only the electric and gas businesses but also such nonutility businesses as transportation, ice, steam and telephone. Proceedings were instituted under section 11(b)(1) of the act and the Commission directed, after hearings, that Engineers retain only one of its subsidiaries, Virginia Electric & Power Co., or, if the company elected, Gulf States Utilities Co.[43] Engineers contested the Commission's order in the courts but, while review proceedings were pending, proceeded to divest itself by sale of many of its properties. One major operating subsidiary, Puget Sound Power & Light Co., was reorganized and Engineers' remaining interest therein was sold. The two sub-holding companies were eliminated. A portion of the proceeds of these sales was used by Engineers to acquire Virginia Public Service Co. which adjoined and was interconnected with the properties of Virginia Electric & Power Co., its largest subsidiary. The properties so acquired were merged into the latter company.

By 1945 the Engineers system had been reduced to three operating companies, each soundly financed and capable of standing upon its own feet. These companies were Virginia Electric & Power Co. operating in Virginia, West Virginia, and North Carolina, Gulf States Utilities Co., in Louisiana and Texas, and El Paso Electric Co., in Texas and New Mexico. In that year, Engineers filed a voluntary plan under section 11(e) of the act which provided that Engineers' preferred stock should be retired by the payment of cash and that the remaining assets should be distributed to its common stockholders, after which Engineers would liquidate and dissolve. The El Paso stock was distributed to the common stockholders of Engineers, as was the major portion of the stock of Virginia Electric & Power Co. The stock of Gulf States Utilities Co. was offered to common stockholders of Engineers on a subscription basis.

The principal question which arose in connection with the plan involved the amount of cash to be paid to preferred stockholders of Engineers. The company originally proposed that the preferred stock be retired by the payment of an amount equal to the involuntary liquidation price, $100 per share plus accrued dividends. Certain preferred stockholders contended that the preferred stock should receive amounts equal to the call prices, which were $105 for the $5 preferred and $110 for the $5.50 and $6 series. The latter position was sustained by the Commission, which held that while the charter provisions did not control, the fair investment value of the preferred stock was not less than the respective call prices.[44] Engineers ac-

[43] 12 S. E. C. 41.
[44] Holding Company Act releases Nos. 7041 and 7119.

cordingly amended its plan to provide for the retirement of the preferred by the payments of amounts equivalent to the call prices. After litigation which reached the Supreme Court, Commission approval of the plan was upheld.[45]

The balance of the stock of Virginia Electric & Power Co. retained by Engineers is now being sold, leaving Engineers with no substantial asset other than cash. This cash will be distributed to the common stockholders upon dissolution of the company.

**General Public Utilities Corp.**

This company is the top holding company emerging from reorganization of the former Associated Gas & Electric System. Associated Gas & Electric Co. and its immediate subsidiary Associated Gas & Electric Corp. registered as holding companies on March 28, 1938. At that time the system consisted of 164 companies, including 11 subholding companies, and was unequalled for the complexity of its corporate structure. Four of the utility companies were as many as 6 tiers of companies removed from the top holding company. The system was engaged in business in 26 States scattered from Maine to Arizona and in the Philippine Islands; the businesses included such diverse activities as electric, gas, water, ice, street railway, bus, heating, hotel, insurance, real estate, engineering, marine towing, toll bridge, coal mining, and ferry operations. Associated Gas & Electric Co. itself had outstanding 10 different kinds of fixed-interest debt obligations, several series of income debentures, a number of securities variously known as convertible debenture certificates, convertible certificates, and convertible obligations, two different classes of preferred stock, a class A stock, a class B stock, a common stock and warrants to purchase common stock. Most of Associated's subsidiaries also had senior securities outstanding in the hands of the public. The consolidated assets of the system were stated at a little over $1,000,000,000 and the corporate assets of Associated Gas & Electric itself were stated at approximately $450,000,000.

In 1940, Associated Gas & Electric Co. and Associated Gas & Electric Corp. filed petitions for reorganization pursuant to chapter X of the Bankruptcy Act. In 1942, pursuant to the provisions of section 11 (b) (1) of the act, the trustees of Associated Gas & Electric Corp. were ordered to divest themselves of all their interests in some 114 companies located primarily outside the 3 States of New York, Pennsylvania, and New Jersey, no determination being made at that time of the status of the majority of the properties in these States.[46] Of these 114 companies 111 have been divested. Included in the 3 remaining companies are 2 operating in the Philippine Islands as to which our divestment order has been temporarily suspended.[47] Just prior to the close of the fiscal year the Commission ordered the section 11 (b) (1) proceedings reconvened for the purpose of determining what properties located in Pennsylvania and New Jersey, and incidental businesses related thereto, may be retained under the standards of the act.[48] All but 3 New York properties have already been divested and preparations are being made for the disposition of these 3 as well.

[45] 17 L. W. 4601 (1949).
[46] 11 S. E. C. 1115.
[47] Holding Company Act release No. 5601.
[48] Holding Company Act release No. 9182.

As at January 1, 1946, a comprehensive plan of reorganization of Associated Gas & Electric Co. and Associated Gas & Electric Corp. was consummated pursuant to chapter X of the Bankruptcy Act and section 11 (f) of the Holding Company Act. In place of the two companies and their many securities there was substituted a single company, General Public Utilities Corp. (GPU), which had a security structure consisting of 10 year convertible debentures, bank loans, and common stock. The debentures were redeemed in 1947, however, and at June 30, 1949, GPU had outstanding only $3,950,000 of notes payable to banks, all due within approximately 6 years, and common stock having a book equity of approximately $122,000,000.

After consummation of the plan of reorganization, GPU's assets consisted primarily of securities of three subholding companies which in turn had outstanding in the hands of the public approximately $80,000,000 of senior securities. These publicly held securities have been reduced to $32,000,000 through the dissolution of two of these companies and the retirement of substantial amounts of senior securities by the third. Plans are presently pending which should result in the retirement of the remaining subholding company's senior securities and make possible the dissolution of the company if such action should be deemed necessary or advisable at that time.

The operating subsidiaries of General Public Utilities have all restated their accounts to eliminate inflationary items and have been refinanced in a manner which enables them to raise new money for construction purposes on a sound and economic basis.

**International Hydro-Electric System—New England Electric System**

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

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

The Commission initiated proceedings under section 11 (b) (2) with respect to IHES. The first important step in these proceedings was to cause the cancellation of the class B and common stock. Subsequently, in 1942, the Commission directed IHES to liquidate and dissolve.[49] However, many system problems had to be resolved before the portfolio of IHES could be distributed. Among these were litiga-

[49] 11 S. E. C. 888.

tion of claims on behalf of IHES against its former parent, International Paper Co., the reorganization of NEES, and the merger of IHES's two New York subsidiaries into a single company. These matters were not fully disposed of until 1947, when the reorganization of NEES was completed and the sum of $10,000,000, together with other considerations, was finally paid to IHES in settlement of the claims against International Paper Co. The separate reorganization of NEES was itself a major operation. NEES had five subholding companies, in two tiers, over its operating subsidiaries. Under a voluntary plan filed under section 11 (e) of the act the subholding companies were eliminated by the retirement of their securities in exchange for cash or new common stock of NEES.[50] NEES emerged from the reorganization with a single issue of debt and common stock, which replaced 18 classes of old securities. IHES now owns only 8 percent of the common stock of NEES, and is no longer a holding company with respect to it.

It is contemplated that NEES will continue indefinitely as a registered holding company. During the current fiscal year the Commission has entertained numerous applications by NEES and its subsidiaries relating principally to the financing problems of the NEES system. Also, Green Mountain Power Corp., a subsidiary of NEES operating in Vermont, has itself filed a voluntary plan of reorganization.

Meanwhile, hearings on various plans for the liquidation and dissolution of IHES are going forward. An application has been made by a class A stockholder of IHES seeking to have the Commission modify its dissolution order of 1942 in order to permit IHES to continue as a corporate entity rather than to dissolve.

**The Middle West Corp.**

The Middle West Corp. (Middle West), successor in bankruptcy to Middle West Utilities Co., registered under the Holding Company Act in December 1935. At that time it had 152 subsidiaries, including 62 electric or gas utility companies and fifteen subholding companies. Sixteen of the 152 subsidiaries were themselves in process of reorganization under the Bankruptcy Act, and these in turn controlled an additional 74 of the system companies.

As a result of proceedings under section 11 (b) (1) of the act, Middle West was ordered to sever its relations with all properties, operations and companies except Central Illinois Public Service Co. and its subsidiaries and Kentucky Utilities Co. and its subsidiaries, jurisdiction being reserved to consider the retainability of these companies.[51]

In 1947, however, the management of Middle West decided to dissolve the corporation and a resolution was presented to stockholders, who voted in favor of the dissolution. Pursuant to this decision, Middle West distributed to its stockholders its principal assets, consisting of the common stocks of Central Illinois Public Service Co., Kentucky Utilities Co., Public Service Co. of Indiana and Wisconsin Power & Light Co.[52] Many of its smaller properties were sold or merged into other companies in the system. Middle West has now

[50] Holding Company Act release No. 6470.
[51] 14 S. E. C. 309.
[52] Holding Company Act releases Nos. 8642 and 8788.

disposed of substantially all of its assets. Declarations are pending before the Commission covering the disposition of its holdings of common stock of Upper Peninsula Power Co. and of its interest in four service companies.

In April 1946, the Commission approved the creation of the Central & South West Corp. system,[53] which is comprised of four electric utility companies of substantial size. The new system was formed by merging two subholding companies which between them had four outstanding issues of 6 and 7 percent preferred stock with dividend arrearages totaling about $16,000,000. These shares were retired at the redemption price plus accrued dividends. The merger also resulted in increasing combined common equity from 9.5 percent of total capitalization and surplus to 29.5 percent. The new Central & South West Corp. continues to be subject to the act as a registered holding company controlling an integrated electric system.

**Midland United Co. and Midland Utilities Co.**

Midland United Co. and its subsidiary, Midland Utilities Co., which had been part of the Insull utility empire, filed voluntary petitions for reorganization pursuant to section 77B of the Bankruptcy Act on June 9, 1934. The trustees of the respective estates registered as holding companies under the Public Utility Holding Company Act of 1935 on December 1, 1935. At that time the Midland United System was comprised of 27 companies and Midland Utilities Co., in turn, had an additional 18 subsidiaries.

At the time of the filing of the bankruptcy petitions, Midland United had outstanding secured demand notes, two classes of preferred stock, both in arrears as to dividends, and common stock. Midland Utilities had outstanding both secured and unsecured demand notes, debentures on which there was accumulated unpaid interest, two classes of preferred stock, both in arrears as to dividends, and common stock. In addition, there were intercompany claims between the two companies as well as claims against the estates by various affiliated and nonaffiliated interests.

Various plans were considered by the reorganization court and by this Commission and numerous hearings with respect to such plans were held. The final plan of reorganization was approved by this Commission in late 1944, and was confirmed by the reorganization court on April 7, 1945. This plan, which was thereafter consummated, proposed the recapitalization of both companies on a one-stock basis with complete liquidation to follow within five years. The liquidation of both companies has now been completed.

**New England Gas & Electric Association**

New England Gas & Electric Association, a Massachusetts trust, registered as a holding company in 1938 and in 1941 was made the subject of proceedings under section 11 (b) (2) of the act. At that time the company's capitalization consisted of five debenture issues, four of which matured in the years 1947 to 1950, two classes of preferred shares with large dividend arrearages, and common shares. There was little or no equity for the second preferred and common stock of New England. Furthermore, under the terms of its declara-

[53] Holding Company Act release No 6606.

tion of trust its shares were all nonvoting and vested in the holders no right or power to elect or remove its trustees, directors, or officers or to control them in the management of its affairs. The trustees were self-perpetuating and they in turn appointed or removed officers and directors.

The system consisted of 10 electric utilities, 7 gas utilities, 2 gas and electric utilities, a steam-heating company and 2 service companies. The utility subsidiaries rendered service in the States of Massachusetts, New Hampshire, and Maine. New England's investments in its subsidiaries were carried at approximately double the related net assets of the subsidiaries at the dates of their acquisition.

Subsequent to the institution of section 11 (b) (2) proceedings the trustees of Associated Gas & Electric Co. and Associated Gas & Electric Corp. asserted claims in the amount of approximately $30,000,000 against New England arising from various transactions between the two systems. It appeared to the Commission that before a determination could be made with respect to the recapitalization of New England the validity and rank of the asserted claims would have to be resolved, and the proceedings under section 11 (b) (2) were broadened accordingly.

After conclusion of very lengthy hearings, but before a decision of the Commission with respect to the claims, numerous discussions were held by the parties looking toward a recapitalization plan which would resolve the section 11 (b) (2) problems and also the complex claims and counterclaims between New England and the Associated system. A plan of recapitalization acceptable to the various parties in the proceeding was then filed and approved by the Commission [54] and by the United States District Court for the District of Massachusetts.[55] Due to adverse market conditions, however, this plan was not consummated. In the following year an alternate plan was approved by the Commission [56] and was consummated during April 1947.

The alternate plan substituted for the complex capitalization of New England a capital structure consisting of collateral trust bonds, preferred stock and common stock. It corrected the lack of voting power by extending to the proposed shares full voting rights, including the right to elect trustees annually. The plan also provided for a settlement of the enormous contingent debt liabilities resulting from the claims litigation and restated the carrying value of New England's investments in its subsidiaries at approximately $50,000,000, representing related net asset value as shown by the books of the subsidiary companies.

**New England Public Service Co.**

This company at the time of its registration had five major operating subsidiaries, of which two operated in Maine, one in New Hampshire and two in New Hampshire and Vermont. It also owned, through an industrial subsidiary, five textile mills, a paper company, and a forest products manufacturing company. The company was heavily overcapitalized, having outstanding two classes of prior lien preferred stock and, junior thereto, four classes of preferred stock. All these

[54] Holding Company Act release No. 6729.
[55] Unreported (D. Mass ; No. 5636, 7-17-46, 3-10-47).
[56] Holding Company Act release No. 7181.

preferred issues had substantial dividend arrearages. As a result of simplification proceedings instituted by the Commission under section 11 (b) (2) of the act, the company was directed, in 1941, to reorganize on a one-stock basis, or, in the alternative at its election, to liquidate and dissolve.[57] The company did not appeal this decision and has elected to dissolve. It has merged Cumberland County Power & Light Co. into Central Maine Power Co. and has caused Public Service Co. of New Hampshire to acquire the New Hampshire properties of Twin State Gas & Electric Co. and Central Vermont Public Service Corp. to acquire the Vermont properties of that company. The industrial companies were sold for cash.

A plan filed by the company under section 11 (e) of the act provided for the retirement of the prior lien stock by the payment of amounts equal to the voluntary redemption prices, $120 per share for the $7 series and $110 per share for the $6 series, in each case with accrued dividends. A portion of the cash required was derived from the sale of the company's interest in its nonutility properties and the balance from a bank loan. Due to the pendency in the courts of the *Engineers Public Service Co.* case, the Commission approved the retirement of the preferred by the payment for each share of prior lien of $100 per share and the deposit of the difference in escrow, reserving for future determination what additional amounts, if any, should be paid on the prior lien stock.[58] This plan was approved by the district court.[59]

Superimposed on New England Public Service Co. is Northern New England Co., a voluntary association, which owns approximately one-third of the former company's common stock. During the current fiscal year the Commission approved a plan for the partial liquidation of this company by distribution of cash to its shareholders.[60] At the same time it directed that the company liquidate and dissolve.

**The North American Co.**

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

During the last 5 years, North American has taken substantial steps toward compliance with the Commission's section 11 (b) (1) order, which was issued in 1942.[61] By a number of means, including dividend payments in portfolio securities, outright distribution, issuance of purchase warrants to its stockholders and sale at competitive bidding, North American has disposed of nearly all of its assets except Union Electric Co. of Missouri, Missouri Power & Light Co., and several minor nonutility subsidiaries.

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[57] 9 S. E. C. 239
[58] Holding Company Act releases Nos. 7511 and 7713.
[59] 73 F. Supp. 452 (S. D. Me., 1947).
[60] Holding Company Act release No. 8401.
[61] 11 S. E. C. 194 (1942), aff'd *sub nom The North American Co.* v. *S. E. C.*, 133 F. 2d 148 (C. A. 2, 1943), aff'd 327 U. S 686 (1946).

Among major interests which have been divested are those in Pacific Gas & Electric Co., Cleveland Electric Illuminating Co., Wisconsin Electric Power Co., Potomac Electric Power Co., Detroit Edison Co., Illinois Power Co., St. Louis County Gas Co., Northern Natural Gas Co., Des Moines Electric Light Co., and Illinois Terminal Co. Since the close of the fiscal year, the Commission has approved divestments of West Kentucky Coal Co. and Kansas Power & Light Co.[62] The Commission has before it a plan for the liquidation and dissolution of North American Utility Securities Corp., a proposed sale by North American of its holdings in Capital Transit Co., and the proposed transfer of Missouri Power & Light Co. to Union Electric Co. of Missouri.

Concurrently with its divestments, North American has eliminated all of its debt and preferred stock and presently has an all common stock structure.

**Northern States Power Co.**

Northern States Power Co., a Delaware corporation, had as its only substantial asset the common stock of Northern States Power Co., a Minnesota corporation. The Delaware company had been organized prior to the passage of the Holding Company Act, largely for the purpose of avoiding a provision for double stockholders' liability then contained in the Minnesota corporation law. This provision was later repealed and for many years the Delaware company performed no function other than to hold the Minnesota company stock.

The Minnesota company, on the other hand, is a substantial holding-operating company, engaged, either directly or through subsidiaries, in the gas and electric business in the States of Minnesota, Wisconsin, North Dakota, and South Dakota, and, to a minor extent, in Illinois.

The Delaware company filed various plans for its liquidation and dissolution. The principal question arose as to the proportions in which its principal asset, the common stock of the Minnesota company, should be distributed among its four classes of security holders. During the past fiscal year, the Commission approved a plan giving to the 7 percent preferred 41.05 percent, to the 6 percent preferred 36.94 percent, to the class A common stock 18.82 percent and to the class B common stock 3.19 precent.[63] The United States District Court for Minnesota approved this plan and ordered it carried out.[64] Distribution has now been made.

**Ogden Corp.**

This company is the successor in reorganization to the former Utilities Power & Light Corp. At the time of its registration as a holding company in 1936, Utilities Power & Light Corp. had total consolidated book assets of over $300,000,000, and 48 subsidiaries, including 27 public utility companies. The utility subsidiaries were located in far-flung areas—including 12 States of the United States and 2 provinces of Canada.[65] Its other subsidiaries were engaged in a

[62] Holding Company Act releases No. 9237 and 9213.
[63] Holding Company Act releases Nos. 7950 and 7976.
[64] 80 F. Supp. 193 (Minn., 1948).
[65] Just prior to its registration as a holding company Utilities Power, through its subsidiary Utilities Power & Light Corp., Ltd., had disposed of its interests in 57 British utility subsidiaries.

great variety of nonutility businesses, including such nonrelated enterprises as machinery manufacturing, motion picture theater, wood products manufacturing, railroad transportation, coal production, and oil production. As a result of its top-heavy capital structure—consisting of two series of debentures, preferred stock (with large dividend arrearages) and three classes of common stock—Utilities Power went into bankruptcy in 1937. In 1938, the Commission instituted proceedings against the Utilities Power system under the integration provisions of section 11 (b) (1) of the act—the first of such proceedings to be instituted by the Commission.

Emerging as Utilities Power's successor pursuant to a plan of reorganization approved by the Commission and by the district court, Ogden Corp. was committed to a program of divestment of its interests in utility properties, so that it would cease to be a public utility holding company under the act.[66] Ogden's initial outstanding securities, which were distributed among the creditors and preferred stockholders of Utilities Power in the latter's bankruptcy reorganization, consisted of debentures, preferred stock and common stock. With the proceeds from the sale or other disposition of public utility investments, Ogden, as early as 1940, redeemed for cash its entire outstanding debentures and preferred stocks and has since made substantial cash distributions to holders of its common stock.

Ogden also caused the reorganization of certain of its utility subsidiaries so as to simplify their capital structures, eliminate dividend arrearages, and place them on a sound financial basis. Thus, Derby Gas & Electric Corporation was reorganized in 1942;[67] The Laclede Gas Light Co. was reorganized in 1945;[68] and Interstate Power Co. was reorganized in 1948.[69] In addition, Central States Power & Light Corp. disposed of all its physical utility properties and its liquid assets have been distributed to its security holders and to certain security holders of its parent company, Central States Utilities Corp., pursuant to a plan of liquidation and dissolution of both companies approved by the Commission in July 1947.[70]

Since its inception in 1940 Ogden has divested itself of direct or indirect public utility interests with book assets of over $150,000,000. Among the principal divestments were the sale of Ogden's investment in Indianapolis Power & Light Corp., its interest in the reorganized Derby company, and of the reorganized Laclede company. In addition, Ogden disposed of investments in numerous nonutility subsidiaries through outright sale or dissolution of such subsidiaries.

Following the reorganization of Interstate, referred to above, certain shares of new common stock of Interstate, together with cash, were placed in escrow pending resolution of subordination questions regarding Ogden's former holdings in Interstate, under the principles of the *Deep Rock* case.[71] In June 1949 the Commission approved a plan for resolution of the "Deep Rock" issues which provided for distribution

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[66] 5 S. E. C. 483 (1939).
[67] 9 S. E. C. 686 (1941).
[68] Holding Company Act releases Nos. 5062 and 5071, plan approved and enforced, 57 F. Supp. 997 (ED Mo. 1944).
[69] Holding Company Act release No. 7955, plan approved and enforced, unreported (Del., No. 1003, January 7, 1948).
[70] Holding Company Act releases Nos. 7568 and 7610, plan approved and enforced, 74 F. Supp. 360 (Del. 1947).
[71] For a discussion of the *Deep Rock* case and the underlying principles thereby established, see the Commission's Tenth Annual Report, p. 94.

of the escrowed stock and cash to public holders of Interstate's old debentures and preferred stocks and to Ogden.[72] The matter is pending in the District Court of the United States for the District of Delaware. Pursuant to the plan, Ogden is committed to disposition of its holdings in Interstate's new common stock within a year from the effective date of the plan.

Ogden having disposed of all its interests in public utility properties (with the single exception of its interest in Interstate which, as noted above, is destined for early disposition) the Commission, in August 1948, granted an application pursuant to section 5 (d) of the act declaring Ogden to be no longer a registered holding company, subject to certain conditions and reservations.[73] Shortly thereafter, Ogden registered with the Commission as an investment company under the Investment Company Act of 1940.

Of the entire former Utilities Power system, only Derby Gas & Electric Corp. (with present total consolidated assets of approximately $15,800,000) and Interstate Power Co. (with present total consolidated assets of approximately $49,000,000) remain subject to the act as registered holding companies.

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

The Standard holding company system presented in extreme degree the evils of corporate pyramiding and scatteration of properties which the integration and simplification provisions of the act were designed to eliminate. Standard Power, through its subsidiary, Standard Gas, controlled at that time 104 active subsidiaries whose operations were conducted in 20 different States and Mexico, and the system contained 9 registered holding companies. At June 30, 1949, the number of active subsidiaries had been reduced to 66 companies (including 43 street railway companies) operating in 8 States, and the number of registered holding companies to 3. The system presently comprises Philadelphia Co. and its subsidiaries, Wisconsin Public Service Corp., Oklahoma Gas & Electric Co., Louisville Gas & Electric Co., and Market Street Railway Co., an inactive company in process of dissolution. Substantially all of the proceeds from divestments together with undistributed earnings of Standard Gas were applied to the reduction of Standard Gas' indebtedness from some $71,000,000 in 1940 to $9,800,000 as of June 30, 1949. On December 31, 1948, the Commission entered an order requiring either the liquidation of Standard Gas or its recapitalization on an all-common stock structure.[74]

In 1947, extensive hearings were held on the status under section 11 of Standard Gas' principal subsidiary, Philadelphia Co. That company is a holding company whose principal subsidiaries are engaged in serving the Pittsburgh area with electricity (Duquesne Light Co.), natural gas (Equitable Gas Co.) and street railway and bus transportation (Pittsburgh Railways Co. and its underliers). In June 1948, the Commission ordered Philadelphia Co. to dispose of its interests in the natural gas utility and the transportation businesses and thereafter to liquidate and dissolve.[75] Standard and Philadelphia Co. filed petitions for review of that order with the United States Court of

[72] Holding Company Act releases Nos. 9139 and 9202.
[73] Holding Company Act release No. 8402.
[74] Holding Compay Act release No. 8773.
[75] Holding Company Act release No. 8242; rehearing denied, Holding Company Act release No. 8320.

Appeals for the District of Columbia. Briefs were filed and oral argument was had on May 19, 1949. As of the end of the fiscal year the matter was pending decision by the court.

In late 1948, Standard Gas filed a voluntary plan for the simplification of the capital structure of Philadelphia Co., providing for the retirement of Philadelphia Co.'s $36,000,000 of funded debt and $40,000,000 of preferred stocks. Hearings on that plan were commenced in April 1949 and have been adjourned to October 1949 to permit Standard to prepare and file amendments.

An important development in the compliance by Standard Gas & Electric Co. with section 11 occurred in May 1949, when a compromise plan for the reorganization of Pittsburgh Railways Co., which has been in bankruptcy since 1938, was announced.[76] The transit system in Pittsburgh is operated by Pittsburgh Railways Co. under complex lease and operating agreements. It is owned by 55 separate corporations which have 42 security issues outstanding in the hands of the public and some 80 other security issues held by Philadelphia Company and its subsidiaries. Philadelphia Co. and Pittsburgh Railways, in addition, have guaranteed or are otherwise obligated to pay rentals, bond interest, taxes and other obligations of some of the underlying companies. Under the plan, a single company would be formed which would replace all of the existing companies, and would have a simple capital structure consisting of common stock and not to exceed $6,000,000 of bonds. During the last fiscal year two major voluntary simplification plans of subholding companies in the Standard System—Louisville Gas & Electric Co. and Northern States Power Co., both Delaware holding companies superimposed upon operating utilities having the same names—were consummated, marking the culmination of extensive hearings and lengthy court proceedings. Those companies are now in the process of liquidation.

Perhaps the most significant recent development in the system, from the point of view of stockholders, was the resumption in early 1949 of regular quarterly dividends on the senior preferred stocks of Standard Gas for the first time since 1934, made possible by the substantial improvement in the system's earnings in recent years and the refunding of Standard Gas' bank loan. This, in turn, made possible the resumption, for the first time since 1935, of regular quarterly dividends on the preferred stock of Standard Power.

**The United Light & Railways Co.**

On February 18, 1938, The United Light & Power Co. registered as a holding company with a system comprised of 10 holding companies, 7 of which were registered holding companies, 21 electric and gas utility subsidiaries, 20 nonutility subsidiaries, and a service company. In 1941 the Commission directed the dissolution of United Light & Power Co. and United American Co., a subholding company.[77] By a subsequent order the Commission directed the divestment of the interests of United Light & Power Co. and the subholding companies in 22 subsidiaries in order to comply with the standards of section 11 of the act.[78]

[76] File No. 52-28.
[77] 8 S. E. C. 837.
[78] 9 S. E. C. 833.

After a series of transactions designed to enable Light and Power to comply with the outstanding order of dissolution, the Commission approved a plan which provided, in substance, for the distribution of Light and Power's remaining investment, the common stock of United Light & Railways Co., to its common stockholders.[79] The residual net assets of Light and Power were transferred to Railways, and Light and Power was dissolved. Thus, Railways became the system's top holding company with two principal subholding company systems, Continental Gas & Electric Corp. and American Light & Traction Co.

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

On February 17, 1949, Railways and Continental publicly announced their intention to liquidate and dissolve and a plan under section 11 (e) was accordingly filed with the Commission on May 31, 1949.[80] The liquidation and dissolution of the two companies will be accomplished, after retirement of their debt, by the distribution of the common stocks of subsidiary companies to common stockholders of Railways and to a small minority interest holding common stock of Continental. If the proposed dissolutions are consummated, there will remain of the complex holding and subholding company system of The United Light & Power Co. only an integrated gas utility system held by Light and Traction, which has changed its name to American Natural Gas Co.

**United Corp.**

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

In June 1941, the Commission instituted proceedings with respect to United under sections 11 (b) (1) and 11 (b) (2) of the act. At that time the 125 companies in the United System operated in 22 States and in Canada. Their combined total assets approximated $2,765,000,000. Subsequently, the Commission ordered that United change its existing capitalization, which consisted of preferred and common stocks, to one class of stock and that it cease to be a holding company.[81] United has since retired all of its preference stock by exchanging for it portfolio

[79] Holding Company Act release No. 3242 and 10 S. E. C. 945.
[80] File No. 54-178.
[81] Holding Company Act release No. 4478.

securities and cash. Its principal investments now consist of common stocks of the following companies:

| Company | Percent of voting control |
|---|---|
| Niagara Hudson Power Corp | 28 |
| South Jersey Gas Co | 28. 5 |
| The Columbia Gas System, Inc | 6. 8 |
| Public Service Electric & Gas Co | 3. 5 |
| The United Gas Improvement Co | 7. 7 |

There is pending before the Commission a plan for the distribution to United's common stockholders of approximately 50 percent of its holdings of Niagara Hudson common stock.[82]

**Niagara Hudson Power Corp.**

In 1942 the Commission instituted proceedings under section 11 (b) (2) with respect to Niagara Hudson, its subholding company, Buffalo Niagara and Eastern Power Corp. (BNE), and their 18 subsidiary companies. Subsequently, a plan was filed pursuant to section 11 (e) of the act providing, among other things, for the consolidation of BNE and its 3 principal public-utility subsidiaries, the dissolution of Niagara Hudson and the payment of accrued and unpaid preferred dividends. This plan, however, was disapproved by the Public Service Commission of the State of New York. Thereafter the Commission issued an order requiring BNE to recapitalize on a one stock basis.[83]

BNE and Niagara Hudson then filed plans providing for the consolidation of BNE and certain of its subsidiaries into Buffalo Niagara Electric Corp. as a surviving company.[84] To accomplish the reorganization Niagara Hudson used approximately $63,000,000 in retiring the publicly held second preferred stock of BNE at its call price plus accrued dividends. These funds were obtained from bank loans, treasury cash and proceeds from the sale of certain of Niagara Hudson's portfolio securities.

At the end of the 1949 fiscal year there were pending before the Commission plans providing, among other things, for the consolidation into a single operating company of Niagara Hudson's principal subsidiaries; namely, the new Buffalo Niagara Electric Corp., Central New York Power Corp., and New York Power & Light Corp.; the reclassification of the common stock of the new operating company into class A and common stocks; the exchange of class A stock for the outstanding preferred stocks of Niagara Hudson; the offering of the common stock of the new operating company to Niagara Hudson's own common stockholders on a subscription basis; and the eventual dissolution of Niagara Hudson. [85]

**The Columbia Gas System, Inc.**

Columbia registered as a holding company in January 1938. There were approximately 50 companies in the system at that time, including one subholding company, 4 electric utilities, 21 gas utilities and three electric and gas utilities.

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[82] File No. 54-167.
[83] Holding Company Act release No. 5115.
[84] Holding Company Act release No. 6083.
[85] File Nos. 54-170 and 54-172.

In 1941, the Commission instituted proceedings with regard to Columbia and several of its subsidiaries, including Columbia Oil & Gasoline Corp. The plan involved, among other things, the sale by Columbia Oil & Gasoline Corp. of its interest in Panhandle Eastern Pipe Line Co., the transfer of its five oil and gasoline subsidiaries to Columbia, and its subsequent liquidation. The Commission approved this plan [86] and consummation thereof had the effect of divorcing Panhandle Eastern from the Columbia System, a step which the Commission had found to be necessary under section 11 (b) (1).[87] The plan also extricated some of the companies and other interested parties from the problems which they faced under the antitrust laws, and terminated a complex tangle of private litigation.

After further proceedings under sections 11 (b) (1) and 11 (b) (2) with regard to Columbia and its remaining subsidiaries, the Commission found that Columbia could retain the distribution operations of the Charleston, Pittsburgh and Columbus groups of gas properties, as well as the production and transmission properties owned and operated by the companies within each group.[88] The Commission further found that certain other properties, including the properties owned by the Cincinnati Gas & Electric Co. and the Dayton Power & Light Co. were not retainable by Columbia and should be divested. Columbia has fully complied with this order and anticipates continued existence as a holding company controlling an integrated gas system. Since 1946, Columbia has issued and sold $78,000,000 principal amount of debentures in order to obtain funds for construction purposes and has raised new equity money through the issue and sale to its stockholders of 2,568,300 shares of additional common stock at $10 per share.

**The United Gas Improvement Co.**

United Gas Improvement Company (UGI) registered as a holding company in March 1938 with approximately 50 subsidiary companies engaged in the electric, gas, and miscellaneous businesses. After section 11 (b) (1) proceedings, the Commission defined its integrated system as the electric properties in the Pennsylvania, Delaware, and Maryland area, and orders of divestment were issued on the basis of this interpretation.[89] Thereafter voluntary plans under section 11 (e) were filed by UGI and its subsidiary, Philadelphia Electric Co., for the purpose of enabling the UGI system to effect partial compliance with section 11 (b). Pursuant to this plan, which was approved by the Commission,[90] UGI distributed to its preferred and common stockholders $30,600,000 in cash and substantially all its stockholdings in Philadelphia Electric and in Public Service Corp. of New Jersey. The consummation of this plan and the retirement of UGI's preferred stock made possible the further distribution of investments and cash to its common stockholders. It also made possible an exchange of properties between UGI and nonaffiliated holding company systems, out of which evolved the present holding company system of Delaware Power & Light Co.

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[86] 12 S. E. C. 218 and Holding Company Act releases Nos. 3829, 3950, and 4319.
[87] 11 S. E. C. 80.
[88] Holding Company Act release No. 5455.
[89] 9 S. E. C. 52 and 11 S. E. C. 338.
[90] 12 S. E. C. 1080, Holding Company Act release No. 4205, and 15 S. E. C. 131.

UGI later distributed to its stockholders its holdings of Delaware Power & Light Co. and exchanged for approximately 750,000 shares of its outstanding capital stock its portfolio holdings of securities of 4 public utility holding companies; namely, American Water Works & Electric Co., Inc., The Commonwealth & Southern Corp., Niagara Hudson Power Corp. and Public Service Corp. of New Jersey.

As of December 31, 1948, the UGI system consisted of five gas utility companies, one gas and electric company and five nonutility companies.

**Public Service Corp. of New Jersey**

Public Service Corp. of New Jersey for more than 40 years had been a holding company with respect to numerous electric, gas, and transportation subsidiaries operating primarily in the State of New Jersey. While it had been subject to the provisions of the act as a subsidiary of United Corp., it was, until 1946, exempted by rule from registration as a holding company. On June 12, 1946, the Commission revoked the exemption and instituted proceedings under sections 11 (b) (1) and 11 (b) (2) with respect to the system;[91] shortly thereafter Public Service registered as a holding company. At that time Public Service had four utility subsidiaries, chief of which were Public Service Electric & Gas Co. (PEG), and a transportation subsidiary, Public Service Coordinated Transport (Transport) which in turn had four nonutility subsidiaries.

At December 31, 1946, Public Service had outstanding $19,087,455 face amount of 6 percent perpetual interest bearing certificates secured primarily by noncallable preferred stocks of PEG and Transport with an aggregate par or stated value of more than twice the face value of the perpetuals. At the same date Public Service also had outstanding $160,000,000 aggregate par or stated value of noncallable preferred stocks bearing dividend rates of $8, $7, $6, and 5 percent as well as $112,000,000 stated value of common stock. In addition to these high cost, noncallable and perpetual securities which constituted an unparalleled stranglehold on system growth and expansion, numerous other classes and series of securities were held within the system.

As a result of a plan consummated on July 1, 1948, Public Service was dissolved and its security holders received securities of PEG, the principal operating company, in exchange for those of Public Service.[92] Substantially all perpetual and noncallable securities were eliminated, thus clearing the way for future system financing on an economical basis. Inflationary items in the accounts of the subsidiaries were either eliminated or subjected to a program of amortization. Several subsidiary companies were recapitalized, one was sold, and two were merged, the stock of the merged company being distributed to the Public Service common stockholders. PEG and its transportation subsidiaries are no longer subject to the provisions of the act.

**West Penn Electric Co.**

West Penn Electric Co. is the surviving holding company emerging from reorganization of American Water Works & Electric Co., Inc.

[91] Holding Company Act release No. 6693

[92] Holding Company Act releases Nos. 7964 and 8002; plan approved and enforced, unreported (D. N. J. No. 11105, 1-19-48)

The system of American Water Works & Electric Co., Inc. was comprised, at the date of registration, of 14 subholding companies (including 4 which were also operating companies), 14 electric or gas utility companies and 122 nonutility companies, most of which were water companies.

In 1947 American was liquidated and dissolved, resulting in the payment and discharge of $13,850,000 principal amount of corporate indebtedness of American and of $19,986,800 aggregate par value of corporate preferred stocks. There is still pending for the decision of the Commission the treatment to be accorded the holders of certificates issued to the preferred stock in lieu of any additional payment over voluntary liquidation price of $100 per share. The redemption premium applicable to this preferred stock was $10 per share. (Holding Company Act releases Nos. 7091 and 7208.).

This liquidation also resulted in the divestment of 70 water companies and the payment and discharge of preferred stocks plus arrears of a subsidiary aggregating in excess of $4,000,000. West Penn Electric Co. is now the top holding company in the system and controls 20 direct and indirect subsidiary companies engaged in electric, gas, transportation, and certain minor businesses in sections of Pennsylvania, West Virginia, Maryland, Virginia, and Ohio. The major operating utility operations of West Penn Electric have been consolidated in three companies, Monongahela Power Co., West Penn Power Co., and the Potomac Edison Co.

## COOPERATION WITH STATE AND LOCAL REGULATORY AUTHORITIES

It is the established policy of the Commission to seek effective cooperation with State commissions in all matters where their respective jurisdictions complement each other and in all other cases where such cooperation is desirable and appropriate.

Because the work of holding company simplification and integration is progressing at a good pace, large numbers of electric and gas utility operating companies have been divested and accordingly have passed from the jurisdiction of the Commission under the Holding Company Act. However, mutual problems of regulation continue to arise and in these instances, every effort is made to encourage exchange of ideas and information in furtherance of the policy of cooperation so clearly reflected in various sections of the Holding Company Act.

Most instances of cooperation during the past year have involved questions related to the capital structures of particular companies. The Commission has consistently stood for conservative capitalization and adequate common equity. In the recent case involving Wisconsin Public Service Corp., the assistance of the State commission has been particularly helpful in this respect. Application was made by the company in April 1949 for the issuance of $3,000,000 bank loans, one-half for immediate issuance with the balance to be sold in August. The application also reflected the eventual need for $8,000,000 of permanent financing but offered no indication as to how such financing would be accomplished. Because of the marginal equity ratio of Wisconsin, the staff expressed concern to the company over the absence of any indicated common stock financing in the near

future. It also advised a staff member of the Wisconsin Public Service Commission regarding the particular application and related aspects of the capitalization picture. Final scheduling of the financial program for Wisconsin Public Service Corp. has not yet been accomplished but the two commissions have a common objective in seeking an improved equity ratio for the company and further conferences are in prospect. In this connection it should be noted that over the past several years the staff of this Commission has worked closely with the staff of the Wisconsin Commission on the problems of a number of Wisconsin companies.

The matter of appropriate financial structure was also discussed in February 1949 between the staff of this Commission and members of the Vermont Public Service Commission in respect to Green Mountain Power Corp., a subsidiary of New England Electric System. Arrearages had accumulated on the preferred stock in amount sufficient to give that stock voting control and the company was in need of financial reorganization. Another problem was the presence of substantial amounts of excess over original cost in the property accounts. These and other features were considered in conference and it was indicated that no final action would be taken by the Commission until the views of the Vermont Commission had been presented.

The staff of the Commission also had the benefit of discussion in October 1948 with representatives of the Public Service Commission of Indiana on matters relating to the acquisition by Ohio Valley Gas Co. of three gas companies from United Public Utilities Corp. and the resultant financial structure of Ohio Valley. As a result of these conferences joint recommendations for changes in the proposal were agreed upon as a condition precedent to its approval. The changes were designed to achieve an objective of the Indiana Commission's representatives, who wished to see the transactions result in the purchasing company owning the properties of the three gas companies rather than their securities. It was also expected that these revisions would conserve cash for construction. The joint recommendations were then discussed with representatives of the purchasing company who altered their proposal in such manner as to make it acceptable to both commissions. Changes made in the proposed bond indenture aided the company in securing a more flexible instrument and a lowered cost of its debt money.

Another instance of cooperative effort involves the application by Appalachian Electric Power Co. for approval of a proposal to establish a line of credit with four banks amounting to $18,000,000. In setting this matter down for hearing the Commission set forth, as among the issues to be considered, the future financing plans of Appalachian and its parent company, American Gas & Electric Co., and the extent to which the proposed construction program will be financed by equity capital. Since this matter is of considerable interest to local authorities, the commissions in each of the States in which American Gas operates were served with notice of the hearing and the Virginia State Corporation Commission indicated that it intended to have an observer present at the proceedings.

Other instances of cooperation during the past year were related to problems involved in the Commission's administration of section 11 and other provisions of the Holding Company Act. For example,

there has been pending before this Commission since late 1947 a proposal by American Power & Light Co. to contribute to the Washington Water Power Co. its holdings of all of the common stock of Pacific Power & Light Co.

Simultaneously with the application made to the Commission for authority to acquire the Pacific stock, a similar application was made by Washington to the Washington Department of Public Utilities (now Public Service Commission). In a decision dated March 9, 1948, the Washington Commission refused to permit the acquisition, holding that approval would have created a holding company relationship which in the opinion of that commission constituted an unnecessary corporate complexity. On April 8, 1948, American filed with the Commission a plan which, among other things, called for a further application to the Washington department by Washington for permission to acquire the common stock of Pacific. In the alternative the plan proposed that American be continued in existence to hold the common stocks of Pacific and Washington. This, of course, raises a question of modification of the Commission's order of August 22, 1942, which directed the dissolution of American. Since the proposal vitally affected utilities operating in both Washington and Oregon, the Washington department, through its attorney general, was upon application made a party to the proceeding and while no representative of the attorney general appeared, a letter from him was read into the record indicating the Washington department's deep concern with that part of the plan relating to Washington. His letter was also made available to counsel for each of the parties and participants.

In September of 1948 all of the exhibits received during the proceeding, numbering in the aggregate over 100, were sent to the attorney general at his request, together with copies of those parts of the transcript containing testimony relating to the Washington company. Subsequently, the chairman of the new Washington Public Service Commission and the Oregon Commissioner of Public Utilities jointly wired the Commission setting forth their views as to those parts of the plan which touched on the relinquishment by American of control over Washington and Pacific. Throughout this period a number of conferences have been held between members of the Commission staff and representatives of the Oregon Commissioner and the Washington Commission, pertaining to this problem and related matters affecting the Washington and Pacific companies.

The Commission also had discussions with the Public Service Commission of Utah during March 1949. The Utah commission, acting in collaboration with local Rural Electrification Administration cooperatives, requested this Commission to defer for 2 months proceedings in the United States District Court for the Southern District of New York for approval of a plan involving the reorganization of Washington Gas & Electric Co. The additional time was requested in order to enable the cooperatives to make studies preparatory to submission of a bid for the acquisition of Washington's sole subsidiary, Southern Utah Power Co. Discussions between the staffs of the two Commissions served to satisfy the Utah commission that the procedures contemplated would assure the cooperative organizations the desired amount of time.

In October 1948 the Commission received communications from the

common counsel of Detroit, Mich., and from the city manager of Madison, Wis., with respect to a proposal of Michigan-Wisconsin Pipeline Co. to sell $66,000,000 of its first-mortgage bonds. Though it was found necessary to exempt this sale of bonds from its usual competitive bidding requirements, the petitions of these city governments in favor of the bidding procedure were carefully weighed in the findings and opinion of the Commission. Corporation counsel for the city of Detroit also appeared as a party in these proceedings.

### LITIGATION ARISING UNDER THE ACT

Toward the end of the fiscal year the Supreme Court sustained the Commission on major issues of law governing the consideration and enforcement of plans submitted pursuant to section 11 (e) of the Holding Company Act. In a case posing fundamental questions concerning the Commission's valuation technique and the scope of review by the district courts which had been the subject of differing opinions within the Commission and strong attack from outside, the Supreme Court directed enforcement of a section 11 (e) plan as approved by the Commission, reversing the court of appeals and the district court.[93] Because of the far-reaching importance of this case, it is discussed below in relation to the development of the principles adopted by the Supreme Court.

During the year district courts of the United States entered orders enforcing voluntary plans approved by the Commission under section 11 (e) of the act in 14 cases. In 12 of these cases the plans were declared effective and were consummated during the course of the year, or were in process of being consummated at the close of the year. In one case the order of the court was vacated at the instance of the Commission, where changed circumstances had rendered the plan not feasible. Appeals were taken from four of the enforcement orders. In two of these cases motions were made for a stay of the district court's orders, and in each case the motion was denied. At the close of the fiscal year one of the appeals had been dismissed on stipulation, and the others were pending.

In three cases, petitions were filed with the courts of appeals pursuant to section 24 (a) of the act to review orders entered by the Commission. In one such case, the Philadelphia Co. petitioned for review of the Commission's order under section 11 (b) of the act directing the company to divest itself of its interests in gas and transportation operations and to dissolve.[94] Stay of the Commission's order was granted pending determination of the appeal, which had not been decided at the close of the fiscal year. Thereafter the Commission's order was affirmed.[95] A second petition, to review an order of the Commission denying a committee's request for authority to solicit funds from stockholders,[96] had not been perfected at the end of the fiscal year. The third petition involved the propriety of the Commission's determination that preferred stockholders of a holding company subsidiary merged into an affiliated company were entitled

[93] *S. E. C.* v. *Central-Illinois Securities Corp.*, 338 U. S. 96.
[94] Holding Company Act release No. 8242.
[95] *Philadelphia Co.* v. *S. E. C.*, — F. 2d — (C. A. D. C., October 10, 1949).
[96] *Halsted, et al.*, Holding Company Act release No. 8965.

to receive more than the liquidation preferences of their stock. After the end of the fiscal year the Commission's order was affirmed.[97]

During the fiscal year two appeals from orders of the United States district courts approving section 11 (e) plans, pending at the commencement of the year, were disposed of, in the one case by affirmance of the district court order,[98] and in the other by dismissal on stipulation.

At the commencement of the fiscal year there were pending before the court of appeals six petitions for review of Commission orders under the act. In three such cases the orders were affirmed, in one the petition was dismissed, in another a Commission motion to dismiss was pending at the end of year, and in the sixth the Commission's order was reversed. In that case the court of appeals held that the Commission had denied the Philadelphia Co. procedural due process in that the company had not been afforded an opportunity to adduce evidence in opposition to a proposed amendment to rule U–49 (c) of the Commission's General Rules of Practice under the Public Utility Holding Company Act.[99] The Supreme Court granted *certiorari*, but prior to hearing, the decision of the Court of Appeals was vacated on joint motion of counsel, the company having submitted to the amended rule and the matter having become moot.[1]

A list of all cases in which administration of the Holding Company act was an issue and the status of those cases at June 30, 1949, is set forth in the appendix. The following section discusses the Commission's record in the courts in proceedings for the enforcement of section 11 (e) plans, in relation to the Supreme Court decision mentioned above.

## ENFORCEMENT PROCEEDINGS UNDER SECTION 11 (E) OF THE ACT

In enacting the Holding Company Act, Congress recognized that the problems in holding company systems were so extensive and the task of simplification so complicated that legislative action alone without administrative supervision would not effectively meet the situation. The enforcement of the act, therefore, was entrusted to the Commission. Thus section 11 (b) directs the Commission to determine what action should be taken by registered holding companies to meet the standards of the act. The Commission may, under section 11 (d), apply to a court to enforce an order issued by the Commission under section 11 (b), and in such cases the court is given power over the company and its assets to enforce the order of the Commission in accordance with a plan which shall have been approved by it.

Congress recognized, however, that it was desirable to encourage voluntary compliance with the act by the various holding company systems. Under section 11 (e) registered holding companies and their subsidiaries are permitted to file voluntary plans designed to meet the requirement of section 11 (b), and it is this voluntary cooperative route to effectuate compliance which has been followed in most cases.

[97] *In re Pennsylvania Edison Company*, — F. 2d — (C. A. 3, August 31, 1949).
[98] *In re North American Light & Power Company*, 170 F. 2d 924 (C. A. 3, 1948), affirming *In re Illinois Power Company*, 74 F. Supp. 137 (D. Del., 1947).
[99] *Philadelphia Company v. S. E. C.*, — F. 2d —.
[1] *S. E. C.* v. *Philadelphia Company*, — U. S. —, 93 L. Ed., *adv. op.* 896.

Section 11 (e) of the act provides that if after notice and opportunity for hearing the Commission finds a plan, as submitted or as modified, necessary to effectuate the provisions of section 11 (b) and fair and equitable to the persons affected by the plan, the Commission shall make an order approving the plan and at the request of the company may apply to a district court of the United States to enforce and carry out the provisions of the plan. If the court, upon such application and after notice of opportunity for hearing, approves the plan as fair and equitable and appropriate to effectuate the provisions of section 11, the court then enters an order enforcing and carrying out the plan.

Whether a plan satisfies the standards of the act in respect of "necessity" is a question primarily for Commission determination.[2] To be necessary within the meaning of section 11 (e) of the act a plan need not by itself effectuate complete compliance with the requirements of section 11. It is sufficient if the plan provides a suitable and expeditious means for achieving results necessary under section 11 (b), although different means might have been chosen and further steps may be necessary.[3]

In *Electric Power & Light Corporation*,[4] a plan was found necessary wherein it was proposed, *inter alia*, that a new holding company be organized which would, *prima facie*, meet the integration standards of the act, even though objecting stockholders urged other methods of effectuating compliance with the Commission's prior order directing the holding company to dissolve.

In cases arising under the Bankruptcy Act the Supreme Court held, as urged by the Commission, that in order to be "fair and equitable" a plan must satisfy the "absolute priority" standard; that is, the full priority of senior securities must be compensated before junior security holders may participate in the reorganization.[5] In the application of the absolute priority standard to the requirement that a plan under section 11 (e) of the act must be fair and equitable, the Commission has evolved what has come to be known as the "investment value" doctrine. In brief, this holds that the measure of equitable equivalence for purposes of simplification proceedings compelled by the Holding Company Act is the value of the securities on the basis of a going business and not as though a liquidation were taking place,[6] except as it appears that liquidation could and would have taken place apart from the compulsion of section 11.[7]

Since the passage of the act, the Commission has filed applications with United States district courts for the enforcement of 80 such voluntary plans, of which 3 were pending as of June 30, 1949. In 75 cases the plans were approved by the district court. In the 2 cases where approval was refused by the district court the court was reversed, in 1 case by the court of appeals,[8] and in the other by the Supreme Court.[9] Appeals from enforcement orders of district courts were taken in 16

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[2] *American Power & Light Corporation* v. *S. E. C.*, 329 U. S. 90; *In re Standard Gas and Electric Co.*, 151 F. 2d 326 (C. A. 3, 1945), *cert. den.* 327 U. S. 796.
[3] *Lahti* v. *New England Power Association*, 160 F. 2d 845 (C. A. 1, 1947).
[4] Unreported, S. D. N. Y. April 14, 1949, affirmed after close of fiscal year 178 F. 2d 687 (D. A. 2, 1949).
[5] *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106; *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510; *Group of Investors* v. *Chicago, M., St. P. & P. R. Co.*, 318 U. S. 523; *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448.
[6] *S. E. C.* v. *Central-Illinois Securities Corp.*, supra; *Otis & Co.* v. *S. E. C.*, 323 U. S. 624.
[7] See *In re Pennsylvania Edison Company*, supra.
[8] *In re Standard Gas and Electric Company*, supra.
[9] *S. E. C.* v. *Central Illinois Securities Corp.*, supra.

cases, of which 6 were dismissed or discontinued, 8 were affirmed, and as of June 30, 1949, 2 were pending.[10] In 5 cases petitions for writs of *certiorari* were filed to seek review of decisions of courts of appeals affirming enforcement orders of the district courts. In 4 cases the petitions were denied and, in the fifth, the decision of the court of appeals was affirmed. Thus, every case heretofore decided on the Commission's applications for court enforcement of section 11 (e) plans has resulted in court approval of the plan.

Before it may issue an enforcement order, the district court must find that the plan is fair and equitable to the persons affected and appropriate to effectuate section 11 of the act. Accordingly, the court orders a hearing on these issues and directs that notice be given of such hearing to the security holders affected by the plan. The enforcement proceeding is based upon the record made before the Commission, containing all the evidence relating to the plan. Until the decision of the Court of Appeals for the Third Circuit in the *Engineers* case, the courts had consistently held that an enforcement proceeding under section 11 (e) did not constitute a trial *de novo*. The doubts raised by the *Engineers* case as to the scope of review by the enforcement court, and the nature of the hearing in the enforcement court, were resolved by the decision of the Supreme Court reversing the Court of Appeals for the Third Circuit. The Supreme Court held that the scope of review of the district court in enforcement proceedings under section 11 (e) of the act is identical with the review process prescribed in section 24 (a) of the act, relating to petitions to a court of appeals to review orders of the Commission; that is, the decision of the Commission is to be sustained if supported by substantial evidence and not contrary to law.

The determination of what constitutes fair and equitable treatment under the standards of section 11 (e) often involves review of intercorporate transactions to ascertain whether there has been such wrongdoing on the part of the parent as to require subordination of its claims to those of other security holders under the doctrine of *Taylor* v. *Standard Gas and Electric Company*.[11] These "Deep Rock" matters have formed an integral part of many plans filed under section 11 (e) of the act.[12] The jurisdiction of the Commission to approve claims settlements in the context of a section 11 (e) plan even though such settlements are not the result of arm's-length bargaining was affirmed during the year by the Court of Appeals for the Third Circuit.[13] The courts during the year also upheld the Commission's approval of two plans embodying similar settlements of claims and involving other problems of allocations of assets.[14] In all three cases court actions had been instituted based on the alleged wrongdoing by the parent company; consummation of the plans would in effect dispose of that litigation. After the decision in the *North American* case the district court held that dividends paid by *Illinois Power*

[10] After the close of the fiscal year the district court's enforcement order was affirmed in one of these cases. *In Re Electric Power & Light Corporation*, — F. 2d — (C. A. 2, 1949).

[11] 306 U. S. 307.

[12] Comparable problems of fairness and equity may arise out of management purchases of securities of a corporation during proceedings for its reorganization. See *S. E. C.* v. *Chenery Corporation*, 318 U. S. 80, 332 U. S. 194, rehearing denied 332 U. S. 783.

[13] *In re North American Light & Power Company*, 170 F. 2d, 924 (C. A. 3, 1948).

[14] *In re American & Foreign Power Company, Inc.*, 80 F. Supp. 514 (D. Me., 1948), order vacated January 4, 1949; In Re *Electric Power & Light Corporation*, unreported (S. D. N. Y., April 14, 1949), stay denied C. A. 2, May 5, 1949, stay denied 337 U. S. 903, affirmed — F. 2d — (C. A. 2, August 9, 1949).

*Company* on the shares of its common stock allocated to public stockholders of *North American Light & Power Company* should be distributed to such stockholders along with the *Illinois Power Company* stock.[15]

In two other contested decisions decided during the fiscal year the courts enforced plans, approved by the Commission, providing for the retirement of holding company preferred stocks by distributions of common shares of subsidiary companies.[16] *In re National Power & Light Company* [17] the district court upheld the Commission's determination with respect to the amount of the fee payable by the company to counsel representing a security holder in a reorganization involving primarily settlement of claims and upheld the exclusive jurisdiction of the Commission to pass on such fees.

In the above cases involving allocations of new or portfolio securities to the security holders of holding companies, as in the *Otis* case, application of the investment value doctrine required determination of equitable equivalence between the rights surrendered and the securities given in compensation therefor, involving primarily comparisons of the amount and quality of earnings applicable to the securities retired by the plans with the amount and quality of earnings applicable to the securities to be distributed under the plans. In such cases it is held that a dollar valuation need not be placed upon either the old or the new securities. The valuation problem was presented in somewhat different form in plans providing for the retirement of senior securities by payments in cash.

In such cases the Commission held, with court approval, that redemption premiums as such are not payable, and that where the investment value of the securities being surrendered is not in excess of the involuntary liquidation preference or face amount, payment of that or a lesser amount is fair and equitable.[18] In *American Power & Light Company* [19] the Commission held that application of the investment value theory called for the payment of an amount equal to the voluntary call price of callable debentures being retired pursuant to section 11 (e) plan, where the investment value of the debentures was at least equal to the call price, and for payment of a somewhat greater amount with respect to debentures which would not be callable until some time after the effective date of the plan. In a subsequent case [20] the Commission held unfair a plan calling for the retirement of a noncallable preferred stock by payment in cash at the liquidation preference. In the *Engineers* case the Commission approved a plan calling for the retirement of preferred stocks at an amount equal to the call price, where it found that the investment value of those

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[15] F. Supp. (D. Del. 1949), appeal pending.
[16] *In re Northern States Power Company*, 80 F. Supp. 193 (D. Minn., 1948); *In re United Corporation*, F. Supp. (D. Del. February 15, 1949).
[17] — F. Supp. — (S. D. N. Y. 1949), appeal pending.
[18] The cases are cited in the Appendix to *S. E. C.* v. *Central-Illinois Securities Corp., supra.*
[19] Holding Company Act release No. 7176, enforced (unreported) S. D. N. Y. December 21, 1945 (No. 33-583).
[20] *The United Light & Power Company*, Holding Company Act release No. 6603. Thereafter a rehearing was granted, and while decision was pending a substitute plan was proposed by the company and approved by the Commission. Holding Company Act release No. 7951.

stocks was at least equal to that amount. The district court, on the Commission's application for enforcement, found the plan unfair in that regard, and held that no more than the involuntary liquidation preference might be paid. The district court in its decision considered as controlling certain factors which it grouped under the term "colloquial equities." The Court of Appeals for the Third Circuit held that the district court had no power to amend the plan, but approved the district court's rejection of the investment value doctrine as applied by the Commission. The Supreme Court, on June 27, 1949, reversed the court of appeals and held that investment value was the proper basis for evaluating the prior claim of preferred stockholders in a liquidation compelled by the Holding Company Act.

**Other Court Decisions during the Fiscal Year**

In *South Carolina Public Service Authority* v. *S. E. C.*[21] the court of appeals affirmed an order of the Commission which granted exemption from its competitive bidding rule to The Commonwealth & Southern Company with respect to the sale of all the common stock of South Carolina Power Company. Assuming without deciding that petitioner, a public authority, was a "party aggrieved" by the Commission's order, the court of appeals found that a higher offer of the petitioner for the stock afforded no justification for upsetting that order, in view of a decision of the South Carolina Supreme Court that the petitioner had no power to make a purchase of this character.

In *North American Utility Securities Corporation* v. *Posen* [22] the company sought an injunction against the individual defendants to prevent their solicitation of authorizations from its stockholders to represent them in connection with a plan of reorganization pending before the Commission, claiming that such solicitation would violate Section 11 (g) of the act. The Commission, which had authorized the solicitation, intervened as a party defendant and moved for dismissal of the complaint. The district court dismissed the complaint on the merits, and on appeal the order was affirmed.

## SUMMARY OF LITIGATION UNDER THE HOLDING COMPANY ACT

The over-all impact of court litigation upon the administration of the Public Utility Holding Company Act during the 14 years of its existence may also be summarized by statistical measurement. A total of 246 civil and criminal proceedings, exclusive of Bankruptcy Act proceedings, in which the validity or enforcement of the statute was in issue, have been initiated in the courts. Litigation has been completed with respect to 234 of these proceedings; the remaining 12 were pending on June 30, 1949.

**Petitions to Review Orders of the Commission**

Seventy of the 246 proceedings initiated were petitions to United States courts of appeals to review orders of the Commission as provided

[21] 170 F. 2d 948 (C. C. A. 4, 1948).
[22] 82 F. Supp. 16 (S. D. N. Y., 1948), affirmed after close of year 176 F. 2d 194 (C. A. 2, 1949).

by section 24(a) of the act. The disposition of these proceedings may be summarized as follows:[23]

| | |
|---|---|
| Petitions dismissed or denied | 36 |
| Commission orders affirmed | 26 |
| Commission order reversed | 1 |
| Petition withdrawn | 1 |
| Proceedings remanded to Commission | 1 |
| Proceedings vacated as moot | 2 |
| Total disposed of | 67 |
| Pending June 30, 1949 | 3 |
| Total | 70 |

In the proceeding remanded to the Commission, the Commission in effect reaffirmed its previous order upon different grounds, and was ultimately upheld by the United States Supreme Court.[24] One of the two proceedings vacated as moot involved an order of the court of appeals which had disapproved action of the Commission in amending a rule;[25] in the other proceeding the court of appeals had affirmed in part and reversed in part an order of the Commission.[26] In both instances the companies concerned undertook to comply with the Commission action under review while the proceedings were pending in the Supreme Court.

The one Commission order ultimately reversed[27] had exempted International Paper & Power Co., from certain provisions of the act in respect of certain specific transactions to be consummated during the pendency of, and after Commission decision on, the company's pending application for a general exemption. Thereafter the Commission disposed of the pending application by entry of an order declaring International not to be a holding company.[28]

**Enforcement of Reorganization Plans under Section 11**

Eighty-six of the 246 proceedings were initiated by applications by the Commission to United States district courts for orders enforcing plans of reorganization under sections 11(d) and (e) of the act. One of the 86 proceedings was based upon an application of the Commission, filed at the request of a registered holding company, to enforce an order directing dissolution of the company. The district court took possession of the company and appointed a trustee. Disposition

[23] In each case only the ultimate decision is considered and intermediate decisions are disregarded. In two of the cases where the Commission's order was ultimately affirmed [*Okin* v. *S. E. C.*, 154 F. 2d 27 (C. A. 2, 1946), and *American Power & Light Co.* v. *S. E. C.*, 158 F. 2d 771 (C. A. 1, 1946), reh. den. 1-8-47] the Commission had lost an earlier round in the Supreme Court which had decided, contrary to the Commission's contention, that the petitioners were "persons or parties aggrieved" within the meaning of section 24 (a) of the act. Similarly in one of the cases where the proceedings were vacated as moot, the court of appeals had refused to dismiss the petition to review, rejecting the Commission's contention that no reviewable "order" within the meaning of section 24(a) of the act was involved [*Philadelphia Co.* v. *S. E. C.*, 164 F. 2d 889 (C. A. DC, 1947)] and the Supreme Court refused to review this determination. (333 U. S. 828).

Where several parties have petitioned to review the same order, the review is treated as only one proceeding unless the petitions were filed in different circuits. Two proceedings are considered to be involved where petitions to review the same order were filed in two circuits, even though ultimately determined in the same circuit, unless the petitions were consolidated.

[24] *S. E. C.* v. *Chenery Corp.*, 332 U. S. 194 (1947), rehearing denied 332 U. S. 783 (1947).

[25] *Philadelphia Co.* v. *S. E. C.*, 175 F. 2d 808 (C. A. D. C., 1949).

[26] *Engineers Public Service Co.* v. *S. E. C.*, 138 F. 2d 936 (C. A. D. C., 1943).

[27] *Lawless* v. *S. E. C.*, 105 F. 2d 574 (C. A. 1, 1939), rehearing denied 6-26-39.

[28] *International Paper and Power Company*, 4 S. E. C. 873 (1939).

of the other 85 proceedings for enforcement of section 11(e) plans may be summarized as follows: [29]

| | |
|---|---|
| Application to district court withdrawn upon request of Commission | 1 |
| Applications granted by district courts, not appealed | [1] 61 |
| Applications granted by district courts, affirmed by courts of appeals | 8 |
| Applications granted by district courts, appeals dismissed by courts of appeals or discontinued | 7 |
| Applications denied by district courts, approved on appeal | 2 |
| Total | 79 |
| Applications granted by district courts from which appeals were pending on June 30, 1949 | 4 |
| Applications pending in district courts on June 30, 1949 | [1] 2 |
| Total | 85 |

[1] On 1 application for enforcement, not included among applications granted, the court entered an order enforcing certain uncontested provisions of the plan during the fiscal year; the proceeding was pending on June 30, 1949, with respect to a contested provision of the plan.

In five of the eight cases where district court orders were affirmed by the courts of appeals, review was sought in the United States Supreme Court, but in four cases the petitions were denied; in the fifth case the order of the court of appeals was affirmed.[30] One of the enforcement orders was subsequently vacated at the request of the Commission and others, upon a showing of material changes in circumstances during the course of the litigation.[31] Notice of appeal from the remand was filed but the appeal had not been perfected prior to June 30, 1949. Another enforcement order was vacated at the request of the Commission and upon approval by the district court of an alternate plan.[32]

In one of the two proceedings in which the district court denied an application of the Commission for an order of enforcement, the court of appeals reversed the order of the district court, and review was denied by the United States Supreme Court.[33] Upon a showing of material changes in circumstances during the pendency of this litigation, the district court, with the concurrence of the Commission, subsequently remanded the plan to the Commission for further consideration. An appeal from the remand order was dismissed by the court of appeals. In the second proceeding involving denial of the Commission's application, the district court disapproved an important aspect of the plan but ordered enforcement of the plan as modified.[34] On appeal from that portion of the order disapproving part of the plan, the court of appeals upheld the district court in that regard, but reversed on the ground that the district court should have remanded the plan to the Commission.[35] The United States Supreme Court reversed the order of the court of appeals, and directed enforcement of the entire plan as approved by the Commission.[36]

The application withdrawn upon motion of the Commission was withdrawn because of substantial changes in circumstances affecting

[29] Every application for court enforcement involving a plan separately disposed of by the court is treated separately, even where more than one application involves a single company.

[30] *Otis & Co.* v. *S. E. C.*, 323 U. S. 624 (1945), rehearing denied 323 U. S. 887.

[31] *In re American & Foreign Power Co.*, 80 F. Supp. 514 (D. Me., 1948), order vacated and plan remanded to Commission, January 4, 1949.

[32] *In re New England Gas & Electric Assn.*, unreported (D. Mass., July 17, 1946 and March 10, 1947).

[33] *In re Standard Gas & Electric Co.*, 151 F. 2d 326 (C. A. 3, 1945), *cert. den.* 327 U. S. 796.

[34] *In re Engineers Public Service Co.*, 71 F. Supp. 797 (D. Del. 1947).

[35] *In re Engineers Public Service Co.*, 168 F. 2d 772 (C. A. 3, 1948).

[36] *S. E. C.* v. *Central-Illinois Securities Corp.*, 338 U. S. 96 (1949).

the reorganization plan at issue;[37] a plan subsequently approved by the Commission was approved and enforced by the district court.[38]

**Injunctive Proceedings Initiated by the Commission**

Fourteen of the 246 proceedings were initiated by the Commission to restrain violations, or to enjoin interference with the enforcement, of the act. The disposition of these proceedings may be summarized as follows:

| | |
|---|---|
| Permanent injunctions granted | 7 |
| Proceedings dismissed or discontinued | 6 |
| Defendant adjudged guilty of contempt in violating preliminary injunction [1] | 1 |
| Total | 14 |

[1] *S. E. C.* v. *Okin*, 48 F. Supp. 928 (S. D. N. Y., 1943).

In one of the seven cases in which permanent injunctions were granted, an appeal was taken and the injunction was finally affirmed by the United States Supreme Court.[39] In a second of these cases, an order of the district court granting a temporary injunction was affirmed by the court of appeals prior to the granting of a final injunction by the district court.[40] In a third case, the court of appeals affirmed the order of the district court with modifications.[41]

In all of the proceedings dismissed or discontinued, that action was taken upon the motion, or with the consent or acquiescence, of the Commission. One such proceeding revolved around an order of the Commission revoking an exemption previously granted to a holding company. The court of appeals affirmed an order of the district court denying an injunction to prevent consummation of a plan of reorganization which had been put into effect while the revocation proceeding was pending.[42] The courts enjoined the company from carrying out the reorganization plan pending final disposition of the case. The company registered with the Commission while the matter was under consideration by the Supreme Court and, upon unopposed motion of counsel for the Commission, the judgment of the court of appeals was vacated and the proceeding remanded to the district court with instructions to dismiss the complaint as moot.[43]

Two proceedings were dismissed following entry of a temporary restraining order or preliminary injunction; in each case the Commission decided the results it sought had been accomplished. Three proceedings were dismissed after they had become moot, one before any action had been taken by the court, one after denial of a temporary injunction, and the other after the court of appeals had reversed a district court order refusing injunctive relief.[44]

**Actions Initiated by Others than the Commission**

Seventy-one proceedings in which the Commission was a defendant or an intervenor, or appeared as *amicus curiae*, were instituted to

[37] *In re Northern States Power Co. (Del.)*, unreported (D. Minn. November 22, 1946).
[38] *In re Northern States Power Co. (Del.)*, 80 F. Supp. 193 (D. Minn., 1948):
[39] *Electric Bond & Share Co.* v. *S. E. C.*, 303 U. S. 419 (1938):
[40] *S. E. C.* v. *Associated Gas & Electric Co.*, 99 F. 2d 795 (C. A. 2, 1938):
[41] *Okin* v. *S. E. C.*, 139 F. 2d 87 (C. A. 2, 1943).
[42] *S. E. C.* v. *Long Island Lighting Co.*, 148 F. 2d 252 (C. A. 2, 1945):
[43] *S. E. C.* v. *Long Island Lighting Co.*, 325 U. S. 833 (1945).
[44] *S. E. C.* v. *Okin*, 132 F. 2d 784 (C. A. 2, 1943).

prevent or delay enforcement of the act by the Commission, to prevent action by other persons pursuant to orders of the Commission, or to seek relief against corporate management for alleged misconduct. The nature and disposition of these proceedings are as follows:

| | | |
|---|---|---|
| Complaints for judgments declaring act to be unconstitutional: | | |
| Commission dismissed as party on its own motion | 22 | |
| Proceedings dismissed or discontinued | 26 | |
| Declaratory judgment issued; reversed on appeal | 1 | |
| Act held inapplicable to plaintiffs; constitutionality not determined | 3 | |
| | | 52 |
| Complaints for injunctions against the Commission, dismissed | | 3 |
| Petition for writ of mandamus against the Commission, denied | | 1 |
| Complaints for injunctions against other persons: | | |
| Dismissed | 5 | |
| Determined consistently with Commission order | 1 | |
| | | 6 |
| Actions seeking relief for corporate mismanagement: | | |
| Settlements approved | 2 | |
| Proceedings dismissed | 3 | |
| Dismissal of complaint reversed | [1] 1 | |
| Pending June 30, 1949 | 1 | |
| | | 7 |
| Actions relating to defendants' sec. 11 (e) plans, pending | | 2 |
| Total | | 71 |
| Less: Pending, June 30, 1949 | | 3 |
| Total disposed of | | 68 |

[1] *Goldstein* v. *Grosbeck*, 142 F. 2d 422 (C. A. 2, 1944), reversing 42 F. Supp. 419 (S. D. N. Y. 1941), *cert. den.* 323 U. S. 737.

The three proceedings for declaratory judgments in which the act was held inapplicable involved companies in reorganization under the Bankruptcy Act when the Holding Company Act became law. The district court order holding that the act was unconstitutional [45] was reversed by the court of appeals; the Supreme Court denied review.[46]

Plaintiffs appealed from the dismissal of one of the injunction actions against the Commission, and from two of the injunction actions against other persons in which the Commission intervened as a party defendant. In each case (two of them decided before and one after the end of the fiscal year) the court of appeals affirmed the decision of the district court.[47]

The Commission appeared as *amicus curiae* or as intervenor in the listed cases where relief was sought for corporate mismanagement and supported the two settlements;[48] the Commission took no position on the merits in the other cases but appeared in order to avoid conflicts between the court proceedings and related proceedings pending before the Commission.

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[45] *In re American States Public Service Co.*, 12 F. Supp. 667 (D. Md., 1935).
[46] *Burco, Inc.* v. *Whitworth*, 81 F. 2d 721 (C. A. 4, 1935), *cert. den.* 297 U. S. 724.
[47] *Okin* v. *S.E.C.*, 130 F. 2d 903 (C. A. 2, 1942), *cert. den.* 317 U. S. 701; *Phillips* v. *The United Corp.* 171 F. 2d 180 (C. A. 2, 1948) rehearing denied 1-11-49; *North American Utility Securities Corp.* v. *Posen*, 176 F. 2d 194 (C. A. 2, 1949) affirming 82 F. Supp. 16 (S. D. N. Y. 1948).
[48] *Ladd* v. *Brickley*, 158 F. 2d 212 (C. A. 1, 1946), *cert. den.* 330 U. S. 819, rehearing denied 330 U. S. 855; *Illinois-Iowa Power Co.* v. *North American Light & Power Co.*, 74 F. Supp. 317 (D. Del. 1947).

**Criminal Prosecutions**

Five of the 246 proceedings were prosecutions of three corporate and four individual defendants for criminal acts in connection with the enforcement of the act. There are summarized as follows:

| | |
|---|---|
| Indictments charging conspiracy to violate and violations of the act | 2 |
| Indictments charging perjury before officer of the Commission, defendants convicted | 3 |
| Total | 5 |

In one of the cases charging conspiracy to violate and violations of the act, the two defendants (a corporation and an individual) were found guilty and the judgment was affirmed on appeal;[49] in the other the two defendants (corporations) pleaded guilty. Of the three cases charging perjury before an officer of the Commission, one resulted in a conviction affirmed on appeal,[50] one in a plea of guilty, and one in a plea of *nolo contendere* (no contest).

[49] *Egan* v. *United States*, 137 F. 2d 369 (C. A. 8, 1943), rehearing denied 9–9–43.
[50] *Boehm* v. *United States*, 123 F. 2d 791 (C. A. 8, 1941), rehearing denied 11–26–41.

## PART IV

# PARTICIPATION OF THE COMMISSION IN CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT

Chapter X of the Bankruptcy Act, as amended in 1938, governs the reorganization of corporations (other than railroads) in the Federal courts. The Commission (at the request or with the approval of the court) participates in proceedings thereunder to provide independent expert assistance in the proceedings, and upon submission to it of plans of reorganization to prepare formal advisory reports on such plans. The Commission has no statutory right of appeal in any such proceeding, although it may participate in appeals taken by others.

The Commission does not administer chapter X. It acts in a purely advisory capacity. It has no authority either to veto or to require the adoption of a plan of reorganization or to render a decision on any other issue in the proceeding. The facilities of its technical staff and its impartial recommendations are placed at the services of the judge and the security holders, affording them the views of experts in a highly complex area of corporate law and finance.

### THE COMMISSION AS A PARTY TO PROCEEDINGS

During the 5-year period from July 1, 1944, to June 30, 1949, the Commission participated as a party in the chapter X reorganization of 188 companies with aggregate stated assets of $2,201,388,000 and aggregate stated indebtedness of $1,526,599,000. During the 5-year period the Commission filed notices of appearance in proceedings involving 56 companies (with aggregate stated assets of $442,538,000 and aggregate stated indebtedness of $413,778,000). Eleven of these participations were at the request of the judge; 35 were upon approval by the judge of the Commission's motion to participate.

Proceedings involving 93 debtors were terminated during the 5-year period, so that as of June 30, 1949, the Commission was participating in proceedings involving 95 companies with aggregate stated assets of $1,586,111,000 and aggregate stated indebtedness of $1,049,915,000.

During the past fiscal year the Commission participated in proceedings involving the reorganization of 101 companies [1] whose stated assets were $1,670,445,000 and aggregate indebtedness, $1,163,049,000.[2] During the year the Commission filed its notice of appearance in 9 new chapter X proceedings. Three were filed at the request of the judge. In 6 the judge approved the Commission's motion to participate. These 9 new proceedings involved 13 companies (9 principal and 4 subsidiary debtors) with aggregate stated assets of $108,390,000 and aggregate stated indebtedness of $99,417,000. Proceedings involving 5 principal debtors were closed during the year.

[1] Appendix table 23 contains a complete list of reorganization proceedings in which the Commission participated during the year ended June 30, 1949.

[2] Appendix table 22, pts. 1 and 2, classify these debtors according to industry and size of indebtedness.

**Problems Involving the Trusteeship**

One of the objectives of chapter X, in amending its predecessor statute section 77B, was to make adequate provisions for trusteeships. The law now requires that an independent trustee be appointed where the corporation is of substantial size. The trustee is required to be primarily responsible for the operation of the corporation's business during the proceeding, to examine and evaluate the reasons for the debtor's financial difficulties, to appraise the ability and fidelity of its management and to formulate and file a plan of reorganization. The independent trustee was thus made the focal point of the reorganization process and, by reason of his duties, it is obvious that the success of the reorganization depends largely upon the thoroughness, skill, and loyalty with which he performs his tasks. A prominent part of the Commission's work under chapter X has involved its concern with the functions of the trustee.

The Commission has continued its policy of careful examination of the qualifications of trustees in the light of the standards of disinterestedness prescribed by the statute for trustees and their counsel. In several cases, sufficient evidence of conflicting interests was developed to warrant an appearance by the Commission before the court for the purpose of urging the removal of trustees. In a pending proceeding the Commission sought the removal of the so-called disinterested trustee upon the grounds, among others, that he was director and stockholder of a bank which had financial dealings with the debtor and which acted as indenture trustee for certain issues of the debtor's securities, that he had permitted an officer of the debtor, associated with the parent company of the debtor for many years, to assume a leading role in the preparation of an investigation report by the trustee as to whether claims existed against the parent company, and that the trustee in other ways had abdicated his responsibilities to the management of the debtor and the parent company.[3] The Special Master to whom the Commission's application was referred concluded that the trustee should be removed from office. Thereafter the trustee resigned.

In proceedings involving two debtors[4] the Commission objected to the final accounts of a trustee who had resigned, and urged that he be surcharged upon the ground, among others, that he had knowingly permitted certain of his employees to trade in the securities of the debtors and their subsidiaries. The Special Master agreed that trading in these securities was a breach of fiduciary duty and that the trustee's knowledge and acquiescence rendered him culpable and liable for surcharge to the extent of the profits. The district court has approved the recommendation of the Special Master and an appeal is pending. In another case,[5] the Commission asked that a former trustee be surcharged on the ground that he had been negligent and faithless in that he had obtained services and supplies from the debtor without payment and that he had authorized unnecessary expenses and received "kick-backs." The district court agreed that the evidence showed negligence and a low fiduciary standard but not that the trustee received "kick-backs." It held that because of his ineffi-

[3] *In re Pittsburgh Railways Co.*, W. D. Pa.
[4] *In re Federal Facilities Realty Trust, National Realty Trust, N. D.* Ill.
[5] *In re P-R Holding Corporation*, S. D. N. Y.

cient and negligent management he was not entitled to compensation for his services in operating the debtor and that he must be surcharged for the amount found to have been received by him. However, since there was no finding of malfeasance, the court permitted him a fee for that part of his services which had been devoted to the formulation of an acceptable plan of reorganization.

Under chapter X the court may designate as an additional trustee an officer, director or employee of the debtor for the sole purpose of assisting in the operation of the business. The Commission has urged that this should be done only in the exceptional case, since the services of an executive of the debtor may be obtained by employing such executive.

The Commission has found it increasingly necessary during the past 5 years to prevent encroachment by the additional trustee upon the special functions delegated to the independent trustee, such as the investigation of the affairs of the corporation and corporate causes of action, the preparation of a report of such investigation, and the formulation of a plan of reorganization. Although the responsibilities of the additional trustee do not assume the proportion of those of the disinterested trustee, his key position in assuming joint responsibility with the independent trustee for operations of the debtor, and his resultant close association with the independent trustee, make it essential that he also be free from interests which are materially adverse to those of the estate or of any class of security holder. During the past 5 years the Commission has taken steps to have the additional trustee resign or be removed because of conflicting or adverse interests, particularly on the ground of the existence of causes of action on behalf of the estate against him or against the management. In these cases the additional trustee usually tendered his resignation after informal conferences.

**Problems in the Administration of the Estate**

Frequently during the past 5 years the question has been presented of the adequacy of the independent trustee's investigation of the debtor's operations and of the reasons for its financial plight. In several cases, the Commission advocated the retention by the trustee of an independent expert qualified to appraise the debtor's property, make valuations, or report upon the efficiency of the debtor's operations.[6]

In administrative matters, the Commission has attempted to discourage hazardous speculation. In the case of a real estate and mortgage holding corporation having a large, matured debenture issue, the Commission successfully argued that pending the adoption of a plan of reorganization the trustees should maintain a high degree of liquidity; pursue a conservative course with respect to making new investments, subject to court approval on notice to the parties; and generally abstain from buying new mortgages which are by their nature not ordinarily liquid. In another case involving a large investment company whose major holdings consisted of the common stocks of two subsidiary investment companies, the Commission urged that the speculative character of the enterprise be reduced by the retirement of senior preferred stock and debt by the subsidiaries

[6] See *In re Childs Co.*, S. D. N. Y.; *In re Pittsburgh Railways Co.*, W. D. Pa.; and *In re VanSweringen Corp.*, N. D. Ohio.

and subsequently by the liquidation and dissolution of one of the subsidiary companies. The first part of this program was carried out and the second part is pending before the court.

Another administrative problem is the accumulation by many debtors of substantial amounts of cash in excess of operational requirements. In these cases the Commission has urged that at least partial payments be made to creditors on account of their claims against the estate. In several cases the power of the district court to authorize such distribution in advance of a plan of reorganization was questioned before the Court of Appeals for the Second Circuit. In one case a stay was denied and the appeal withdrawn [7] and in another case the order for distribution was affirmed without opinion.[8] Recently the Court of Appeals for the Third Circuit handed down a written opinion, holding that the district court had the power to direct interim distributions.[9]

One of the important functions of the trustee is to investigate possible claims against the old management or other persons and to assure their diligent prosecution. During the past 5 years the Commission has not only helped trustees in their investigation of possible causes of action, but has undertaken its own investigation. Where trustees have neglected this duty or have been less than thorough, the Commission has asked the court to direct the trustee in order to get adequate results.

In several cases the investigation made by the Commission, or in which the Commission assisted, was the basis for compromises and settlements favorable to the estate and to public bondholders. In some cases, the settlement was arrived at after suit was commenced. Such compromises have resulted in either the disallowance or reduction of claims against the estate thereby increasing the participation of public investors, or in the recovery of funds which would inure to the benefit of the public investors. Although the Commission has opposed inadequate offers of compromise, it is generally in favor of the compromise of disputes as a method of reaching a fair and equitable result.

**Responsibilities of Fiduciaries**

The Commission is concerned with the qualifications of indenture trustees, committees, attorneys, and other representatives of security holders. The Commission has brought several proceedings to disqualify committees whose members were in conflicting positions. In one case the Commission sought to disqualify members of a committee upon the ground that, having served as directors of the debtor and having joined in the submission of the debtor's voluntary plan proposed to bondholders prior to the chapter X proceeding, they had developed such a close affinity with the debtor and its controlling persons that they were not in a position to give exclusive loyalty to bondholders. The district court agreed with this position.[10] In another case the Commission urged that a committee for bondholders be disqualified because it had been organized and sponsored by the controlling interests of the debtor. It was pointed out that the

[7] *In re Realty Associates Securities Corp.*, 58 F. Supp. 220 (E. D. N. Y. 1944).
[8] *In re Warner Sugar Corp.*, S. D. N. Y.
[9] *In re Industrial Office Building Corp.*, 171 F. 2d 890 (1949).
[10] *In re Realty Associates Securities Corporation*, 56 F. Supp. 1008 (S. D. N. Y. 1944).

members of this committee would necessarily be called upon to review the conduct of the previous management. The court sustained this view, holding that representatives of security holders must be free of conflicting interest, must give loyal and disinterested service, and that a fair conclusion from all the circumstances was that the committee was primarily formed to represent the management interests and not the public bondholders.[11] The court also agreed that withdrawal by the management interests from the committee did not change the situation. The court also sustained the Commission's position that trading in the debtor's bonds by a committee member was a basis for disqualification.

A far-reaching decision, in which the Supreme Court sustained the views of the Commission in the field of fiduciary law, was handed down in the case of *Young* v. *The Higbee Co.*[12] In the reorganization proceedings involving The Higbee Company, two preferred stockholders appealed in their own names from the order of confirmation of a plan of reorganization, seeking greater participation for preferred stockholders under the plan. Subsequently the stockholders sold their stock, for an amount far in excess of its market value, to certain creditors who were anxious to consummate the plan, and the appeal was then dismissed. Another preferred stock holder, who had unsuccessfully sought to intervene and prosecute the appeal, filed a petition seeking to have the selling stockholders account for the excess they had received over the market value of their stock. The court held that the selling stockholders owed an obligation to other stockholders of their class to act in good faith even though they had prosecuted the appeals in their own names, that since they in effect had settled an appeal in which all other preferred stockholders were interested, the fruits of the settlement properly belonged to the entire class. The court also held that the chapter X court had ample jurisdiction to require an accounting.

Another aspect of the conduct of fiduciaries which assumed importance during the past 5 years involved the buying or selling of claims against or stock interests in the debtor. Trading in securities of a debtor in reorganization by trustees, directors, attorneys, committee members, or other fiduciaries is a practice generally condemned by the courts and the Commission in opinions and reports. The access to inside information and, frequently, the influence over the course of reorganization which may be possessed by these fiduciaries highlight the conflict of interest engendered when a fiduciary deals in the subject matter of his trust. They are cogent reasons for strict enforcement of judicial sanctions. One sanction discussed hereinafter, which the Commission has invoked is the denial of any fees or reimbursement of expenses.[13]

Another sanction is the prevention of profit to fiduciaries by limiting any claim they might have against the company to the cost of the claim or by requiring them to account for any profits made in trading securities of the company. This sanction has been applied, at the instance of the Commission, to the directors of a corporation in

[11] *In re International Railway Company*, W. D. N. Y., July 7, 1949.
[12] 324 U. S. 204 (1945).
[13] See section 249 of chapter X and *Woods* v. *City National Bank*, 312 U. S. 262 (1941).

reorganization under section 77B, where the debtor was continued in possession.[14]

The court held that directors who, during their incumbency, purchased bonds of the corporation in reorganization should be limited to cost because of the breach of trust involved. In another case the Commission sought limitation to cost where an individual acquired bonds with the aid of an indenture trustee for bondholders through activities which appeared to constitute a breach of the latter's fiduciary obligation.[15] The court entered an order limiting the purchaser to the cost of his bonds. Trading by a committee member in the securities of the subsidiaries of a debtor corporation was discountenanced by the Commission in another case and a satisfactory settlement involving payment of his profits to the company was approved by the court.[16] The application of the same rule has been advocated by the Commission in a series of cases during the past five years where the fiduciary purchased at a discount claims against the corporation prior to the inception of chapter X proceedings but during a period when the corporation was insolvent. In the Commission's view the fundamental basis for the rule, the clash of adverse interests created by the trading in claims against the debtor, is equally applicable whether the corporation is insolvent and in need of rehabilitation or is actually undergoing judicial reorganization. The Commission has urged that the rule be applied to directors and officers of the insolvent corporation, a managing agent having supervision of its affairs, members of a bondholders' committee, and near relatives or business associates of such fiduciaries. Such cases have in several instances been disposed of by compromise and settlement.[17] The matters are pending in other cases,[18] one before the Supreme Court.[19]

Apart from special cases, however, the Commission has taken the position that security holders are to be treated equally regardless of when or at what price their securities were purchased. The Commission has successfully opposed an investigation into purchases of securities at less than par by public security holders.[20] The Commission argued that the reasons for the rule against such purchases by fiduciaries did not apply to members of the public and pointed out that, unless trading by the public were unimpeded, securities of companies in reorganization would become unmarketable—no one would purchase securities if the price actually paid would become the maximum he could recover from the estate.

**Activities with Respect to Allowances**

A major objective of the Commission in its advisory capacity is to protect the estate from exorbitant and inequitable charges, and, at the same time, to seek fair compensation for applicants so as to encourage legitimate creditor and stockholder participation in the reorganization process.

[14] *In re Philadelphia & Western Railway Co.*, 64 F. Supp. 738 (E. D. Pa. 1946). A settlement was subsequently negotiated and approved by the court.
[15] *In re Jeffery Terrace Building Corp.*, N. D. Ill. Subsequently a settlement was negotiated and approved.
[16] *In re American Fuel & Power Co.*, E. D. Ky.
[17] *In re Fifth and Pierce Co.*, N. D. Iowa, West. Div.; *In re Warner Sugar Corp.*, S. D. N. Y.; *In re Gramolt Corp*, S. D. N. Y.; *In re Drake Stadium and Field House Corp.*, S. D. Iowa, Cent. Div.; *In re 322 Eighth Ave. Corp.*, S. D. N. Y.
[18] *In re Wade Wade Park Manor Corp.*, N. D. Ohio; *In re Franklin Building Company*, 83 F. Supp. 263 (E. D. Wisc. 1948), appeal pending in C. A. 7.
[19] *Manufacturers Trust Co.* v. *Becker (In re Colton Crescent, Inc.)*, *certiorari* to C. A. 2, 173 F. 2d 944 (1949).
[20] *In re Pittsburgh Railways Co.*, 159 F. 2d 630 (C. A. 3, 1946), *cert. den.*

The Commission itself receives no allowances from estates in reorganization and presents a wholly disinterested and impartial view. The Commission endeavors to obtain a limitation of the aggregate fees paid in any one case to an amount which the estate can feasibly or should fairly pay. Fee applications are carefully studied and recommendations are made to the end that unnecessary duplication of services and nonbeneficial efforts shall not be recompensed and that applicants shall be regarded on the basis of their relative contribution to the administration of the estate and the adoption of a plan of reorganization. Specific recommendations are made to the courts in cases in which the Commission has been a party and is familiar with the services of the various parties and with all significant developments in the case.

An important question that arose during the past 5 years involved the extent of the jurisdiction of the chapter X court with respect to fees. Contending that complete judicial scrutiny over the granting of all fees in respect of the reorganization was essential to assure the fairness of the reorganization, to prevent abuses, and to supervise effectively the activities of representatives of security holders in the proceeding, the Commission urged that the chapter X court had the power and duty to pass upon the reasonableness of a fee agreement between attorneys and a stockholders' committee even though such fees were to be paid by members of the committee and not directly out of the estate.[21] In this case the district court held that it had no jurisdiction to pass on the agreement and an appeal to the court of appeals was dismissed for lack of prosecution. The issue again arose in a suit to enforce the agreement and the Commission participated, as *amicus curiae*, in an appeal to the Court of Appeals of the State of New York from the denial of a motion to dismiss the complaint. That court, upholding the Commission's position, reversed the lower court's decision [22] and the case was taken to the Supreme Court upon a writ of *certiorari*. The Commission again filed a brief as *amicus curiae*. The Supreme Court held that it was the aim of chapter X to expand judicial control over reorganization fees and expenses and that since the determination of allowances is made an integral part of the process of confirmation of a plan of reorganization, which is exclusively entrusted to the bankruptcy court, it may not be delegated to a State court.[23]

A subject that has been of considerable significance during the past 5 years in the field of allowances in chapter X proceedings is the matter of freedom from conflicting interest as a prerequisite for receiving an allowance. The Commission has contended that fees be granted only for disinterested services rendered to the estate or security holders. In a number of cases during the past 5 years the Commission successfully opposed the allowance of fees to persons who represented interests adverse to those of the estate or the security holders, either as a prospective purchaser of the debtor's property, as prospective underwriter of its securities, as landlord, or as tenant.[24] In these cases

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[21] *In re Pittsburgh Terminal Coal Corp.*, W. D. Pa.
[22] *Leiman* v. *Guttman*, 297 N. Y. 201, 78 N. E. (2d) 472 (1948).
[23] *Leiman* v. *Guttman*, 336 U. S. 1 (1949).
[24] *In re Congress & Senate Co.*, 163 F. 2d 621 (C. A. 8, 1947); *In re 32-36 North State Street Building Corp.* 164 F. 2d 205 (C. A. 7, 1947); *In re Equitable Office Building Corp.* (Aranow appeal) (C. A. 2, 1949); *In re Rocky Mountain Fuel Corporation*, D. Colo.; *In re International Mining and Milling Corp.*, D. Nevada

the Commission argued that, despite the fact that the services of applicants may have incidentally benefited the estate or contributed to a plan of reorganization, they were rendered for the purpose of advancing special interests of their clients which were distinct and different from that of the estate or other security holders. Under these circumstances, the Commission was of the view that they should look to their clients and not to the estate for their compensation.

The denial of allowances as a prophylactic measure to the end that fiduciaries and representatives of security holders maintain appropriate standards of conduct has been mentioned above. Specific applications of this doctrine have continued to occupy the Commission's attention during the past 5 years. The Commission has opposed the granting of fees to applicants in various cases where as fiduciaries they occupied conflicting positions. For example, the Commission successfully opposed an allowance where an indenture trustee acted as such at the instance of a bondholders' committee.[25] In an analogous situation, the Commission successfully objected to any allowance to the former president of a debtor for services he had rendered as additional trustee because investigation disclosed that he had participated in various acts of mismanagement while acting as president, causing loss to the corporation.[26]

In another case, the Commission objected to any allowance to an attorney for stockholders on the ground that he had disclosed private information regarding the reorganization proceeding to his brother-in-law on the basis of which his brother-in-law had purchased stock of the debtor. The Commission also pointed out that the attorney had proposed a plan of reorganization under which his mother-in-law would participate in and profit from the financing of a new common stock issue. On appeal from a denial of a fee by the district court [27] the Court of Appeals for the Second Circuit held that although the disclosure by the attorney to his brother-in-law was a breach of trust, it was an error to deny any compensation to the attorney as a matter of law, but rather that it was within the discretion of the court as to how much the fee earned by the attorney should be reduced because of this breach.[28] The Court of Appeals indicated that the attorney had a personal interest, as distinguished from a financial interest, in the underwriting participation of his mother-in-law and that this interest was not sufficient to bar him from compensation in view of the disclosure made to the court of the relationship.

The application of section 249, and the equitable principle which it codifies—the denial of compensation to an attorney or other representative of security holders who has traded in securities of the debtor—has been a recurrent problem in chapter X cases during the past 5 years. In several cases, the Commission took the position that purchases of sales of securities by near relatives of a fiduciary come within the application of the rule. In two cases the Commission's contention was upheld,[29] in two cases it was not,[30] and others

[25] *In re Ritz-Carlton Rest. and Hotel Co.*, 60 F. Supp. 861 (D. C. N. J., 1945).
[26] *In re American Acoustics, Inc.*, D. N. J.
[27] *In re Equitable Office Building Corp.*, 83 F. Supp. 531 (S. D. N. Y. 1949).
[28] *Berner v. Equitable Office Building Corp.*, — F. 2d — (1949).
[29] *In re Midland United Co.*, 64 F. Supp. 399 (D. C. Del. 1946) affirmed, 159 F. 2d 340 (C. A. 3, 1947); *In re Inland Gas Corp.*, 73 F. Supp. 785 (E. D. Ky.).
[30] *In re Penn Timber Co.*, D. C. Ore., no opinion; *In re Philadelphia and Reading Coal and Iron Co.*, 61 F Supp. 120 (E. D. Pa. 1945), appeal disallowed (C. A. 3, 1945).

are pending. In another case the Commission successfully opposed an applicant's narrow interpretation of section 249 which would have made its provisions inapplicable to attorneys who represent individual creditors or stockholders as distinguished from committees or indenture trustees.[31] The Commission has also been upheld in its contention that trading in the securities of the subsidiary of a debtor came within the scope of the statutory prohibition, particularly where the subsidiary had claims against the parent and other adverse interests existed.[32] Section 249 has also been held applicable to another situation where the interest was an indirect one.[33]

### INSTITUTION OF CHAPTER X PROCEEDINGS AND JURISDICTION OF THE COURT

The Commission has participated in various cases during the past 5 years, as a party or as *amicus curiae*, in order to establish the jurisdiction of the chapter X courts over the entire reorganization process to the complete extent intended by the statute.

In one group of cases, the Commission took steps to assure that the investor safeguards of chapter X were not evaded and nullified by the improper resort of a corporation to chapter XI.[34] In accordance with the decision of the Supreme Court in *Securities and Exchange Commission* v. *U. S. Realty and Improvement Co.*, 310 U. S. 434 (1940), the Commission sought the dismissal of chapter XI proceedings because the corporation had a substantial class of public security holders. It was the Commission's position that the provisions of chapter XI, intended for the relatively small company, do not contain the safeguards necessary to protect large classes of public investors in the consummation of a fair, equitable, and feasible plan of reorganization. In one of these cases,[35] the resort to chapter XI was apparently an attempt to raise money through the sale of stock without registration under the Securities Act under the exemption afforded by chapter XI in connection with a plan of arrangement.

During the past 5 years, the Commission participated in a group of cases involving the question of "good faith" in the filing of a petition as a prerequisite to approval of the petition by the court. The Commission's view in some of these cases was that the pendency of a prior state court proceeding was not a bar to a chapter X proceeding since the prior proceeding did not contain safeguards for investors comparable with those in chapter X. However, the courts felt in these cases that the prior state court proceedings would serve the interests of security holders sufficiently.[36] In another case, the Commission supported the district court's approval of the petition against objection to the jurisdiction of the court on the ground that the debtor was a nonprofit corporation which had been dissolved under State law. The Commission argued that the business enterprise conducted by the state court receiver was an "unincorporated association" under the Bankruptcy Act and entitled to the benefits

[31] *Abrams* v. *188 Randolph Building Corp.*, 151 F. 2d 357 (C. A. 6, 1945) *cert. den.*
[32] *In re Midland United Co.*, *supra.*
[33] *In re Inland Power & Light Corp.*, N. D. Ill. (1947), appeal disallowed (C. A. 7, 1947).
[34] *In re Culton Crescent, Inc.*, S. D. N. Y.; *In re American Silver Corp.*, S. D. Cal., Cent. Div.; *In re Solar Manufacturing Corp.*, S. D. N. Y.
[35] *In re American Silver Corp:*
[36] *In re Sheridan View Building Corp.*, 149 F. 2d 532 (C. A. 7, 1945), *cert. den.*; *In re St. Charles Hotel Co.*, 149 F. 2d 645 (C. A. 3, 1945), *cert. den.*

of the reorganization statute, but the Court of Appeals concluded that there was no corporate entity and reversed the lower court's ruling.[37] The legal sufficiency of the petition for reorganization arose in other cases. In one,[38] the Commission urged that the petition showed a need for reorganization to avoid sacrifice of values through a forced sale, that chapter X contained appropriate safeguards and flexibility to protect investors, and that a plan could involve either a sale of property at a fair upset price and a distribution of the proceeds or the issuance of new securities in a reorganized corporation which would acquire the assets of the debtor. The Court of Appeals affirmed this position. In another case,[39] the Commission successfully argued in opposition to a motion to dismiss the petition, maintaining that secured creditors were proper parties to file a petition for reorganization and that the petition alleged sufficient facts to show preferential payments as an "act of bankruptcy." On the other hand, where the evidence failed to show sufficient facts to spell out "insolvency" or "acts of bankruptcy," the Commission successfully urged dismissal of the petition.[40]

During the past 5 years, two important aspects of the jurisdiction of the chapter X court were settled in cases in which the Commission actively participated—cases involving claims both on behalf of the estate and against the estate. In a case involving a suit for $39,000,000 by chapter X trustees against directors, officers, and the controlling stockholder of the debtor, the Commission appeared as *amicus curiae* and supported the trustees' contention that the chapter X court had jurisdiction regardless of diversity of citizenship. The Commission urged that Congress had purposely modified the Bankruptcy Act to afford the reorganization trustee a wider choice of forum than the bankruptcy trustee, having in mind the typical suit involving diversion of assets and related misconduct by insiders in large corporations which have a national public interest.[41] The Supreme Court upheld this broad interpretation of the statute. In another chapter X proceeding in which the Commission actively participated, the summary jurisdiction of the chapter X court to determine the ownership of securities in or claims against the debtor and to enjoin interference with the exercise of this jurisdiction was sustained.[42] The Court of Appeals for the Third Circuit also sustained the position of the Commission that the district court had the power to restrain the transfer of claims against the estate in order to preserve its jurisdiction over the claims and to protect the estate against the loss of asserted equitable defenses.

A similar question of the jurisdiction of the chapter X court arose in a case where the court had approved and allowed the settlement of claims against the debtor by its subsidiary.[43] Certain stockholders of the subidiary brought suit against the subsidiary in another court to enjoin consummation of the settlement agreement, alleging that it was improvident and unfair. On motion, the chapter X court

[37] *In re Midwest Athletic Club*, 161 F. 2d 1005 (C. A. 7, 1947).
[38] *In re Diversey Hotel Corp.*, 165 F. 2d 655 (C. A. 7, 1848), *cert. den.*
[39] *In re Third Avenue Transit Corp.*, S. D. N. Y.
[40] *In re 32 West Randolph Corporation*, N. D. Ill.
[41] *Austrian* v. *Williams*, 331 U. S. 642 (1947).
[42] *In re International Power Securities Corp.*, 170 F. 2d 399 (1948). It is to be noted that the exercise of the injunctive power of the court was upheld although the bonds and their bank custodian were beyond the territorial limits of the district court and their alleged owner was an Italian corporation.
[43] *In re Central States Electric Corp.*, E. D. Va.

issued an order restraining the stockholders' suit and requiring the stockholders to submit the issues raised in the reorganization proceeding. The Commission supported the motion on the ground that the chapter X court had exclusive jurisdiction over the allowance of claims against the estate and that the stockholders were in effect interfering with the reorganization proceeding. After hearing the objections to the settlement, the court overruled them.

The extent of the chapter X court's jurisdiction over reorganization matters was broadly defined in another decision during the past 5 years. In the proceedings involving Pittsburgh Railways Co., the Commission actively supported a petition to have the court assert jurisdiction for purposes of reorganization over various subsidiary companies and associated companies, which were not nominally before the court, in order to effectuate a complete reorganization of the Pittsburgh transit system. The Commission, calling attention to the urgent necessity of a system-wide reorganization, argued that the separate corporate entities of the so-called underlier companies should be disregarded to achieve a workable plan under the facts of this case where the enterprise had always been conducted as a unit, operations were unified, and the affairs of the companies inextricably intermingled. The Court of Appeals for the Third Circuit sustained this position and reversed the district court which had denied the petition.[44]

## PLANS OF REORGANIZATION UNDER CHAPTER X

The ultimate objective of the reorganization is the formulation and consummation of a fair and feasible plan of reorganization. Accordingly, the most important function of the Commission under chapter X is to aid the courts in achieving this objective.

### Fairness

Underlying the Commission's approach to the problems of fairness or reorganization plans under chapter X is the cardinal principle that full recognition must be accorded to claims in the order of their legal and contractual priority, either in cash or new securities, and that junior claimants may participate only to the extent that the debtor's properties have value after the satisfaction of prior claims or to the extent that they make a fresh contribution necessary to the reorganization of the debtor. A valuation of the debtor's assets is essential to provide a basis for judging the fairness as well as the feasibility of proposed plans of reorganization. The Commission has continued to recommend that the proper method of valuation for reorganization purposes is primarily an appropriate capitalization of reasonably prospective earnings. These principles as to the recognition of priorities and as to valuation, laid down in a series of Supreme Court decisions, are firmly established. Nevertheless, the Commission has been called on during the past 5 years to reiterate the arguments originally advanced in support of these principles. For example, in the reorganization proceedings involving the Chicago transit system, junior security holders relied upon a rate base valuation of the properties, upon a price fixed by a formula in the original franchises of the

[44] *In re Pittsburgh Railways Co.*, 155 F. 2d 477 (1946), *cert. den.*

debtors in 1907, upon book values, and upon a hypothetical condemnation figure, in an attempt to reach a substantially higher figure than a proposed purchase price for the properties and the valuation estimated by the Commission. Replying to these contentions, the Commission indicated in its advisory report that reorganization values are dependent upon probable future earnings and that, on the basis of the record and the applicable rules of priority, the junior security holders should be denied any participation. The plan was amended accordingly and approved by the district court and affirmed by the Court of Appeals.[45]

In connection with the fairness of plans and the treatment of claims against the estate, the Commission has been concerned with situations where mismanagement or other misconduct on the part of a parent company or a controlling person required that the claim of such person be subordinated to the claims of the public investors or that participation be limited to cost. Such matters must be given full consideration since they form an integral part of the concept of the "fair and equitable" plan.

The increasing prosperity of business during the past 5 years has enabled various debtor corporations to solve their financial problems and in many cases has shaped the course of the reorganization. In a number of cases, it was felt that a sale of the assets of the debtor would be more beneficial for security holders than a plan involving the exchange of new securities for old securities. The legal basis for plans involving sales has been affirmed in various cases in which the Commission was an active participant in supporting the power of the chapter X court.[46]

The relative prosperity of debtor corporations was also reflected during the past five years in an increasing number of cases dealing with questions of interest. In the *Childs Company* case the Commission successfully urged the general equitable rule that, where full payment is ultimately made, prior partial payments are to be applied first to accrued interest and then to principal. Following its policy of according to senior creditors all their contractual rights before participation by junior creditors, the Commission supported the claim of first mortgage bondholders to interest on overdue interest as provided for under the terms of the mortgage indenture in the proceedings involving Inland Gas Corp. The Supreme Court, however, in *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156 (1946), adopting an approach to the problem which had not been argued by any of the parties, held that it would be inequitable to permit the payment of interest on interest under the circumstances of the case.[47] The Court held that the failure to make interest

[45] *In re Chicago Railways Company*, 160 F. 2d 59 (C. A. 7, 1947), *cert den.* See also *Trinity Buildings Corp. Pref. Stockholders' Committee* v. *O'Connell*, 155 F. 2d 327 (C. A. 2, 1946); *Dudley* v. *Mealey*, 147 F. 2d 268 (C. A. 2, 1945).

[46] *In re Lorraine Castle Apartments Building Corp., Inc.* 149 F. 2d 55 (C. A. 7, 1945) *cert. den.* October 8, 1945; *In re Chicago Railways Company*, 160 F. 2d 59 (C. A. 7, 1947).

[47] It may be observed that the Commission's brief before the Supreme Court contained the following statement:

"The validity, as a matter of public policy, of a covenant for interest on interest, as applied to interest accruing since the date of a Federal equity receivership or bankruptcy proceedings, might conceivably be regarded as a proper subject for independent decision by the Federal court, even in the absence of direct legislation. The consequence of such a holding would be to afford greater uniformity and certainty in dealing with a problem which appears to be arising with increasing frequency in reorganization proceedings and occasionally in the State courts. We recognize, however, that there is no precedent for such a rule. The closest analogy would appear to be those cases holding that the equitable status of certain claims is a matter of bankruptcy law."

payments promptly was the result of judicial action and bondholders should not receive added compensation by way of penalty.

The Commission was not successful in another case involving the payment of interest to creditors. The Commission urged in that case that the aggregate claim of principal and interest which had accrued prior to the commencement of the proceeding should be treated as though it were a judgment against the estate. Such a judgment would carry interest on the over-all amount up to the date of payment and would include interest on the interest which had accrued prior to the date of the proceeding. The Commission argued that the filing of the petition for reorganization restrained creditors from pursuing their usual remedy by way of judgment and execution, but this stay should not be utilized to affect the substantive rights which would normally follow when creditors obtain a judgment. The district court sustained the Commission's view but the court of appeals reversed, holding that interest was not payable on that portion of the claim which represented unpaid interest accrued prior to the date of the chapter X petition, citing the *Vanston* case.[48] Another issue in that case was settled by the court's holding that interest on the principal amount of the claim continued to accrue, after the institution of chapter X proceedings, at the contract rather than the legal or "judgment" rate where the covenant was to pay interest until the principal "shall be duly paid."

In two subsequent cases the Commission was sustained in its position regarding interest. In *Empire Trust Co.* v. *Equitable Office Building Corp.*, a debenture provision for the payment of interest at 5 percent "until such principal shall be paid" was likewise construed as fixing the postmaturity rate applicable during the pendency of the reorganization proceeding and as negativing the 6 percent legal rate which might otherwise have been applicable.[49] In *Delatour* v. *Prudence Realization Corp.*, where guaranteed certificates of participation in a 6 percent mortgage issued by the debtor provided for the remission of only 5½ percent interest to the public certificate holders by the guarantor servicing-agent, the public certificate holders were nevertheless allowed the 6 percent mortgage interest to the exclusion of the guarantor following default on the guaranty.[50] The court held that the one-half percent interest represented compensation due the guarantor for its guaranty and for servicing the mortgage, both of which terminated upon default.

**Feasibility**

That reorganizations are often attributable to a lack of feasibility in prior reorganizations is attested by the fact that numerous chapter X proceedings involve companies which had previously been "reorganized" in equity receivership cases or under section 77B. In order to avoid a similar record as to chapter X cases, with its attendant expense and injury to investors, the Commission gives a great deal of attention to the economic soundness and feasibility of plans. In this connection the Commission is particularly concerned with the adequacy of working capital: the relationship of funded debt and the capital structure

[48] *In re Realty Associates Securities Corporation*, 163 F. 2d 387 (1947), reversing 66 F. Supp. 416 (S. D. N. Y. 1946).
[49] 167 F. 2d 346 (C. A. 2, 1948).
[50] 167 F. 2d 621 (C. A. 2, 1948).

as a whole to property values; the adequacy of corporate earning power in relation to interest and dividend requirements; the necessity for capital expenditures; and the effect of the new capitalization upon the company's prospective credit. During the past 5 years the Commission has continued to encounter opposition on the part of representatives of security holders who are reluctant to scale down debt because they desire to retain tax deductions based on interest payments. These parties are disposed to base values and capital structures upon inflated earnings because they either overlook the extent to which earnings are inflated or hope they will continue long enough to permit debt to be reduced to manageable proportions. In most cases, even where the Commission's view of a feasible debt issue has not been accepted, the debt adopted under the plan of reorganization was reduced to a much greater extent than desired originally by the parties.

**Modification of Plan**

The *Equitable Office Building* case presented the problem of amending a plan after it had been approved and confirmed by the court and was about to be consummated by the transfer of assets to a new reorganized company and by the distribution of new securities. Two common stockholders, dissatisfied with the small amount of new common stock allotted to them under the plan, presented a financing proposal under which stockholders would receive rights to buy the stock of the new company, an underwriter would buy all unsubscribed shares, and the proceeds would be used to pay debenture holders in full. The marked improvement in the real estate market made this proposal possible. Debenture holders opposed this proposal since the market price of debentures had risen far above the amount due on the debentures, reflecting the market's appraisal of the increase in values. The Commission supported the stockholders' petition to amend the plan on the ground that debenture holders had no vested rights under the plan prior to consummation of the plan and that stockholders should be permitted to salvage whatever equity existed. The court of appeals sustained the petition of the stockholders, holding that even after confirmation debenture holders had no legally protected interest beyond principal and interest due them.[51]

**Consummation of Plan**

Frequently, the plan of reorganization contains provisions relating to the terms to be incorporated in corporate charters, bylaws, trust indentures, and other instruments which are to govern the internal structure of the reorganized debtor. In other cases these details are left for the approval of the court upon consummation of the plan. In both cases, the Commission pays careful attention to these matters and endeavors to obtain the inclusion of protective features and safeguards for investors. Among numerous other matters, the Commission has urged and generally favored provisions for cumulative voting for directors, pre-emptive rights for stockholders, provisions making lists of stockholders available for inspection, the ratification by stockholders of the selection of auditors, and, in certain instances, a limitation upon compensation for management. The use of the voting trust as a control device has been suggested in various cases in which the Commission participated. Unless justified by the special and

[51] *Knight* v. *Wertheim*, 158 F. 2d 838 (C. A. 2, 1946).

unusual circumstances of the case, the Commission has opposed the voting trust because it disenfranchises stockholders who are entitled to a voice in the management of the enterprise. In those cases where the Commission has agreed that a voting trust was necessary in the interests of security holders, or where the voting trust was adopted over the Commission's objection, the Commission has sought to have the voting trust agreement contain appropriate safeguards in the interests of investors.

## ADVISORY REPORTS

The preparation of advisory reports pursuant to section 172 of chapter X represents only a small part of the activities of the Commission in chapter X proceedings. Nevertheless, because of their wide distribution and because they are usually filed in the larger cases, which have a greater public interest, the advisory reports occupy a prominent position in the reorganization field. They are a principal means of contact between the Commission and the public in chapter X matters. Generally speaking, an advisory report is prepared only in connection with a proceeding involving a large public interest and in which significant problems exist. The Commission has not filed formal advisory reports in the bulk of the cases in which it has participated, but in all these cases it has advised the court in detail, orally or by memorandum, of its views with respect to the various plans of reorganization proposed in the proceeding.

During the past 5 years the Commission has filed eight advisory and six supplemental reports. During the 1949 fiscal year, the Commission prepared three advisory reports, in the proceedings involving Inland Gas Corp. and American Fuel & Power Co., Aireon Manufacturing Corp., and International Railway Co.

# PART IV

## ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

The term "trust indenture" when applied to corporate debt securities refers to an instrument underlying the securities in which covenants of the issuer for the protection of the security holder are set forth. A "trustee," usually a large bank, is commonly designated to perform certain acts on behalf of the security holders. Before passage of the Trust Indenture Act of 1939 the usual provisions in indentures exculpating trustees so fully exonerated them from any responsibilities to perform their duties that one court said that the term "trustee" is a "misnomer" (*Haggard* v. *Chase National Bank*, 287 N. Y. S. 541, 570) and the Commission, in part VI of its Protective Committee Study (1936)—relating to corporate trustees—stated that the "so-called trustee" was "merely a clerical agency." The act operates by requiring the inclusion in indentures to be qualified of specified provisions which provide means by which the rights of holders of securities issued under such indentures may be protected and enforced. These provisions relate primarily to the corporate trustee who must not possess conflicting interests; must not after default, or within 4 months prior thereto, improve his position as a creditor to the detriment of the indenture securities; must make annual and periodic reports to bondholders; must maintain bondholders lists to provide a method of communication between bondholders as to their rights under the indenture and the bonds; and must be authorized to file suits and proofs of claims on behalf of the bondholders. The act outlaws exculpatory clauses used in the past to eliminate the liability of the indenture trustee to his indenture security holders and imposes on the trustee, after default, the duty to exercise the rights and powers vested in it, and to use the same degree of care and skill in their exercise as a prudent man would use in the conduct of his own affairs. Specified evidence must be supplied by the obligor to the indenture trustee with respect to the recording of the indenture and with respect to conditions precedent to action to be taken by the trustee at the request of the obligor.

The provisions of the Securities Act of 1933 and the Trust Indenture Act are so integrated that registration pursuant to the Securities Act of 1933 of securities to be issued under a trust indenture is not permitted to become effective unless the indenture conforms to the requirements expressed in the Trust Indenture Act of 1939, and such an indenture is automatically "qualified" when registration becomes effective as to the securities themselves.[1] An application for qualification of an indenture covering securities not required to be registered under the Securities Act of 1933, which is filed with the Commission under the Trust Indenture Act, is processed substantially as though such application were a registration statement filed pursuant to the Securities Act of 1933.

[1] The exemption provisions of the act incorporate most of the exemptions contained in the Securities Act 1933 and include several additional exemptions.

The significance of the act in defining rights under indentures is illustrated in *The Continental Bank & Trust Co. of New York* v. *The First National Petroleum Trust*,[2] decided in 1946. The case involved an interpretation of an indenture qualified under the Trust Indenture Act. The indenture trustee sought to recover certain items of overdue interest upon debentures. Intervenors, representing a majority in amount of outstanding debentures, directed the trustee not to bring any proceedings for a stated period and to waive the default. A motion of the Commission for leave to appear, file a brief and present oral arguments, as *amicus curiae*, was granted.

The court decided that an interpretation of the indenture qualified under the act necessarily involves an interpretation of the act. With respect to the attempt of the holders of a majority of outstanding debentures to postpone and waive default in the interest payment, the opinion stated that such action was contrary to the mandatory provisions of section 316 (b) of the act which expressly prohibits impairment of the right of a debenture holder to receive payment of interest except where, under section 316 (a) (2), holders of not less than 75 percent in principal amount of outstanding debentures consent to postponement for not more than 3 years.

## STATISTICS OF INDENTURES QUALIFIED

For the past 5 years debt securities have been qualified under the act at the rate of about 2½ billions of dollars in aggregate amount each year. Specific figures are shown below:

| Fiscal year | Number of indentures qualified | Aggregate amount |
|---|---|---|
| 1945 | 98 | $1,791,190,320 |
| 1946 | 136 | 2,988,457,658 |
| 1947 | 96 | 2,664,671,361 |
| 1948 | 122 | 2,445,903,580 |
| 1949 | 124 | 2,558,312,365 |
| 5 years | 576 | 12,448,535,284 |

More detailed figures for the 1949 fiscal year are given below:

*Total number of indentures filed under the Trust Indenture Act of 1939*

| | Number | Aggregate amount |
|---|---|---|
| Indentures pending June 30, 1948 | 7 | $263,780,600 |
| Indentures filed during fiscal year | 127 | 2,605,823,365 |
| Total | 134 | 2,869,603,965 |
| Disposition during fiscal year: | | |
| Indentures qualified | 124 | 2,558,312,365 |
| Amount reduced by amendment | | 10,650,000 |
| Indentures deleted by amendment or withdrawn | 1 | 2,500,000 |
| Indentures pending June 30, 1949 | 9 | 298,141,600 |
| Total | 134 | 2,869,603,965 |

[2] 67 F. Supp. 859 (D. C. R. I. 1946).

During the 1949 fiscal year the following additional material relating to trust indentures was filed and examined for compliance with the appropriate standards and requirements:

One hundred fifty-five statements of eligibility and qualification under the Trust Indenture Act;

Fifteen amendments to trustee statements of eligibility and qualification;

One hundred fifteen supplements S–T, covering special items of information concerning indenture securities registered under the Securities Act of 1933;

Thirty-four amendments to supplements S–T;

Twenty-four applications for findings by the Commission relating to exemptions from special provisions of the Trust Indenture Act of 1930; and

Five hundred forty-one reports of indenture trustees pursuant to section 313 of the Trust Indenture Act of 1939.

## PART VI

## ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 requires registration of and regulates investment companies—companies engaged primarily in the business of investing, reinvesting, and trading in securities. Among other things, the act requires disclosure of the finances and investment policies of these companies in order to afford investors full and complete information with respect to their activities; prohibits such companies from changing the nature of their business or their investment policies without the approval of the stockholders; bars persons guilty of security frauds from serving as officers and directors of such companies; regulates the means of custody of the assets of investment companies and requires the bonding of officers and directors having access to such assets; prevents underwriters, investment bankers, and brokers from constituting more than a minority of the directors of such companies; requires management contracts in the first instance to be submitted to security holders for their approval; prohibits transactions between such companies and their officers and directors except on the approval of the Commission; forbids the issuance of senior securities of such companies except in specified instances; and prohibits pyramiding of such companies and cross-ownership of their securities. The Commission is authorized to prepare advisory reports upon plans of reorganizations of registered investment companies upon request of such companies or 25 percent of their stockholders and to institute proceedings to enjoin such plans if they are grossly unfair. The act also requires face amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

### REGISTRATION UNDER THE ACT

During the past 5 years, 69 new investment companies have been registered under the Investment Company Act of 1940—predominantly open-end management companies (companies which redeem their shares on presentation by the stockholders). During the same 5-year period about 185 registered management open-end and management closed-end investment companies reported to the Commission sales to the public of approximately $1,500,000,000 of their securities, and redemptions and retirements of approximately $800,000,000, leaving a net investment in such companies over the period by the public of approximately $700,000,000. As of June 30, 1949, 358 investment companies were registered under the act. They have total assets of approximately $3,700,000,000. These companies are as follows:

| | |
|---|---|
| Number of registered investment companies at July 1, 1944 | 371 |
| Number of new investment companies registered during the 5-year period | 69 |
| Number of registered investment companies whose registration was terminated during the 5-year period | 82 |
| Number of registered investment companies at June 30, 1949 | 358 |

The 69 investment companies registered during the 5-year period are classified as follows:

| | |
|---|---|
| Management open-end | 42 |
| Management closed-end | 24 |
| Unit | 3 |
| Total | 69 |

The 358 investment companies registered at June 30, 1949, are classified as follows:

| | |
|---|---|
| Management open-end | 140 |
| Management closed-end | 107 |
| Unit | 95 |
| Face amount | 16 |
| Total | 358 |

**Types and Investment Policies of Companies Formed**

As indicated above most of the investment companies formed during the last 5-year period have been of the open-end type, investing primarily in common stocks although there was some tendency to adopt a "balanced" investment policy, a policy which would require the investment portfolios of the companies to include a specified minimum of cash, bonds, or preferred stocks. In other cases, new investment companies have adopted so-called formula timing plans whereby common stocks would be bought or sold at predetermined levels of stock market averages. Another company, in a variation from usual investment policies, has stipulated that normally at least 50 percent of its assets would be invested in so-called small companies, defined as companies each with net worth of less than $15,000,000. One company has adopted a policy of limiting its investments as much as possible to securities of companies doing business in the investment company's State of incorporation.

One of the closed-end management companies formed during the last 5 fiscal years is American Research & Development Corp. Formed in 1946, the company announced and has carried forward a policy of supplying venture capital to industry. Its management includes professors at the Harvard School of Business Administration as well as staff members of the Massachusetts Institute of Technology. At its inception the company desired to raise capital primarily from insurance companies and other investment companies. Although it was not contemplated that any one investment company would invest more than 5 percent of its assets in the new company, it was desired to permit individual investment companies to acquire more than 5 percent of the voting securities of the new company. This proposal ran counter to the antipyramiding provisions of the act. The new company applied to the Commission for an order excepting the new company from this prohibition of the act. Because of the nature of the new company's proposed investment policies and the fact that no one investment company would be in a position to exercise control over the new company, the Commission granted the application.[1]

On its initial offering of securities American Research & Development Corp. raised approximately $3,000,000, of which 10 percent was

[1] Investment Company Act release No. 934 (1946).

contributed by insurance companies and 20 percent by investment companies. These capital funds were invested in a wide variety of new enterprises in various developmental stages, including a company engaged in the manufacture of atomic radiation detecting devices, and radioactive isotopes; a company engaged in catching, deveining and freezing shrimp and other shell fish; a company engaged in tuna fishing and canning in the south seas; and companies engaged in developing new inventions, such as house heating devices based on the principle of jet combustion.

During the last fiscal year a second offering of the new company's securities was made to the general public in an amount which, if all sold, would realize to the company an additional $4,000,000 of capital for investment in new enterprises.

**Selling Literature**

The act requires literature (other than the statutory prospectus) used in selling open-end investment company shares to be filed with the Commission within 10 days after such literature is first employed as selling material. During the last 5 years increasing use was made in such literature of charts and schedules purporting to depict the performance records of open-end companies. Many of these depictions appeared to be misleading and inaccurate in material aspects. Accordingly, during the 1949 fiscal year the Commission, in a public release, commented upon aspects in which it deemed these charts and schedules to be misleading. As a result of this release, representatives of the Commission's staff and of the National Association of Securities Dealers and the National Association of Investment Companies held a series of conferences in which a more uniform and accurate method of portraying the performance of investment companies was evolved to serve as a guide to the industry in general. In an attempt to remove misleading comparisons from selling literature conferences are now in progress in respect of charts and graphs purporting to compare the performance of investment companies with that of well-known stock market averages.

**Other Data**

The number of documents filed under the act by registered investment companies during the 1948 and 1949 fiscal years, together with other related statistics, are tabulated below:

| | Fiscal year ended June 30— | |
|---|---|---|
| | 1948 | 1949 |
| Number of registered investment companies: | | |
| Beginning of year | 352 | 359 |
| Registered during year | 18 | 12 |
| Terminations of registrations during year | 11 | 13 |
| Number of companies registered at end of year | 359 | 358 |
| Notifications of registration | 18 | 12 |
| Registration statements | 14 | 12 |
| Amendments to registration statements | 38 | 31 |
| Annual reports | 219 | 228 |
| Amendments to annual reports | 28 | 46 |
| Quarterly reports | 762 | 788 |
| Periodic reports, containing financial statements, to stockholders | 688 | 662 |
| Reports of repurchases of secutities by closed-end management companies | 102 | 72 |
| Copies of sales literature | 2,110 | 1,910 |
| Applications for exemption from various provisions of the act | 61 | 49 |

| | Fiscal year ended June 30— | |
|---|---|---|
| | 1948 | 1949 |
| Applications for determination that registered investment company has ceased to be an investment company | 12 | 14 |
| Amendments to applications | 42 | 35 |
| Total applications: | | |
| Beginning of year | 50 | 44 |
| Filed during year | 73 | 63 |
| Disposed of during year | 79 | 75 |
| Pending at end of year | 44 | 32 |

## APPLICATIONS FILED

Another function of the Commission in administering the act is to pass on applications by investment companies for exemptions from its provisions. The act permits exemption under appropriate standards. An example of the type of relief sought is the case of American Research and Development Corporation which has already been described.

On May 23, 1947, the Commission adopted rule N–5, which provides, in all but a limited number of cases, for a simplified procedure designed to expedite the disposition of uncontested proceedings initiated by application or upon the Commission's own motion pursuant to any section of the act or any rule or regulation thereunder. The rule makes provision for the publication in the Federal Register of the initiation of such proceedings and affords ample opportunity for any interested person to request a hearing.

The most numerous of the applications filed arise out of the provisions of the statute which forbid, in the absence of approval by the Commission, purchases or sales of property or securities among investment companies and their affiliated persons. To approve such transactions the Commission must find that they are fair as to price and involve no overreaching. As a result the applications involve unusual questions of valuation and inside influence. For example, an investment company filed an application to sell a controlling block of stock in a bank to an affiliated person. After consideration of a record containing complex financial statistics in respect of, among other things, the earning power and nature of the assets of the bank, its competitive standing among banks in the same locality, the nature of its loans and other transactions, and the market value of its stock compared to that of other banks, the Commission concluded that the company had not sustained the burden of proof that the price was fair and therefore denied the application. Subsequently, a new application was filed fixing a higher price for the securities and this application was granted.

Data of the nature and disposition of various applications filed under the act during the 1945–49 fiscal years follow:

*Nature and disposition of various applications filed under the Investment Company Act of 1940 during the 5-year period July 1, 1944, to June 30, 1949*

| Section of the act under which application was filed | Number pending at July 1, 1944 | Filed during period | Disposed of during period | Pending at June 30, 1949 |
|---|---|---|---|---|
| 2 (a) (9) Determination of question of control. | 5 | 10 | 1 granted; 2 denied; 12 withdrawn. | ---- |
| 3 (b) (2) Determination that applicant is not an investment company. | 5 | 13 | 10 granted; 1 denied; 6 withdrawn. | 1 |
| 6 (b) Employees' security company exemptions. | 1 | 5 | 1 granted; 1 denied; 3 withdrawn. | 1 |
| 6 (c) Various exemptions not specifically provided for by other sections of the act. | 10 | 102 | 90 granted; 1 denied; 13 withdrawn. | 8 |
| 6 (d) Exemption for small closed-end investment companies offering securities in intrastate commerce. | ---- | 1 | 1 granted | ---- |
| 8 (f) Determination that a registered investment company has ceased to be an investment company. | 7 | 81 | 76 granted; 2 denied; 7 withdrawn. | 3 |
| 9 (b) Exemption of ineligible persons to serve as officers, directors, etc. | 37 | ---- | 11 granted | 13 |
| 10 (f) Exemption of certain underwriting transactions. | ---- | 7 | 7 granted | ---- |
| 11 (a) Approval of terms of proposed security exchange offers. | 1 | 3 | 3 granted; 1 withdrawn | ---- |
| 12 (g) Approval of acquisition of control of insurance company. | ---- | 1 | 1 withdrawn | ---- |
| 17 (b) Exemption for proposed transactions between registered investment companies and affiliates. | 7 | 135 | 111 granted; 3 denied; 21 withdrawn. | 7 |
| 17 (d) Approval of certain bonus and profit-sharing plans. | ---- | 39 | 34 granted; 3 withdrawn | 2 |
| 23 (c) (3) Approval of terms under which closed-end investment company may purchase its outstanding securities. | 1 | 9 | 6 granted; 3 withdrawn | 1 |
| 25 (b) Advisory report on proposed plan of reorganization. | ---- | 2 | 1 report made; 1 withdrawn. | ---- |

## CHANGES IN RULES

The act, in numerous instances, authorizes the Commission, within standards set by Congress, to prescribe rules and regulations to insure the protection of security holders of investment companies. Important instances of such exercise of the Commission's rule-making power over these companies during the past 5 years have been in connection with the custody of their portfolio assets, the bonding of their employees having access to such assets, and pension and profit-sharing plans.

The act permits investment companies to maintain their assets in the custody of a bank or in their own custody. In the latter case the Commission may by rule prescribe the conditions of such custody. The act, however, does not define "custody of a bank" as against custody of its assets by the company itself. Accordingly, the Commission during the last 5 years has amended its custody rule to define "custody of a bank" as custody subject to the investment company's direction but without power in the company's officers or employees to withdraw such assets on their mere receipt given to the bank.

A new rule promulgated by the Commission during the last 5 years requires the bonding of officers and employees of investment companies who have access to their assets or the general power to direct the disposition of such assets. The rule leaves to the best judgment of the management of the investment company the amount and conditions of the bond. However, the bond is required to be filed with the

Commission, and the Commission, after hearing, can direct an increase in the amount of the bond or prescribe other conditions for the protection of investors. An analysis by the Commission of the bonds filed will enable the Commission to determine standards for bonding in the light of the total assets of the companies and other factors.

**Rule N–17D–1—Bonus, Profit-sharing, and Pension Plans**

On February 6, 1946, the Commission adopted a new rule regarding bonus, profit-sharing and pension plans provided by registered investment companies and their controlled companies for their directors, officers, and other affiliated persons. The rule provides that prior to the submission of any such plan to security holders for approval, or if not so submitted prior to the adoption thereof, an application regarding the plan shall be filed with the Commission, which has 10 days to scrutinize the plan and determine whether or not a hearing should be held thereon. The purpose of the rule is to protect registered investment companies and their controlled companies and the security holders of such companies against contribution to such plans on an unfair and inequitable basis. The rule provides that the Commission will, in passing upon such applications, be guided by the standards contained in the various pertinent sections of the act.

The type of situation which rule N–17D–1 was designed to meet is illustrated by the following case: The management of a group of closely affiliated investment companies proposed that each investment company in the group adopt an "employees incentive profit-sharing plan and trust." The proposed profit-sharing plan provided that each investment company should contribute the lesser of (*a*) 15 percent of the available profits of the investment company or (*b*) an amount which represented three times the contributions made by officers or employees. This latter amount was to be cumulative, provided that in any one year the investment company should not contribute more than 15 percent of its available profits. The employee contribution was fixed at an amount each employee might elect, but to constitute not less than 2 percent nor more than 5 percent of the salary received by such employee during the year in which the contribution is made. The proposed plan made no provision for the payment of dividend arrearages by the companies before they could make their contributions to the plan, although at least one of the investment companies involved had dividend arrearages outstanding on its preferred stock. The plan also permitted officers and employees to include unrealized gains on securities as company "profits" for the purpose of calculating each company's contribution to the plan. After consideration of the provisions of rule N–17D–1, the management determined not to submit the proposed profit-sharing plan to the Commission under the rule. The plan was thereafter abandoned.

**Rule N–28B–1—Insured Real Estate Loans**

On June 7, 1946, the Commission adopted rule N–28B–1, which authorizes real estate loans partially or wholly guaranteed under the Servicemen's Readjustment Act (the so-called GI bill) as qualified investments for face amount certificate companies. Such companies are authorized to invest only in investments of a kind in which life insurance companies are permitted to invest in under the provisions

of the Code of the District of Columbia and in such other investments as the Commission may authorize as qualified investments. At the time of the adoption of this rule insurance companies were not authorized by the Code of the District of Columbia to invest in loans guaranteed under the GI bill but were so authorized by the GI bill itself. The effect of the new rule was to extend a similar authorization to face amount certificate companies.

### LITIGATION UNDER THE INVESTMENT COMPANY ACT

There has been little need to resort to the courts for enforcement of the provisions of the act. During the last five fiscal years the Commission began injunctive action to restrain violations of the act in three cases. In two of these, *S. E. C.* v. *Otis, et al* [2] and *S. E. C.* v. *First Investment Co. of Concord, N. H.*,[3] the courts, acting under section 36 of the act, enjoined officers and directors of registered investment companies from further serving in such capacities on the grounds that they had been guilty of gross misconduct and gross abuse of trust in connection with their management of the companies involved. In the *Otis* case, involving British Type Investors, Inc., the Commission agreed to dismiss its complaint after the defendants agreed to a reorganization of the company and to make restitution of benefits acquired by them aggregating over $1,000,000 in value. In the case against First Investment Co. of Concord, N. H., a liquidating agent was appointed to wind up the affairs of the company. In the third case, *S. E. C.* v. *Aldred Investment Trust*,[4] the Commission sought and obtained the appointment of receivers to safeguard the interests of investors.

In the *Aldred* case, Gordon B. Hanlon, for less than $20,000, acquired a majority of Aldred's common stock. The stock itself had no asset value but gave Hanlon control of approximately $2,500,000 in assets. Aldred had a funded debt of $5,900,000 and had been insolvent since 1937. Absent a default in interest, the shareholders could not terminate the trust until the year 2002. Earnings were insufficient to meet the trust's interest requirements. To prevent default in interest and possible termination of the trust, a large proportion of interest was paid out of capital. Various plans of reorganization proposed by Hanlon, giving him ownership of equity securities, were never effectuated because the Commission considered them to be unfair to the debenture holders. Thereafter, without adequately informing the trust's security holders, Hanlon radically changed Aldred's investment policy by selling approximately one-third of the trust's choicest securities in order to obtain funds with which to acquire majority control of Suffolk Downs race track. After an extended trial the district court entered a judgment permanently enjoining Hanlon and certain other defendants from serving as officers and trustees of Aldred. The judgment also provided for the appointment of receivers with power either to reorganize or liquidate the trust in the interest of investors. The decision of the district court was approved by the United States Court of Appeals for the First Circuit

[2] D. C. S. D. N. Y., October 24, 1944.
[3] Civil No. 400, D. C. N. H., June 19, 1945.
[4] 58 Supp. 724 (D. Mass. 1945), affir'd. 151 F. 2d 254 (C. A. 1, 1945), *cert. den.* 326 U. S. 795 (1946).

and an application for a writ of certiorari was denied by the United States Supreme Court.

In *S. E. C.* v. *First Investment Company of Concord, New Hampshire,* the Commission sought an injunction to restrain Charles L. Jackman from serving or acting in the capacity of officer, director, member of the advisory board or investment adviser of the company or of any other registered investment company and to enjoin all defendants permanently from violating section 10 (b) of the Securities Exchange Act of 1934 and rule X–10B–5 thereunder. The complaint alleged that Jackman, while serving as president and director of the company, has been guilty of gross misconduct and gross abuse of trust within the meaning of section 36 of the act. It was further alleged that Jackman operated and managed the company for his own benefit to the detriment of investors and had caused First Investment's stockholders to sell their securities to his nominee by false and misleading information regarding the company's financial condition. The purchases were made at from $6 to $6.75 per share, without disclosure that the stock had an asset coverage of from $18 to $20 per share. In addition, the company did not file with the Commission or submit to its stockholders any of the financial reports required by the Investment Company Act. It was further alleged that Jackman caused the company to engage in numerous financial transactions with corporations controlled by him in violation of various sections of the Investment Company Act. Defendants consented to an injunction under the terms of which Jackman was permanently prohibited from serving the company or any other registered investment company in any capacity and defendants were permanently restrained from engaging in any acts or practices in violation of section 10 (b) of the Securities Exchange Act and rule X–10B–5 in the manner described in the complaint. Jackman also agreed to make restitution.

In *S. E. C.* v. *Otis, et al.,* the Commission alleged that the officers and directors of British Type Investors, Inc., through control of the company's class B stock (which had no asset value but carried all voting rights), engaged in a series of transactions to dilute the asset value of the class A stock for their own benefit. Class A stockholders had no voice in the management of the company, although they had the only equity position. It was also alleged that Automatic Products, Inc., an investment company controlled by British, had failed to register as an investment company in violation of the act. After the Commission filed its complaint, defendants agreed to make restitution and to a reorganization of British to give its class A stockholders the right to elect five of its seven directors, and Automatic filed notification of registration. The action was then dismissed on stipulation.

## PART VII

## ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

The Investment Advisers Act of 1940 requires the registration of investment advisers, persons engaged for compensation in the business of advising others with respect to securities. The Commission is empowered to deny registration to or revoke registration of such advisers if they have been convicted or enjoined because of misconduct in connection with security transactions or have made false statements in their applications for registration. The act also makes it unlawful for investment advisers to engage in practices which constitute fraud or deceit; requires investment advisers to disclose the nature of their interest in transactions executed for their clients; prohibits profit-sharing arrangements; and, in effect, prevents assignment of investment advisory contracts without the client's consent.

*Statistics of investment adviser registrations, 1949 fiscal year*

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|---|---|
| Effective registrations at close of preceding fiscal year | 1,048 |
| Applications pending at close of preceding fiscal year | 15 |
| Applications filed during fiscal year | 135 |
| Total | 1,198 |
| Registrations canceled or withdrawn during year | 137 |
| Registrations denied or revoked during year | 0 |
| Applications withdrawn during year | 3 |
| Registrations effective at end of year | 1,044 |
| Applications pending at end of year | 14 |
| Total | 1,198 |

Approximately 230 registered investment advisers represent in their applications that they engage exclusively in supervising their clients' investments on the basis of the individual needs of each client. The services of about 226 others are chiefly through publications of various types. 234 investment advisers are registered also as brokers and dealers in securities. Most of the remainder offer various combinations of investment services.

### Administrative Proceedings

One proceeding was instituted during the 1949 fiscal year to revoke or deny registration under the act. This action was based on a decree entered on December 23, 1948, by the Supreme Court of the State of New York for New York County enjoining Frederic N. Goldsmith, doing business as F. N. Goldsmith Financial Service, from acting as an investment adviser, broker, or dealer in that State. The Commission, which was conducting an investigation of Goldsmith at the time the action was brought in the State court, thereafter instituted proceedings to determine whether Goldsmith's registration should be revoked or suspended. The case in New York evoked considerable newspaper publicity, in which it was reported that Goldsmith's weekly financial letter for stock trading involved coded advice picked up from comic

strips and humor columns and that Goldsmith had said that he had learned about the code at a seance from the spirit of a one-time market speculator. The case was pending at the end of the fiscal year.

The Commission revoked the registration of an investment adviser in one other proceeding during the last 5 years. Investment Registry of America, Inc., had been registered as a broker and dealer and also as an investment adviser. On January 10, 1946, the Commission, after notice and hearing, ordered both registrations revoked. The revocation of registration as investment adviser was based on misrepresentation in the application for registration. In that application Investment Registry of America, Inc., had declared that its contract with customers provided for a maximum fee of 5 percent of the securities which it selected for its customers. This, the Commission found, was a material misrepresentation in willful violation of section 207 of the Investment Advisers Act, for the "selection" fee frequently ran as high as 9 percent. The increased rate was usually hidden as "charges" in the confirmations which the firm sent to its clients.

**Investigations**

The powers of the Commission under the act are limited. It has the power, however, to make investigations when it appears that the act has been or is about to be violated, and has the power of subpoena to aid its investigations. When an investigation establishes violations of the act, the Commission may seek to enjoin such violations and may take disciplinary action.

The Commission has received a substantial number of complaints against certain investment advisers whose advice consists chiefly of predictions and recommendations furnished in bulletins, market letters, and other publications issued periodically and sold at a regular subscription price. The number of such complaints generally increases, as might well be expected, during periods of market decline. In some cases these publications purport to analyze market conditions and to predict future trends. In other cases, they recommend the purchase of particular stocks on the prediction that the price of the stock will rise. Frequently, such recommendations are accompanied by information about the issuer of the stock and by various comparisons with other stocks, purporting to show a basis for the prediction that the market price of the recommended stock will rise. Subscribers have complained frequently that they suffered losses by following such advice.

The Commission investigates these complaints whenever it has reasonable grounds to believe that the recommendations and predictions are tainted with bad faith or made without foundation, or that the adviser's activities are fraudulent in any other respect. The mere fact, however, that advice given has turned out to be worthless is not sufficient basis for investigation.

The Commission has no power to inspect the books and records of investment advisers, as it has with respect to brokers and dealers. Its powers to deny and revoke investment adviser registrations are more limited than its powers to deny and revoke broker-dealer registrations. Because of these limitations, as pointed out in more detail in the tenth annual report, a broad field intimately related to the securities markets is left unprotected and unsupervised, and the Commission's efforts to enforce the act are greatly curtailed.

## LITIGATION UNDER THE INVESTMENT ADVISERS ACT

The most important court action to date involving a registered investment adviser is that of *Arleen W. Hughes* v. *S. E. C.*[1] Mrs. Hughes was registered both as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act. In her capacity as a dealer, she sold securities which she owned to her investment advisory clients after she had advised them, in her capacity as an investment adviser, to invest in such securities. She failed to make adequate disclosure of her ownership of the securities and of other facts concerning her personal interest in the transactions. The Commission revoked her registration as a broker-dealer after finding that it constituted fraud for her to sell her own securities to her investment advisory clients without disclosure that her interests were in some respects adverse to their interests. Mrs. Hughes thereafter petitioned the court to review the Commission's action. The case is more fully described in part II of this report in the section on litigation under the Securities Exchange Act.

Two injunction actions have been brought under the Investment Advisers Act during the past 5 years. In one the Commission, after agreeing to the opening of a final judgment which had been entered with the consent of the defendant, did not oppose a dismissal of the action when it appeared that the provable facts would not support an injunction.[2] In the other the Commission was granted an injunction against a radio commentator who, in the course of his broadcasts, purported to give unbiased investment advice concerning an oil venture without disclosing to his listeners that he was in the employ of the promoters of the venture.[3]

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[1] — F. 2d — (C. A. D. C., May 9, 1949).
[2] *S. E. C.* v. *Todd*, Civil No. 6149, D. Mass., October 4, 1948. See 13 SEC Ann. Rep. 113 (1947).
[3] *S. E. C.* v. *Wilson*, Civil No. 15649, E. D. Ill., February 3, 1945.

# PART VIII

# OTHER ACTIVITIES OF THE COMMISSION UNDER THE VARIOUS STATUTES

## THE COMMISSION IN THE COURTS

### Civil Proceedings

Complete lists of all cases in which the Commission appeared before a Federal or State court, either as a party or as *amicus curiae*, during the fiscal year, and the status of such cases at the close of the year, are contained in appendix tables 26 to 35.

At the beginning of the 1949 fiscal year 21 injunctive and related enforcement proceedings instituted by the Commission in connection with fraudulent and other illegal practices in the sale of securities were pending before the courts; 18 additional proceedings were instituted during the year and 19 cases were disposed of, so that 20 of such proceedings were pending at the end of the year. In addition, the Commission participated in a large number of reorganization cases under the Bankruptcy Act; in 19 proceedings in the district courts under section 11 (e) of the Public Utility Holding Company Act and in 31 miscellaneous actions, usually as *amicus curiae* or intervenor, to advise the court of its views regarding the construction of provisions of statutes administered by the Commission which were involved in private lawsuits. The Commission also participated in 47 appeals. Of these, 13 came before the courts on petition for review of an administrative order; 8 arose out of corporate reorganizations in which the Commission had taken an active part; 6 were appeals in actions brought by or against the Commission; 10 were appeals from orders entered pursuant to section 11 (e) of the Public Utility Holding Company Act; and 10 were appeals in cases in which the Commission appeared as *amicus curiae* or intervenor.

The significant aspects of the Commission's litigation over the past 5 years are discussed in the sections of this report devoted to the respective statutes administered by the Commission. Most basic questions of constitutionality under the acts were determined prior to the last 5 years, but in 1946 the constitutionality of the integration and dissolution provisions of the Public Utility Holding Company Act was sustained by the Supreme Court. Since then most of the cases under that act have arisen in connection with decisions of the Commission ruling upon the fairness and equity of the plans filed under section 11 (e) of the act. Cases under the other acts have dealt not with major constitutional issues but with problems incident to enforcement.

### Criminal Proceedings

The statutes administered by the Commission provide for the transmission of evidence of violations to the Attorney General who may institute criminal proceedings. The Commission, largely through its regional offices, investigates suspected violations and, in cases where the facts appear to warrant criminal proceedings, prepares detailed reports which are forwarded to the Attorney General. When it is

decided to institute criminal proceedings, the Commission may assign such of its employees as have participated in the investigation to assist in the preparation of the case for presentation to the grand jury, in the conduct of the trial, and in the preparation of briefs on appeal. Parole reports relating to convicted offenders are prepared by the Commission's staff. Where the investigation discloses violations of statutes other than those administered by the Commission, reference is made to the appropriate Federal or State agency.

Up to June 30, 1949, indictments had been returned against 2,564 defendants in 432 cases developed by the Commission. By the end of the 1949 fiscal year, 403 of these cases had been disposed of as to 1 or more defendants and convictions had been obtained in 355 cases—over 88 percent of such cases—against a total of 1,251 defendants.[1] During the past 5 years 89 indictments were returned against 248 defendants and convictions were obtained against 160 defendants. Twenty-two of such indictments, involving 47 defendants, were returned during the last fiscal year.[2]

In the criminal appeals decided in the last five years, judgments of conviction were affirmed as to 54 defendants and reversed as to only 8 defendants.[3] In addition, appeals were dismissed as to 5 defendants and 4 others withdrew their appeals. At the close of the fiscal year, 2 criminal cases involving 5 defendants were still pending in the appellate courts.

The criminal cases developed by the Commission during the past 5 years were extremely varied in nature, although they continue to reflect the same general patterns described in the Tenth Annual Report. For the most part they involved fraud in the promotion of new businesses, inventions, and fraternal organizations; fraudulent schemes in connection with the sale of oil and gas interests and mining ventures; "front money" schemes; frauds perpetrated by brokers and dealers in securities and their representatives; frauds in whisky warehouse receipts transactions; and fraudulent purchases and sales of securities by corporate "insiders." The victims of the schemes employed in these cases resided in almost every state in the country.

Generally, the perpetration of these frauds was accompanied by the willful avoidance of the registration provisions of the Securities Act of 1933, which are designed to provide investors with a full and fair disclosure of material facts about the securities being sold. A substantial number of the fraud cases, therefore, also charged violation of the registration provisions of that act. Other violations presented included the manipulation of the price of stock registered on a national securities exchange, the filing of false reports by a corporation whose securities were registered on such an exchange, and failure to keep required books and records and the filing of false financial statements by registered broker-dealers. A more detailed discussion of certain of the cases prosecuted during the period is contained below.

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[1] In a number of the 48 remaining cases, which resulted in acquittals or dismissals as to all defendants, the indictments were dismissed because of the death of the defendants involved.

[2] The status of all criminal cases pending during the past fiscal year is set forth in appendix table 27. Appendix tables 36, 37, and 38 contain condensed statistical summaries of all criminal proceedings developed by the Commission.

[3] One of these defendants, whose case was remanded for a new trial, pleaded guilty upon retrial. Two others represented corporate defendants in a single case, where the convictions were reversed on jurisdictional grounds, conviction of the individual defendant involved being affirmed. In only one case did the reversal result in the acquittal of all defendants indicted.

The indictment returned during the past year in *U. S.* v. *Preston T. Tucker et al.* (N. D. Ill.) contains charges of fraud arising out of the postwar promotion of the "Tucker" automobile, in connection with which approximately 28 million dollars was raised from the public. The indictment in this case alleges that the defendants, as part of a scheme to defraud in the sale of class A common stock of the Tucker Corp., the sale of dealer and distributor franchises for the "Tucker" automobile, and the sale of luggage and accessories for use in it, caused to be disseminated, by means of an extensive advertising and publicity campaign, various false and fraudulent representations including, among others, representations as to the various features embodied in the automobile, the status of its development and production, and the imminence of mass production.

In addition, the indictment alleges that the defendants caused the corporation to exhibit to the public automobiles which were falsely described as containing the various advertised features, willfully concealing the fact that automobiles shown did not contain many of the important advertised features and that many of the components contained in these automobiles were known by them to be unworkable and unsatisfactory. The indictment also charges that the defendants caused the Tucker Corp. to expend substantial amounts of the monies obtained from investors for the personal benefit and profit of the defendants.[4]

Prior to the return of this indictment, the Commission had conducted a series of inquiries into the affairs of the Tucker Corp. as a result of certain filings made by the corporation with the Commission. In May 1947 a registration statement was filed under the Securities Act of 1933 relating to a proposed public offering of 4,000,000 shares of the Tucker class A common stock, $1 par value, to be offered to the public at $5 a share for a total of $20,000,000. The proceeds were to be used for the mass-production of a medium-priced automobile, to be known as the "Tucker," featuring a rear engine and other innovations departing substantially from conventional automobile design.

The Commission instituted stop-order proceedings alleging misstatements and omissions to state material fact in regard to numerous items of required information in the registration statement, financial statements, the accountants' certificate, certain exhibits, and the prospectus. In the course of these proceedings, it appeared that the prospectus and registration statement as originally filed failed to disclose adequately and accurately the names of all promoters and the amount of consideration received directly or indirectly from the company by each promoter, officer, and director; the stage of development of the mechanical features of the proposed automobile; the status of the company's patent position; the application of the proceeds of the proposed offering and the company's working capital requirements; the business experience of the executive officers; the nature and the extent of the interest of Preston Tucker, president of the corporation, in Ypsilanti Machine & Tool Co.; the interests of affiliates and other persons in property acquired by the company; material litigation; the scope of the audit and the auditing procedures

[4] Trial of these charges commenced on October 4, 1949. Subsequent to the preparation of this report the jury returned a verdict of not guilty as to all defendants.

followed by the certifying accountants; and the failure of the accounts to reflect all liabilities of the company.

During the course of and after the close of hearings in the stop-order proceedings, the corporation filed material amendments which, on the basis of all of the information then available to the Commission, appeared to correct satisfactorily the material deficiencies previously contained in the registration statement. The Commission thereupon issued an opinion stating that for this reason the proceedings would be dismissed and the registration statement, as amended, would be permitted to become effective.[5] In its opinion the Commission discussed the facts adduced in the proceedings and noted the contrast between the information set forth in the amended prospectus and the statements made in the corporation's previous publicity regarding its plans, many of which statements appeared to be grossly misleading and, in many cases, false. Accordingly, the Commission specifically warned the prospective investor of the danger of relying upon past judgments based on prior literature concerning Tucker Corp. in determining whether to purchase the securities. The opinion also pointed out the limits of the Commission's jurisdiction which, under the Securities Act, is restricted to requiring that all pertinent information be supplied so as to enable the investor to make an informed judgment. It was emphasized that in permitting the registration statement, as amended, to become effective, the Commission was in no way "passing on the merit or lack of merit of the securities offered, the registrant's product or the possibility of success or failure of the enterprise."

On May 10, 1948, Tucker Corp. filed with the Commission its first annual report pursuant to section 15 (d) of the Securities Exchange Act of 1934. On the basis of the information contained in this report, as well as certain other information received from various other sources since the date of the stop-order opinion, the Commission, on May 28, 1948, authorized an investigation to determine whether certain provisions of the Securities Act and Securities Exchange Act had been violated by the Tucker Corp., Preston Tucker, and the underwriting firm of Floyd D. Cerf Co., Inc. The facts discovered in the course of this investigation were referred to the Attorney General with a recommendation for criminal prosecution.

In *U. S.* v. *Paul A. Schumpert et al.* (M. D. Tenn.), indictments were based upon the fraudulent sale of stock in the promotion of a small-loan company.[6] The defendants were charged, among other things, with employing the "Ponzi" type of swindle,[7] causing the corporation to pay "dividends" without disclosing that such "dividends" had not been earned but were paid out of capital and were a partial return of the investment. Shortly after the close of the last fiscal year, Paul A. Schumpert, the principal defendant pleaded guilty and was sentenced to 22 years imprisonment.

Some of the other cases in which convictions were obtained for the fraudulent promotion of new businesses or inventions are *U. S.* v.

[5] Securities Act release No. 3236 (1947).

[6] An additional indictment involving the same type of promotion in connection with another small-loan company is pending in *U. S.* v. *Paul A. Schumpert, et al.* (S. D. Miss.).

[7] The "Ponzi" technique which is frequently employed by securities swindlers also was involved in the following cases: *U. S.* v. *Frank V. Raymond* (D. Md.) (sale of oil interests); *U. S.* v. *Magnus G. Thomle* (D. Mass.) (sale of stock of silver-mining company); and *U. S.* v. *Cactus Oil Co., et al.* (D. Del.) (sale of stock of oil company). Convictions have been obtained in all of these cases.

*Elden Adam McElfresh* (N. D. Ohio), (sale of profit-sharing agreements in an alleged system for railroad terminal and yard operations); *U. S.* v. *Federal Fyr-Ex Company, Inc., et al.* (S. D. N. Y.), (promotion of a spurious "business" for the manufacture of a fire extinguisher); *U. S.* v. *John H. Boal* (N. D. Cal.), (sale of securities in the promotion of a corporation purportedly to engage in the manufacture of artificial gas from hydrocarbon oils); *U. S.* v. *W. R. Frentzel et al.* (W. D. Wash.), (sale of profit-sharing agreements in connection with the sale of traps for ocean crab fishing); *U. S.* v. *George Howell et al.* (S. D. Texas) and *U. S.* v. *Wilmington Fire Insurance Co. et al.* (D. Del.), (sale of stock of insurance companies); *U. S.* v. *Thomas A. Neely* (N. D. Ill.), (sale of securities of various corporations which, it was represented, would provide barge-transportation facilities to a number of prominent steel and oil companies); *U. S.* v. *Gerhardt A. Duemling* (D. Nev.), (sale of stock of a steel tool manufacturing corporation); *U. S.* v. *Bennett S. Dennison* (S. D. Cal.), (sale of securities relating to the production and sale of building materials); *U. S.* v. *Clifford S. Johnson et al.* (D. Mont.), (sale of royalty interests in an ice shaving device, known as "Cliffs Ice Shaver"); *U. S.* v. *Chester S. Plasket* (W. D. Texas), (sale of royalty interests and other securities in connection with the promotion of two inventions, known as the "Magic Fountain Shaving Brush" and as the "Magicflo Siphon Jigger", a plastic liquor dispensing device); *U. S.* v. *Harvey H. Hevenor* (S. D. N. Y.), (sale of stock in connection with the promotion of new type mechanical fuses for anti-aircraft projectiles); *U. S.* v. *August F. Slater* (S. D. Cal.), (corporate promotion of a new parking device for automobiles); *U. S.* v. *Leslie G. Bowen et al.* (W. D. Mo.), (sale of various securities relating to the development and sale of mechanical devices for use in the manufacture of bicycles); and *U. S.* v. *Chemical Research Foundation, Inc., et al.* (D. Del.), (sale of stock of a company which, it was stated, would exploit certain pharmaceutical formulae).[8]

The employment of "front money" schemes designed to defraud persons desirous of obtaining capital for the financing of new businesses or the expansion of established ones was involved in *U. S.* v. *Amster Leonard et al.* (E. D. Mich.) and *U. S.* v. *Ocie C. Walker* (N. D. Texas). The defendants in these cases were convicted of fraudulently inducing persons seeking new capital to pay over "advance fees" or "front money" upon the false representation that they would be assisted in raising the necessary capital, when in fact the defendants knew they could not and did not intend to raise any such new capital.

A number of convictions were obtained in cases involving the promotion of mining ventures. In the perpetration of this type of fraud false representations generally are made as to the ownership of the mining properties which are the subject of the promotion; the amount of commercial ore deposits contained in such properties; and the use which is to be made of the monies received from investors. Cases of this type included *U. S.* v. *Harry J. Mallen* (N. D. Ill.) (gold mine); *U. S.* v. *Bennett S. Dennison* (S. D. Cal.) (gold mine); *U. S.* v. *Wallace R. O'Keefe* (W. D. Wash.) (gold mine); *U. S.* v.

[8] An indictment charging the fraudulent sale of securities in connection with the promotion of a phonograph record manufacturing company is presently pending in *U. S.* v. *Harry W. Bank et al.* (S. D. N. Y.).

*James A. Allen et al.* (E. D. Wash.)[9] (silver mine); and *U. S.* v. *F. E. Nemec et al.* (E. D. Wash.)[10] (gold properties).[11] In the *Nemec* case the indictment charged also that the defendants fraudulently claimed that they had acquired a secret process for the recovery of gold and other metals and that this process had been invented by one of the defendants who was falsely described as a nuclear physicist, eminent chemical engineer, and key atomic scientist in the development of the atomic bomb at the Hanford project.[12]

Similar to the mining frauds are those perpetrated in connection with the sale of oil, gas, and other mineral interests. Typical cases are *U. S.* v. *James F. Boyer et al.* (S. D. Fla.) and *U. S.* v. *Aubrey M. Poynter et al.* (E. D. La.)[13] in which the principal defendants were convicted on charges of employing what is colloquially described as a "reloading" scheme.[14] In these cases it was charged, among other things, that the defendants induced investors to make repeated purchases of oil leases by causing fictitious offers to be made to investors for their holdings at prices which would have yielded them tremendous profits. The offers, however, were conditioned upon the investors obtaining additional leases from the defendants. After investors made such additional purchases, the offers ceased and investors were unable to locate the offerors, who, in fact, were accomplices in the scheme.

Fraudulent sales of securities of alleged fraternal associations formed the basis for the convictions in *U. S.* v. *Hugh G. Carruthers et al.* (N. D. Ill.) and *U. S.* v. *Preston E. Douglass* (N. D. Ill.).[15] The *Carruthers* case involved the promotion of the Neological Foundation, which was represented as having been organized for the spiritual improvement and economic self-betterment of persons who joined the foundation and adhered to its so-called "neological" course of training. Carruthers was charged with fraudulently converting funds obtained from members of the foundation for the alleged purpose of carrying on various business enterprises to be operated by the foundation, including the manufacture and sale of hair shampoo and a tonic laxative, a course of instruction in personal development, and a daily newspaper.

In the *Douglass* case, the defendant was charged with selling "stock" of the Frederick Douglass Afro-American Cooperative Industry Builders Association, Inc., a nonprofit Illinois corporation (which was prohibited by statute from issuing stock) by means of false representations. Douglass obtained funds by telling investors that the association had been organized for the purposes of improving the eco-

[9] Appeal pending as to one defendant.

[10] Appeals pending as to four defendants.

[11] Other mining stock promotions resulting in convictions were *U. S.* v. *Franklin Lamon et al.* (D. Del.); *U. S.* v. *James H. Collins et al.* (S. D. Cal.); and *U. S.* v. *Magnus G. Thomle* (D. Mass.).

[12] At the trial this defendant pleaded guilty and testified that he had no background as a nuclear physicist, etc., but rather was a chiropractor who had been employed at the Hanford project as a water tester.

[13] Other cases in which convictions were obtained for the fraudulent sale of such interests or of the stock of oil companies are *U. S.* v. *Frank Mansfield et al.* (W. D. Tex.); *U. S.* v. *Jacob M. Danziger et al.* (S. D. Cal.); *U. S.* v. *George A. Earnhardt et al.* (S. D. Ind.); *U. S.* v. *Frank V. Raymond* (D. Md.); *U. S.* v. *George A. King et al.* (S. D. Ill.); *U. S.* v. *Samuel S. Alexander et al.* (S. D. N. Y.); *U. S.* v. *Stanley Grayson et al.* (S. D. N. Y.); *U. S.* v. *Thomas P. Mulvaney et al.* (S. D. Iowa); *U. S.* v. *Bart Cecil Lucas* (S. D. N. Y.); *U. S.* v. *Cactus Oil Co. et al.* (D. Del.); and *U. S.* v. *William J. Cannon* (D. Colo.). Indictments in similar cases are pending in *U. S.* v. *Jack R. White* (D. Neb.); *U. S.* v. *Galen B. Finch* (S. D. Cal.); and *U. S.* v. *Claude Cleave Alfred* (E. D. Tenn.). In *U. S.* v. *Benjamin F. Austin* (E. D. Mich.) the defendant was convicted of selling stock of an oil company in violation of the registration provisions of the Securities Act.

[14] A similar fraud involving the sale of mining company stocks is charged in *U. S.* v. *Nye A. Wimer* (D. N. J.), where trial of the defendant is pending.

[15] In *U. S.* v. *Robert H. Kells* (D. D. C.) the defendant was convicted of fraudulently selling corporate stock through the medium of an alleged philanthropic and nonprofit association which he had organized.

nomic status and welfare of the Negro race and to furnish investors with employment in cooperative stores and on farms which the association was to develop and establish. In truth, the defendant utilized the enterprise solely for his personal benefit.

The convictions obtained in *U. S.* v. *Gilbert M. Bates* (N. D. Iowa); *U. S.* v. *Stanley Grayson et al.* (S. D. N. Y.); *U. S.* v. *Clarence Everett Martin* (N. D. Ill.); *U. S.* v. *Maxwell Goldberg et al.* (D. Mass.); *U. S.* v. *W. R. Hempstead Co. et al.* (D. R. I.); and *U. S.* v. *Kenneth Leo Bauer et al.* (D. N. J.) are among those pertaining to frauds committed by securities brokers and dealers and their representatives.[16] In the *Bates* case the defendant was convicted for fraud predicated upon the sale of securities to uninformed customers at prices not reasonably related to the prevailing market prices, without appropriate disclosure. The indictment in the *Grayson* case charged a fraudulent "switch" scheme, wherein investors were induced to divulge lists of their securities on the pretense that the defendants would, after analysis, provide them with free investment advice.[17] Thereafter, investors were induced to sell such securities and to purchase from the defendants various fractional undivided interests in oil, gas, and other mineral rights at prices substantially in excess of the maximum recoverable returns which it was estimated investors could obtain from the mineral assets underlying such securities. In the *Martin* case the defendant was charged with employing a scheme to defraud representatives of the estates of deceased and incompetent persons in that he falsely represented that he would dispose of the securities owned by these estates at current market prices, but instead concealed the true current market value of such securities and purchased them for his own account at prices less than the prevailing market prices.

The fraudulent practices charged in the *Goldberg* case included the unauthorized pledging of customers' securities, forgery of customers' checks, and the sale of spurious stock certificates and debentures. The defendants in the *Hempstead* case were convicted of fraud based, in part, upon the operation of a securities business while insolvent. The fraud for which convictions were obtained in *U. S.* v. *Kenneth Leo Bauer et al.* (D. N. J.) was found in the solicitation of customers' orders for the purchase and sale of securities, the deliberate and willful failure to execute such orders, and the subsequent conversion of customers' monies and securities.[18]

[16] Other such fraud cases were *U. S.* v. *Guaranty Underwriters et al.* (S. D. Fla.), (unreasonable spreads); *U. S.* v. *Florida Bond and Share, Inc., et al* (S. D. Fla.), (unreasonable spreads and secret profits); *U. S.* v. *Samuel S. Alexander, et al.* (S. D. N. Y.), (misrepresentations in sale of oil royalties and charging excessive prices without adequate disclosure); *U. S.* v. *Edwin P Woodman* (D. Mass.), (insolvency and conversion of customers' securities); *U. S.* v. *Charles J. Callanan* (D. Mass.) (conversion of customers' securities); *U. S.* v. *Arthur Edwin Daye* (S. D. Fla ), (conversion of customers' securities); *U. S.* v. *Arthur Briscoe Wilson* (N. D., Ill.) (conversion of customers' securities); *U. S.* v. *Wells E. Turner* (W. D. Wisc.) (conversion of customers' funds and securities); and *U. S.* v. *Arthur L. Augustine* (N. D. Iowa) (conversion of customers' funds and securities). The convictions obtained in the *Alexander*, *Woodman*, *Hempstead*, and *Callanan* cases were based not only upon fraud but also upon the failure of the registered broker-dealers involved to keep the books and records required by the Securities Exchange Act of 1934 and the rules thereunder, and in the three cases last mentioned, the filing of false financial statements with the Commission under that act. *U. S.* v. *Glen J. Hildebrand* (S. D. Ill.) is another instance of conviction obtained for failure to keep books and records.

[17] A fraudulent "switch" scheme involving transactions in whisky warehouse receipts resulted in the conviction of a number of defendants in *U. S.* v. *Mark A. Freeman et al.* (N. D. E. D. Ill.). The defendants were charged with inducing owners of whisky warehouse receipts to exchange them for bottling contracts, with a corporation organized by the defendants, by falsely representing that the whisky would be bottled, rectified and sold for the investors for a small fee, whereas in fact the defendants sold or hypothecated the warehouse receipts and converted the proceeds to their own use. *U. S.* v. *Frank L. Ryan et al.* (E. D. N. C.) also involved convictions for fraud in connection with whisky warehouse receipt transactions.

[18] In contrast to these cases is *U. S.* v. *John N. Landberg* (E D. Pa.), involving a customer who perpetrated a fraud on securities brokers. For details of the scheme see *S. E. C.* v. *Landberg* (S. D. N. Y.), discussed hereinafter, in which an injunction was obtained recently against this defendant for similar activities.

In *U. S.* v. *Edgar M. Griswold* (N. D. Ohio); *U. S.* v. *Ellis R. Taylor* (N. D. Ill.); and *U. S.* v. *William A. Hancock* (S. D. N. Y.) convictions were obtained for fraudulent conduct in connection with the purchase of securities in violation of section 10(b) of the Securities Exchange Act of 1934 and rule X–10B–5 thereunder. In the *Griswold* case, the defendant was convicted on charges of defrauding various persons, principally tavern owners, in transactions relating to the stock of a prominent distilling company. Whisky purchase rights had been attached to the stock. Griswold was charged with falsely representing to purchasers that the stock would be worthless after the whisky rights were exercised and that it could not be retained by the purchasers after such exercise. It was further established that Griswold obtained the stock for his own use and benefit by virtue of these false representations and his failure to disclose that even after the exercise of the whisky rights the stock had a market value of not less than $24 a share.

The *Taylor* case involved the fraudulent acquisition of securities from minority holders by a corporate insider. Taylor, who was president of the corporation involved, was convicted on charges that he purchased the stock of minority stockholders by falsely representing the value of the shares and the financial condition of the corporation and by the concealment of his identity as the actual purchaser of the stock and of facts known to him but not to the sellers as to the true value of the shares. In the *Hancock* case, the defendant was charged with employing a scheme to defraud an investment company which employed him as a securities trader. According to the indictment, Hancock deliberately delayed placing orders for the purchase and sale of securities for his company until after he had informed his accomplices of the prices and amounts of the securities orders that he intended to enter on behalf of the company, which enabled his accomplices to buy or sell such securities in dummy accounts and in turn to sell them to or purchase them from the investment company at profits of approximately $300,000.[19]

The fraudulent sale of stock by a corporate insider is charged in the indictments recently returned in *U. S.* v. *Serge Rubinstein et al.* (S. D. N. Y.) in which the defendant Rubinstein is alleged to have obtained an illegal profit of approximately $3,000,000 in the sale of his stock in a corporation of which he was president. According to the indictments, the scheme to defraud involved the dissemination of various false representations intended to establish the favorable financial condition, earnings, and business potentialities of the corporation involved in order to facilitate the sale of his own stock in the corporation. Rubinstein, concealed his activities by falsely representing that he neither had sold nor intended, for a specified future period, to sell any of his stock.

*U. S.* v. *Albert B. Windt et al.* (N. D. Cal.) involved the manipulation of the stock of a mining company listed on the San Francisco Mining Exchange. The defendants were convicted of raising and conspiring to raise the market price of the stock through a series of manipulative transactions designed to create the appearance of active

[19] Defendant was convicted after the close of the 1949 fiscal year.

trading and intended to raise the price of such stock so as to induce others to purchase the stock at higher prices.

In *U. S.* v. *Liggett & Myers Tobacco Co. et al.* (E. D. Pa.) the corporation, whose securities were registered on a national securities exchange, was convicted of making false and misleading statements in annual reports required to be filed by it under section 13 of the Securities Exchange Act of 1934. The corporation was charged with willfully concealing facts relating to the existence of a profit-sharing plan for certain officers and employees of the company.

During the past 5 years the Commission has continued to receive a flood of complaints and inquiries from members of the public, state authorities, and Better Business Bureaus regarding the activities of a fringe group of stock promoters operating out of Toronto, Canada, who have been selling securities to residents of the United States in willful violation of our securities laws. These promotions are conducted by a numerically small group which is in no way representative of the vast majority of persons engaged in the securities business in Canada.[20] Nevertheless, the activities of these offenders have resulted in extremely large dollar amount losses to United States investors. The Commission has conducted investigations of these unlawful promotions wherever possible. Indictments, for the most part secret, have been obtained in a number of cases based primarily upon the employment of schemes to defraud in the sale of securities. However, existing treaty arrangements between Canada and this country do not permit the extradition of the violators, and, consequently, it has been virtually impossible to bring the cases to trial.[21] In 1941 the Commission, recognizing this weakness in enforcement structure, initiated, in conjunction with the State Department and the Department of Justice, efforts to secure a new treaty with Canada which would permit the extradition of persons violating Federal and State securities laws. The treaty was ratified by the United States in May 1942, but has not yet been ratified by the Canadian Parliament.

Two cases of this type made public during the past year demonstrate the lack of effective sanctions in this area of enforcement. In *U. S.* v. *Albert Edward DePalma* (N. D. Ohio) and *U. S.* v. *Noel H. Knowles* (E. D. N. Y.) indictments were returned charging that the defendants had sold Canadian mining stocks to United States investors by means of false representations and as part of a scheme to defraud. DePalma and Knowles, who are residents of Canada, were apprehended within the United States and released on bonds of $50,000 and $25,000 respectively. Both defendants, however, forfeited their bail and fled to Canada rather than stand trial on the fraud charges. Their return to this country cannot be secured under our existing treaty with Canada.

The Commission has endeavored also to meet the problem by turning over to the Post Office Department information gathered in the course of the investigations conducted in these cases. As a result, a

[20] Every year millions of dollars worth of securities are offered in this country by Canadian issuers in full compliance with our laws.

[21] *U. S.* v. *E. M. McLean et al.* (E. D. Mich.), affirmed *sub nom. Kaufman* v. *U. S.*, 163 F. 2d 404 (C. A. 6, 1947), *cert. den.*, 333 U. S. 857 (1948), involved convictions obtained against three such defendants who were apprehended in this country and tried for selling securities from Toronto to United States investors by means of false and fraudulent misrepresentations.

number of "fictitious name and fraud orders" have been issued recently which, in effect, close the mails to communications addressed to the violaters covered by the orders. It seems plain, however, that revision of existing extradition arrangements with Canada is necessary if investors in this country are to be provided with effective protection against securities frauds originating in Canada.

## COMPLAINTS AND INVESTIGATIONS

During the 1949 fiscal year the Commission received 7,048 items of mail concerned with alleged securities violations. These communications are classified administratively as "complaint enforcement" correspondence. While they relate to complaints and alleged violations of various laws administered by the Commission, the bulk of them deals with the enforcement of the Securities Act of 1933 and the registration provisions of the Securities Exchange Act of 1934.

This material constitutes an important source of information concerning possible securities violations. Investigations made by the Commission's staff and contacts maintained with other governmental or private agencies provide additional sources of such information. Where it appears on the basis of any such data that any securities violation may have occurred, the Commission conducts appropriate investigations by means of correspondence or the assignment of cases to field investigators to ascertain the facts of the particular case.

The extent of the investigatory activities of the Commission during the past year under the Securities Act of 1933, the Securities Exchange Act of 1934; sections 12 (e) and (h) of the Public Utility Holding Company Act of 1935; the Investment Company Act of 1940; and the Investment Advisers Act of 1940 is reflected in the following table:

*Investigations of violations of the acts administered by the Commission* [1]

| | Preliminary [2] | Docketed [3] | Total |
|---|---|---|---|
| Pending at June 30, 1948 | 494 | 986 | 1,480 |
| Opened July 1, 1948, to June 30, 1949: | | | |
| New cases | 292 | 195 | 487 |
| Transferred from preliminary | | 32 | 32 |
| Total number of cases to be accounted for | 786 | 1,213 | 1,999 |
| Closed | 218 | 163 | 381 |
| Transferred to docketed | 32 | | 32 |
| Pending at June 30, 1949 | 536 | 1,050 | 1,586 |

[1] These figures include the oil and gas investigations which are separately tabulated and discussed elsewhere in this report.
[2] Investigations carried on through correspondence and limited field work.
[3] Investigations assigned to field investigators.

### Securities Violations File

To assist in the enforcement of the statutes which it administers, and to provide a further means of preventing fraud in the purchase and sale of securities, the Commission has established a securities violations file. This file is a clearing house of information about persons charged with violations of Federal and State securities statutes. It is kept up to date through the cooperation of the United States Post Office Department, the Federal Bureau of Investigation, parole and

probation officials, State securities commissions, Federal and State prosecuting attorneys, police officials, members of the National Association of Better Business Bureaus, Inc., and members of the United States Chamber of Commerce. By the end of the 1949 fiscal year this file contained data about 51,165 persons against whom Federal or State action had been taken in connection with securities violations.

During the past year alone additional items of information relating to 5,577 persons were added to these files, including information concerning 2,065 persons not previously identified therein.

Extensive use is made of this clearing house of information. During the past year, in connection with the maintenance of the files, the Commission received 4,670 "securities violations" letters or reports (apart from those mentioned above which are classified as "complaint enforcement") and dispatched 3,421 communications in turn to cooperating agencies.

## ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

Successive reports of the Commission have called attention to the fact that the detailed provisions of the several acts administered by the Commission recognize the importance of adequate financial statements and their certification by independent public accountants in ensuring the availability of information necessary for the protection of investors and in the conduct of the Commission's work under the acts. These acts grant the Commission broad authority to prescribe, among other matters, the form and content of financial statements required to be filed by registrants subject to the Securities Act of 1933 and the Securities Exchange Act of 1934, to prescribe uniform systems of accounts for registrants subject to the Public Utility Holding Company Act of 1935, and to provide for a reasonable degree of uniformity in accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required by the Investment Company Act of 1940. Acting under this authority the Commission has prescribed uniform systems of accounts for certain public utility holding companies and for public utility mutual and subsidiary service companies. The principal accounting requirements prescribed under the acts of 1933, 1934, and 1940 are set forth in regulation S–X, which governs the form and content of most financial statements filed under these acts. In addition, under the Securities Exchange Act, rules have been adopted governing record keeping, financial reporting, and the auditing of the books of exchange members, brokers, and dealers.

Part X of the Commission's tenth annual report described the development of the Commission's accounting requirements and noted that in this process much assistance was found in the experience and counsel of the accounting staffs of companies subject to our jurisdiction and professional associations of accountants and individual accountants. Cooperating committees from these sources and other governmental agencies having similar problems of accounting, auditing and standards of professional conduct were particularly active during this formative period. Persons familiar with the problems of accounting and financial reporting realize that such matters are not governed

by a completely integrated body of accounting principles and a detailed statement of auditing procedures despite notable progress in these fields reflected in publications by such groups as the American Accounting Association and the American Institute of Accountants, the National Association of Railroad and Utilities Commissioners and by this Commission and other governmental agencies.

**Examination of Financial Statements**

Assurance that generally accepted accounting principles and standards of auditing (where certified financial statements are required) are observed is basic in many of the Commission's activities under all of the acts and in all of the major operating divisions of the Commission. Such assurance is sought through the activities of the Commission's accounting staff which is so organized as to permit expeditious handling of accounting work and to ensure uniformity of treatment of the problems that arise in the work of all the divisions. A substantial part of this work involves the examination of the financial statements and other accounting data included in material filed with the Commission. Questions raised ordinarily are brought to the attention of the registrant by letter. Solutions may then be reached by conference or correspondence. The solution may be the satisfaction of the staff with the material as filed or the filing of amendments to comply with our rules and regulations; very rarely is resort taken to a formal proceeding to resolve a conflict in views.

It should be noted that members of the Commission's accounting staff are always available to advise prospective registrants and their accountants, in conference or by correspondence prior to filing, with respect to interpretation and application of the Commission's accointing requirements to particular situations. Valuable time and expense may be saved by this procedure when unique problems are recognized or where registrants and certifying accountants are without previous experience with Commission procedures.

**Public Discussion of Accounting Problems**

Some indication of the influence of the Commission's work in accounting is found in the numerous inquiries on accounting subjects received from companies and accountants not subject to our jurisdiction. Inquiries also include requests from teachers and students of accounting for assistance in research projects and for copies of Accounting Series releases and regulations for use in college classes in accounting and auditing. A singular request of this type warrants specific comment here. Recognizing a professional obligation to public accountants who participated actively in the war, the American Institute of Accountants prepared a refresher course for public accountants. This course, published in 1945 under the title "Contemporary Accounting," covered developments during the war in the various fields of accounting and auditing. The Commission made a contribution to this work in the form of a chapter on "Requirements of the Securities and Exchange Commission" prepared by the then chief accountant and a member of his staff. Believing that such public discussion of the Commission's work in accounting is helpful to present and prospective registrants and to their accountants, members of the Commission and the chief accountant have accepted invitations to appear at accounting conferences and meetings of

various accounting organizations on numerous occasions. Such occasions afford an excellent opportunity to discuss current trends in the development of accounting principles, auditing standards, financial reporting practices and professional ethics in accounting. Comments received assist materially in the continuous reappraisal of our accounting rules and regulations and in their administration.

A review of the Commission's annual reports for the fiscal years ended June 30, 1945, 1946, 1947, and 1948 and of the papers referred to in the preceding paragraph reveal that the following topics have been considered during the 5-year period: historical versus earning power concept of the income statement; relation between financial and tax accounting practices; corporate consolidations, reorganizations and mergers; termination and renegotiation of war contracts; war and postwar reserves; charges and credits to earned surplus (a problem under almost continuous discussion); reporting of so-called "tax savings" or "charges in lieu of taxes"; accounting for emergency war facilities; the single step income statement; the statement of financial position versus the orthodox form of balance sheet; public utility depreciation; employees' pensions; inventory reserves for future price declines; depreciation and current price levels, development of new terminology for reserves and surplus; improvements in form of financial statements; problems arising from the use of the "lifo" (last-in first-out) method of inventory valuation; and buy-sell-lease financing. A mere listing of these items is sufficient to emphasize the cyclical character of some of the persistent accounting problems and the influence of the closing year of the war and reconversion period.

Some of the problems created by the war (such as reserves for reconversion) were relatively short lived and were disposed of to a large extent during the 5-year period under review. The varying accounting treatments given to emergency war facilities have had a more lingering influence. Where the emergency facilities were used only during the war period and could not be converted to peace time use, the accelerated amortization applied appears to have been appropriate accounting. Where, however, war plants were written off but converted to peacetime use with full efficiency, the post war years benefit from the use of the property without the burden of a depreciation charge. Where postwar use of the properties was anticipated and normal depreciation rates were used for accounting purposes although full emergency facility amortization was claimed during the war period for tax purposes, the postwar period bears a depreciation charge from which no tax benefit is derived. Further accounting complications developed in both of these situations when postwar plant additions were made at excessive construction costs. It is clear that in this postwar period both intraindustry and interindustry comparisons of financial results are seriously affected by these differences in accounting treatment of plant costs. Full disclosure of the methods employed in accounting for fully depreciated assets (whether prewar, war emergency or postwar) and postwar additions is essential in the absence of uniform treatment throughout industry. These problems have not proven as simple as many commentators on the subject have suggested. In any case, the Commission has given serious consideration to these problems as subsequent paragraphs will disclose.

**Revisions of Regulation S–X and Forms**

Regulation S–X, the Commission's principal accounting regulation under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940, was adopted in 1940. In addition to minor technical changes and the recognition of certain temporary conditions growing out of the war, two major changes were made in this regulation during the period under review. After approximately 5 years' experience in examining financial statements of management investment companies filed pursuant to the accounting requirements laid down in article 6 of the regulation, a complete revision was proposed and submitted to interested parties for comment. Extensive comments were received and carefully considered and a formal public conference was held following which remaining problems were discussed with representatives of the industry. The revised article 6 in effect since 1946 has resulted in substantial uniformity in the accounting practices of the companies affected and in more informative and useful financial statements for investors.

A corresponding accounting regulation for face-amount certificate companies was proposed last year as article 68.[22] This proposal is still under discussion with persons who will be governed by its provisions.

The most recent change in regulation S–X is the inclusion of a new article 5–A [23] referred to in last year's report and adopted early in this fiscal year. This new article provides for simplified financial statements for commercial, industrial and mining companies in the promotional, exploratory or development stage previously provided for only in Securities Act registration forms for these companies, extending the use of such simplified statements to applications for registration on Form 10 and to annual reports on Forms 10–K and 1–MD under the Securities Exchange Act for companies of the type indicated.

In previous reports and elsewhere in this report comment may be found as to revision of forms and the elimination of those found to be obsolete. In addition to the program of revision of the forms most widely used, regulation S–X is undergoing a thorough reappraisal with a view to the elimination of obsolete material and the incorporation of provisions relating to accounting terminology and financial statement disclosure developed in the last few years. This program is a major undertaking and will require careful consideration of a number of controversial and complex problems involving accounting principles and auditing standards, as well as the form and content of financial statements.

Incidental to the above program the Commission has received suggestions to the effect that financial statements contained in published reports to stockholders should be accepted in lieu of the financial statements required by certain of our forms. Apparently those making these suggestions have overlooked the fact that a similar previous suggestion was adopted in amendments to Form 10–K for commercial, industrial and utility companies and to Form N–30A–1 for investment companies. Accounting Series Release No. 41 adopted December 22, 1942, dealt with the accounting aspects of these

[22] Accounting Series release No. 63 (1947).
[23] Accounting Series release No. 66 (1948).

amendments. Briefly, the amendments permit companies to file copies of their regular annual reports to stockholders in place of certain of the financial statements required to be filed by such forms, if the financial statements included in the annual report to stockholders substantially conform to the requirements of regulation S–X. The release discusses in some detail the interpretation to be given to the words "substantially conform." Despite this provision intended to simplify compliance as well as to encourage high standards in financial statements furnished to stockholders, only a few registrants have taken advantage of this rule.

The requirements of rule X–13A–13 and Form 8–K for the filing with the Commission of a quarterly report of sales may also be satisfied by the filing in lieu thereof of a copy of the published report to stockholders provided such report contains as a minimum the total amount of gross sales less discounts, returns and allowances, and operating revenues. Although a representative list of corporations has taken advantage of this permission, the use of the alternative has not been as widespread as was expected.

**Review of Commission Decisions**

Reports for the past 4 years have contained detailed consideration of Commission decisions involving points of accounting and auditing of particular interest to accountants. A brief summary will indicate the nature of the problems encountered.

The close of the war and reconversion to peacetime activity and expansion in industry produced several cases in which inventories were found to be overstated due to overoptimism, improper accounting methods or other causes.[24] A number of similar cases were observed and corrected as a result of the Commission's regular examining procedure and without formal Commission action or published opinion. In one of the published cases in which the misleading financial statements had been certified by independent public accountants, the Commission deemed it necessary, by a separate action, to inquire into the auditing procedures followed by the accountants and into other circumstances having a bearing upon the failure to detect the substantial overvaluation of the inventories in question. In this proceeding the accountants stipulated that the statements of fact and conclusions based thereon in the Commission's published report might be considered as evidence. While the hearing officer found all of the parties at fault in some degree, the Commission adopted his recommendation that in view of the remedial measures taken by the accounting firm to strengthen its control procedures, and, further, in view of the prior adverse publicity and certain mitigating circumstances, the proceedings should be dismissed with the recommendation that the public, and particularly the accounting profession, be informed that when a firm of public accountants permits a report or certificate to be executed in its name the Commission will hold such firm fully accountable. This was done by publication of the findings of the hearing examiner.[25] The following comment on this opinion is quoted from the June 1949 number of *The New York Certified Public Accountant:* "The tenor of the opinion is far more important

[24] For example, see Securities Act releases Nos. 3255 (1947) and 3277 (1947).
[25] Accounting Series release No. 67 (1949).

to accountants generally than is the result reached on the specific facts, since the admonitions included a strong invitation to all practitioners to review their existing organizational procedures and practices, and where indicated to take appropriate remedial measures." It is believed that the opinion has had this beneficial effect and will help to strengthen the protection which certification of financial statements by independent public accountants is intended to afford to investors.

A second class of cases involving accounting which has led to Commission opinions during the past five years arose in connection with promotional enterprises. These cases usually reveal failures to disclose significant information concerning the relationship of the promoters to the enterprise, omission of liabilities from the balance sheets, overstatement or improper description of assets and inappropriate and misleading accountants' certificates.[26] A situation of this kind briefly described in the Thirteenth Annual Report [27] resulted in a proceeding under rule II (e) of the Commission's Rules of Practice as a result of which the firm of certified public accountants and the partner in charge of the engagement were found to have engaged in improper professional conduct under our rules. Briefly, the partner in question attached the firm's certificate to a balance sheet which contained certain misstatements of assets and liabilities, including the improper showing among the assets of a leasehold at $100,000, an amount equal to the par value of the common stock issued therefor, when it was admitted that this amount was an overstatement. The opinion concluded "that it was improper to indicate that the stock had been issued at its full par value, whereas, in fact, it had been issued at a discount." The accountants' certificate was held to be false and misleading in that it was couched in terms which implied the existence of an accounting system and accounting records when in fact there were no books of account, no accounting system and no accounting records other than a few vouchers and rough notes in the certifying accountants' own files. In addition, it was found that the partner, and therefore the firm, was not independent as represented and required by the Securities Act of 1933 because the partner had become so enmeshed in the promotion of the enterprise that he was in reality a promoter rather than an independent certified public accountant.[28]

A third class of cases revealed situations in which inadequate or misleading financial statements were employed to assist the management in a program of acquiring the company's securities at less than their fair value.[29]

A fourth group of accounting cases arises in the administration of the rules governing securities brokers and dealers. Difficulties were encountered in this field of regulation largely because of the large number of small firms and the fact that many of the required audits were performed by accountants unfamiliar with the Commission's requirements and apparently not well trained in the improved procedures of brokerage auditing practice. Leaders in the accounting

[26] See Securities Act releases Nos. 3151 (1946), 3236 (1947), 3197 (1947), 3110 (1946) and 3267 (1947).
[27] P. 13, *Health Institute, Inc.*
[28] Accounting Series release No. 68 (1949).
[29] Securities Exchange Act releases Nos. 3822 (1946) and 3716 (1945); Litigation releases Nos. 302 (1945) and 333 (1946).

profession have aided in our efforts to improve the quality of broker-dealer audits and reports.[30] In addition the Commission's staff, through correspondence and direct contact by regional office representatives, has devoted considerable time to explaining to brokers and dealers and their accountants the reporting auditing requirements of the pertinent rule X–17A–5 and Form X–17A–5, which have been in effect since 1943, where it was apparent that inexperience rather than deliberate evasion was the cause of the unsatisfactory reports filed. Nevertheless, our investigations not infrequently disclose failure to keep proper books and records specified under rule X–17A–3 and willful violation of our reporting requirements referred to above. A case of this kind which resulted in disciplinary action against the certifying public accountants was described in last year's report.[31] Two cases reported in Commission opinions this year resulting in withdrawal or revocation of broker-dealer registrations did not involve public accountants.[32] Other cases reviewed in past reports during this period are cited in the margin.[33]

**Current Problems in Accounting and Auditing**

In a preceding paragraph several representative accounting problems considered in the past five years were mentioned. Detailed reconsideration of those matters which have been discussed at some length in prior years' reports would not appear to be necessary here. However, changing business conditions not only create new problems in accounting, but often call for reexamination of old problems.

A persistent problem in reporting has been that of reflecting possible adverse business developments in the future. Accounting devices used include the creation of general purpose contingency reserves and reserves designated for special purposes such as possible future price declines in inventories and for replacement of plant assets in periods of higher price levels. As stated in our fourteenth annual report, administrative policy on this question has been that provisions of this type should be reflected as appropriations of surplus and should be reported in the surplus statement rather than on the profit and loss statement. This view encountered resistance from certain registrants and their accountants due in part to the equivocal position taken in several research bulletins issued by the Committee on Accounting Procedure of the American Institute of Accountants and to which position our chief accountant had taken exception. As indicated in our last report, the Institute committee recognized that considerable confusion in the reporting of operating results was created by the optional reporting methods permitted under their bulletins and sought to remedy the situation by the adoption of a new bulletin [34] in which the option permitting appropriation from net income was withdrawn.

Minority dissents to the bulletin and developments in practice since its publication indicate that its subject matter is still controversial. However, the majority view of the committee reflects a policy, consistent with that of the Commission, that the income statement should show net income for the period without additions or deductions

[30] See editorial, "A Warning to Auditors," *The Journal of Accountancy*, June 1946.
[31] Accounting Series release No. 59 (1947). See also Accounting series release No. 51 (1945).
[32] Securities Exchange Act releases Nos. 4138 (1948) and 4265 (1949).
[33] Securities Exchange Act releases Nos 3593 (1944), 3716 (1945), 3772 (1946), and 3982 (1947).
[34] Accounting Research Bulletin No. 35, October 1948.

of items which are properly excluded from the determination of net income such as the types of provisions for future events mentioned above. This policy is reflected in rule 5–03–16 of regulation S–X which provides that the final caption on profit and loss or income statements shall be Net Income or Loss.

Mentioned in last year's report was an example of the application of the replacement theory of depreciation as compared to the generally accepted accounting concept that depreciation is the amortization of the cost of fixed assets over their anticipated useful lives. A small number of registrants applied some departure from the accepted principle in reports filed with the Commission during the year. Exception was taken in all of these cases, and conferences, in which representatives of registrants, the Commission and the staff participated, were held to consider the general question and its application in particular cases. The conclusion reached was that depreciation charges in financial statements filed with the Commission should continue to be based upon cost. Revisions of financial statements on file have been made in accordance with this conclusion. In some cases accounting recognition has been given to the high rates of production enjoyed in postwar years by accelerating depreciation charges in periods during which productive capacity was used in excess of normal average production over a representative period of years. Similarly, the amortization of plant costs incurred to capture a temporarily expanded demand was deemed to comply with the generally applicable accounting principle of matching costs with revenues. In such cases a clear explanation of the circumstances justifying the early amortization of costs has been obtained. The policy adopted by the Commission is consistent with that adopted by representative professional accounting groups in this country [35] and in Great Britain.[36]

In the Commission's thirteenth annual report attention was called to the practice of accepting, prior to that time, accountants' certificates accompanying financial statements of public utility companies in which the accountants avoided expression of an opinion with respect to the adequacy of the provision and the reserve for depreciation. Since that time Commission policy has been to require that in the event of inadequacy of either the provision or the reserve the accountant must make clear his position as to both. A related problem is the proper disclosure of the reserve for depreciation in the balance sheet. Because of a custom of long standing in the utility industry pursuant to which such reserves were shown grouped with other reserves on the liability side of the balance sheet in accordance with prescribed uniform systems of accounts adopted by the various federal and state regulatory bodies, this Commission's regulation S–X which prescribes the form and content of financial statements to be filed under the acts contains, for such companies, an exception to the general rule that valuation and qualifying reserves shall be shown separately in the statements as deductions from the specific assets to which they apply. However, the general rule has had wide acceptance among accountants for many years and it would appear that it should now be applied

[35] See "Depreciation and High Costs," Accounting Research Bulletin No. 33, American Institute of Accountants, December 1947, reaffirmed October 14, 1948, in a memorandum of the Committee on Accounting Procedure addressed to members of the Institute

[36] For a brief consideration of the subject citing American and British views see *The Canadian Chartered Accountant*, July 1949, p. 21.

to public utility companies since the uniform system of accounts promulgated by the National Association of Railroad and Utilities Commissioners now permits, but does not require, the deduction of reserves for depreciation, depletion and amortization from the related asset accounts on the balance sheet. Some states and the Federal Power Commission, the Interstate Commerce Commission and the Civil Aeronautics Board, adopted this treatment of the reserve as a requirement. A requirement to this effect is being considered in connection with the amendment of regulation S–X now in process.

The use of the word "reserve" in the foregoing discussion prompts a reference to a movement in accounting circles which should have the support of all concerned. There has been much lay criticism of certain technical terms used in accounting. Two terms that have received the brunt of the attack are "reserve" and "surplus." The accounting staff has discussed the matter with representatives of the accounting profession and in response to specific inquiries has indicated that there is no barrier in the Commission's present accounting requirements to the adoption of properly descriptive substitute terminology in financial statements filed with the Commission. In addition, the chief accountant of the Commission has publicly endorsed the movement. A recent review of a number of reports to stockholders indicates a growing acceptance of these proposals to adopt new terminology intended to be more illuminating.

Briefly, it is proposed to restrict the term "reserve" to appropriations of surplus which should be shown as part of the stockholders' equity in the balance sheet. The term would not be used to designate accounts properly classified as liabilities or as deductions from assets. Clear-cut distinctions are difficult in some cases but substantial improvements have been made in financial statements filed with the Commission.

Some large corporations have approached the abandonment of the term "surplus" with caution, adopting the device of using both the old and new terms, showing one or the other in parentheses. New terms found in published reports include "net income retained for use in the business," "profit employed in the business," "income retained in the business," "net earnings retained for use in the business," "accumulated earnings—in use in the business," "reinvestment of profits," and "earnings employed in the business." Corporate financial history in many individual cases will present complications which will require special disclosure. A common example is the situation in which earnings have been capitalized by the payment of stock dividends or by an increase in the stated value of any class of outstanding shares. Consideration must also be given to the proper presentation of appropriations from surplus to create reserves or to indicate restrictions on surplus from a variety of causes. An unqualified use of the suggested substitute terms would appear to be technically incorrect and misleading when earnings have been capitalized or appropriated and shown otherwise than as a part of the recaptioned earned surplus. The phrases mentioned above connote that a given account represents all of the earnings which have been retained. In order for a balance sheet using such terminology to be accurate and meaningful the account thus captioned must be pre-

sented in a manner which will reflect all earnings retained in the business, even though capitalized, or otherwise appropriated.

A problem actively discussed during the year grows out of a form of financing which has had a rapid postwar growth in popularity. There are several variations found, but a common example involves the construction of a building, its immediate sale to a second party accompanied by a long-term lease back to the seller, usually with renewal options. In some cases a third party, usually an insurance company or an educational institution, lends the necessary funds to the lessor, taking a mortgage on the property. In still other cases the lessor-owner of the real estate builds to specifications furnished by the lessee. The device is common in the chain store field but is not restricted to it. The problem for the accountant when faced with these situations is to determine how much disclosure is necessary for the investor to interpret properly the effect upon the financial condition of the company.

The Commission's practice with respect to the treatment of these situations depends upon the terms of the contracts. There are, basically, three types of contracts. Some are simple lease arrangements containing no provision for acquisition by the tenant of title to the property. Specific instructions for the reporting of long-term leases, including those of the type under discussion, are now prescribed in item 5 of rule 12–16 of regulation S–X, dealing with "Supplementary Profit and Loss Information," which requires a statement of the aggregate annual amount, if significant, of the rentals upon all real property now leased to the registrant and its subsidiaries for terms expiring more than three years after the date of filing, and the number of such leases. If the rentals are conditional the minimum annual amount thereof is to be stated. It is also essential, in view of the fixed commitment involved, that adequate information with respect to such leases be submitted as supplemental information to the balance sheet, preferably in the form of a footnote keyed to a caption in the balance sheet.

A second type of contract involves the purchase or repurchase of the property by the lessee, and provides that the periodic payments made under the agreement will be applied against the purchase price of the property. Such arrangements are clearly purchase or repurchase contracts, and should be shown at their full contract cost, less appropriate allowance for depreciation, on the asset side of the lessee's balance sheet, with the liability under the purchase contract reflected under an appropriate caption on the liability side. Here, again, adequate information concerning such arrangements should be appropriately disclosed.

The third type of contract incorporates an agreement which permits but does not obligate the lessee to acquire title to the property either during the life of the lease or upon its termination. In these situations it is necessary to go beyond the form of such contracts and determine whether, in substance, the lessee actually intends to acquire the property. Among the factors to be weighed in reaching a decision are:

1. Whether the rentals are to be applied against the purchase price, and if so, whether they are out of line with rentals under leases not containing acquisition provisions;

2. The estimated value of the property at the time the purchase option becomes exercisable as compared with the agreed purchase price, if any;

3. Whether the contract provides for an extension of the lease period, and the amount of the rentals to be paid during the extended period.

If it is determined, after consideration of all the factors in a particular case, that the agreement is in fact a purchase or repurchase contract, it follows that it must be reflected in the balance sheet as in the second type of case. If, on the other hand, the agreement constitutes a *bona fide* lease arrangement, it will be necessary only to submit the required information as a supplement to the financial statements as in the first example.

Most of the articles concerning "net-lease" financing appearing in various financial and accounting publications either do not refer to some of the significant problems inherent in this practice, or give them only passing mention. One of the principal problems to the lessee is, of course, the fixed commitment for a long term of years. In the cases which have come to our attention the arrangements do not appear to be subject to adjustment to conform to changes in business conditions, a situation which may present considerable hazard in periods of declining business activity.

A case in point is that of the Childs Co. The Commission's advisory report [37] on the proposed plans of reorganization of this company discloses that the "need for cash to repay bank loans caused the company to dispose of a number of its best properties and take back leases at rentals which later proved burdensome." Among the factors enumerated by the trustee as contributing to the chain's financial difficulties were excessive rentals paid by many of the stores and obsolete restaurant locations which were impossible to abandon because of lease obligations.

It is true, of course, that the purchase of property subject to a mortgage also commits the mortgagor to periodic payments of interest and to repayment of the principal amount. However, the number of such commitments which may be incurred by any one mortgagor is somewhat restricted by virtue of the fact that ordinarily a mortgage cannot be obtained for the full value of the property, and the purchaser must provide the balance himself. Because this restriction is not present in the typical "sell-lease" transaction, and there is a real danger that the lessee will commit himself for payments which he will be unable to meet under adverse conditions, full disclosure of such lease obligations is necessary in order to make the financial statements not misleading.

## DIVISION OF OPINION WRITING

The Division of Opinion Writing aids the Commission in the preparation of findings, opinions, and orders promulgated by the Commission in contested and other cases and controversies arising under the Securities Act of 1933, the Securities Exchange Act of 1934, the Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act

[37] Corporate Reorganization Release No. 67, September 30, 1946.

of 1940. These statutes provide for a wide variety of administrative proceedings which require quasi-judicial determination by the Commission. Formal opinions are issued in all cases where the nature of the matter to be decided, whether substantive or procedural, is of sufficient importance to warrant a formal expression of views.

The Division of Opinion Writing is an independent staff office which is directly responsible to the Commission. It receives all assignments and instructions from and makes recommendations and submits its work to the Commission directly. It is headed by a director, who is assisted by an assistant director, supervising attorneys and a staff of drafting attorneys and a financial analyst.

While engaged in the preparation of opinions assigned to the Division of Opinion Writing, the members of this Division are completely isolated from members of the operating division actively participating in the proceedings and it is an invariable rule that those assigned to prepare such an opinion must not have had any prior participation in any phase of the proceedings with respect to which the opinion is to be prepared. Commission experts are from time to time consulted on technical problems arising in the course of the preparation of opinions and findings, but these experts are never individuals who have participated in the preparation of the case or testified at the hearing.

The director or assistant director of the Division of Opinion Writing together with the members of the staff of the Division who are assigned to work on a particular case, attend the oral argument of the cases before the Commission and frequently keep abreast of current hearings. Prior to the oral argument, the Division makes a preliminary review of the record and prepares and submits to the Commission a summary of the facts and issues raised in the hearings before the hearing officer, as well as in any proposed findings and supporting briefs, the hearing officer's recommended decision, and exceptions thereto taken by the parties. Following oral argument or, if no oral argument has been held, then at such time as the case is ready for decision, the Division of Opinion Writing is instructed by the Commission respecting the nature and content of the opinion and order to be prepared.

In preparing the draft of the Commission's formal opinion, the entire record in the proceedings is read by a member of the staff of the Division of Opinion Writing and in some cases he also prepares a narrative abstract of the record. Upon completion of a draft opinion and abstract of the record, and after their review and revision within the Division of Opinion Writing, they are submitted to the Commission. If the study of the record in the case by the Division of Opinion Writing has revealed evidence of violations warranting a reference to the Attorney General for criminal prosecution, or has disclosed the desirability or the need for any changes in administrative procedures or techniques, appropriate recommendations are made to the Commission at the time the draft opinion in the case is submitted.

The draft opinion as submitted may be modified, amended, or completely rewritten in accordance with the Commission's final instructions. When the opinion accurately expresses the views and conclusions of the Commission, it is adopted and promulgated as the

official decision of the Commission. In some cases concurring or dissenting opinions are issued by individual Commissioners who wish to express their separate views on matters covered by the opinion adopted by the majority of the Commission. In such cases the Division of Opinion Writing is occasionally instructed to prepare drafts of such concurring or dissenting opinions and confers respecting them with the individual Commissioners involved, submits drafts directly to them, and makes such modifications and revisions as are directed.

The findings of fact, opinions, and orders adopted and promulgated by the Commission serve as an aid and guide to the bench and bar. With minor exceptions (*e. g.*, certain opinions dealing with requests for confidential treatment) all are publicly released and distributed to representatives of the press and persons on the Commission's mailing list. In addition, the findings and opinions are printed and published by the Government Printing Office in bound volumes under the title "Securities and Exchange Commission Decisions and Reports."

The Division of Opinion Writing uses a system of drafting and reviewing attorneys to check and recheck against the record, in order that the cases assigned to it receive the meticulous consideration which their importance and substantial nature require, and to ensure that the findings and opinion of the Commission will reflect with complete correctness the facts in the record and the applicable law. The Commission believes this to be the only effective way to achieve consistent accuracy in dealing with cases having the technical complexities that characterize the matters it is required to decide.

The foregoing represents the primary function of the Division of Opinion Writing—to aid in the preparation of findings, opinions, and orders promulgated by the Commission in contested cases arising under the statutes it administers. The creation of the Division of Opinion Writing as an independent staff unit in 1942 was based on the view that the fair exercise of the Commission's adjudicatory functions in many types of cases made it appropriate that it be assisted in that function by members of its staff who were independent of any other employees who participated in any of the investigative or prosecutory functions of the Commission. Originally initiated as a matter of Commission policy, this arrangement's desirability was subsequently given express recognition in the specific provisions of the Administrative Procedure Act which in certain types of cases require that there be a complete separation of function between quasi-prosecutory functions and quasi-judicial functions. The existence of the Division of Opinion Writing thus made it possible for the Commission even before the passage of the Administrative Procedure Act to meet fully the separation of function requirements contained in Sections 5 (c), 7 and 8 of that act.

Following the adoption of the Administrative Procedure Act in June 1946, the Commission's Rules of Practice and procedure were revised in order to effect full compliance with the provisions of the act. Revised Rules of Practice were adopted effective September 11, 1946, when most provisions of the act became effective, and there were also prepared for publication in the Federal Register, as required by

the act, descriptions of the Commission's organization and procedures, lists of forms, and a compilation of interpretative opinions theretofore issued for the guidance of the public. These materials were prepared under the joint direction of the Division of Opinion Writing and the Office of the General Counsel.

The Commission, through its revised Rules of Practice, has sought to provide a flexible procedure which will be suited to the needs and desires of the participants in the proceeding before it, as well as guarantee them the procedural safeguards required by the general principles of due process and the provisions of the Administrative Procedure Act. Thus, in many instances the Commission, at the request of some participants, has availed itself of the assistance of the Division of Opinion Writing in the preparation of its findings even though separation of functions was not technically required by law. Further, under rule III of the Commission's Rules of Practice, the moving party may, subject to contrary determination by the Commission, specify the procedures considered necessary or appropriate in the proceedings, with particular reference to (1) whether there should be a recommended decision by a hearing officer; (2) whether there should be a recommended decision by any other responsible officer of the Commission; (3) whether the interested Division of the Commission's staff, or only the Division of Opinion Writing, may assist in the preparation of the Commission's decision and (4) whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective. Other parties may object to the procedures or specify other procedures, but in the absence of such objection or specification of additional procedures may be deemed to have waived objection to the specified procedure and to the omission of any procedure not specified.

In addition to its primary function, the Division of Opinion Writing is also given assignments of a general nature which are not inconsistent with the objective of the separation of the investigatory and quasi-judicial functions. Thus, the Division has been assigned continuing joint responsibility with the Office of the General Counsel in dealing with problems arising under the Administrative Procedure Act. It has also been given the responsibility of preparing a compilation of administrative decisions and other authorities under the various statutes administered by the Commission, and from time to time it is given other special assignments by the Commission.

The Division of Opinion Writing also assists the operating divisions of the Commission in the preparation of opinions in certain uncontested cases where participation by the operating division in the decisional process is proper under the Administrative Procedure Act. In some instances members of the Division of Opinion Writing are also assigned to assist the Office of the General Counsel in connection with court appeals taken from Commission decisions initially drafted in the Division.

Some of the more significant opinions issued by the Commission during the year are commented upon in this report under the discussions of the various statutes.

## INTERNATIONAL FINANCIAL AND ECONOMIC MATTERS

Registration statements covering $15,353,450 of securities issued by foreign companies were filed during the fiscal year 1949. Because of the withdrawal of one statement covering an offering of $7,500,000 of securities of a Canadian oil company, only $7,853,450 of securities of foreign issuers were effectively registered.

Upon the outbreak of World War II the national securities exchanges suspended dealings in all securities of German, Japanese, Italian, and other axis origins. Shortly thereafter the Commission, upon cousultation with the Departments of State and Treasury, requested that brokers and dealers refrain from effecting transactions in these securities. Following the filing of a registration statement by the Republic of Italy in December 1947, covering an offer of exchange for the outstanding dollar bonds of the Kingdom of Italy and certain municipal and corporate obligations, the Commission withdrew its request as to Italian securities.

In recognition of the interest of United States bondholders and upon request of the securities exchanges upon which the bonds were traded, the Commission has consulted with the Departments of State, Treasury, Justice, and the Army as to the questions involved in the eventual resumption of trading in German, Japanese, and other former axis issues. Events which have taken place since these bonds were suspended from trading have been reviewed. The uncertain status of prewar dollar obligations of Germany and Japan, the lack of a peace treaty with either country, and the substantial dollar obligations they have incurred during the period of occupation have been noted. The Commission has concurred in the conclusion that it would not be in the interest of United States foreign policy or of public investors to approve the resumption of trading in German or Japanese securities at this time.

The Commission maintains, through its Adviser on Foreign Investment, facilities for liaison with other agencies which might have jurisdiction over or interest in problems of foreign finance. The Commission has continued its representation on the Staff Committee of the National Advisory Council on International Monetary and Financial Problems. It has continued to cooperate with other agencies concerned with the development of the Government's foreign economic program through the Executive Committee on Economic Foreign Policy and its subcommittees on Foreign Investment Policy, Private Monopolies and Cartels, and the United Nations Economic Subcommittee. The Commission is represented also on the Federal Committee on International Statistics formed to advise and assist the United States member of the United Nations Statistical Commission.

In furtherance of the European Recovery Program, the Commission participated in the preparation for presentation to the Congress of documents on the financial problems of the program through membership on the Financial Policy Subcommittee of the Correlation Committee on ERP. At the request of the Administrator for Economic Cooperation, the Commission's Adviser on Foreign Investment prepared a statement on private United States investments in foreign countries, and the prospects for private investment in certain ERP

countries. This statement was submitted in connection with the hearings on H. R. 2362 (a bill to Amend the Economic Cooperation Act of 1948) before the Committee on Foreign Affairs of the House of Representatives.

The Commission has also contributed to the formulation and implementation of the President's Point IV Program for the provision of technical assistance to and the encouragement of private investment in underdeveloped countries. In this connection the Adviser on Foreign Investment has participated as a member of the working groups on the financial aspects of the program, assisting in the drafting of principles for the investment clauses of treaties to provide prospective United States investors with guaranties through the Export-Import Bank against risks peculiar to foreign investments.

The Commission, through the office of its Adviser on Foreign Investment, maintains a constant surveillance of foreign exchange regulations and capital controls of other countries, noting particularly the effect of such regulations and controls upon United States investors abroad. One of the purposes of this review is to be assured that accurate disclosure of foreign exchange controls is made in registration statements and prospectuses used in connection with public offerings of foreign securities in the United States. During the year the Commission has had occasion to bring to the notice of the Department of State for appropriate action instances of apparent or potential violation of the Securities Act of 1933 in the offering of foreign securities. The Commission continues to maintain surveillance of the transactions in outstanding securities effected by foreigners in the securities markets under the Commission's jurisdiction.

The Commission, as a member of the Board of Visitors of the Foreign Bondholders Protective Council Inc., continued consultation with the Department of State on problems referred to the Board by officers of the Council. Upon the invitation of the United States Governor of the International Bank and Monetary Fund, the Chairman of the Commission and the Adviser on Foreign Investment took part in the third annual meeting of these institutions held in Washington in September of 1948.

At the request of representatives of the National Advisory Council on International Monetary and Financial Problems, the Commission gave consideration to legislation to afford certain conditional exemptions from the Securities Acts for obligations issued or guaranteed by the bank. (See discussion, above, under the section dealing with the Securities Act.)

### ADVISORY AND INTERPRETATIVE ASSISTANCE

Constant requests by attorneys, accountants, persons engaged in specialized fields of the securities business, and members of the general public in connection with the acts administered by the Commission has made an interpretative and advisory service an important part of the Commission's work. New problems arise continuously as changes in patterns of financing and business conditions present novel situations. When the frequency and importance of inquiries and the proper administration of the statutes dictate, interpretations of

general application are circulated in release form and are also published in the Federal Register.

Representatives of new enterprises and small business ventures constantly seek guidance and assistance under the various acts which the Commission administers. For the most part, these inquiries involve the applicability of exemptions from the registration provisions of the Securities Act, including the availability of special exemptions for small issues of securities. Many small issuers have thus received timely advice which enables them to comply with the applicable statute with a minimum of effort and expense.

In order to avoid violating the acts administered by the Commission, those who must comply with these acts often seek preliminary advice from the Commission concerning the application of the statutory provisions to proposed transactions. This preliminary advice has frequently proved mutually helpful to the securities industry and to the Commission, inasmuch as it tends to avoid needless effort, expense, and delay that might otherwise be necessary to correct what would have been defective filings by the registrant.

Among the more frequent inquiries received are those which relate to questions of control of an issuer by a particular person for the purpose of determining whether registration of the issuer's stock is required under the Securities Act to cover sales by him; whether a particular offering is public or private; whether a company is an investment company, and the applicability of the various sections of the Investment Company Act to proposed transactions; questions of the extent to which brokers, dealers, investment advisers, statistical agencies, and others may properly disseminate information about securities free of the prospectus requirements of sections 5 and 10 of the Securities Act; the manner and degree to which stabilization may be maintained with respect to the market prices of outstanding securities while a registered offering is in progress; and to whether the disposition of various types of interests, such as membership in a cooperative housing project, participation in pension funds, and the like, constitute offers of securities within the meaning of the Securities Act.

The volume and nature of the interpretations rendered in the Commission's ten regional offices have followed the pattern of those rendered by the staff at the central office. Each regional office is advised concerning inquiries received in the central office originating from persons located in the region covered by the respective regional office, and each office is advised also of all interpretations involving unique situations. In addition, to assure uniformity of interpretations, the central office makes a complete review of interpretations given by the regional offices.

### CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

The Commission is empowered to grant confidential treatment, upon application by registrants, to information contained in reports, applications, or documents which they are required to file under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public

Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Under the Securities Act of 1933 the Commission has adopted rule 580, which provides that information as to material contracts, or portions thereof, will be held confidential by the Commission if it determines that disclosure would impair the value of the contracts and is not necessary for the protection of investors. The other four statutes referred to, in general empower the Commission to hold confidential under certain conditions any information contained in any reports required to be filed under those statutes. Disclosure of information confidentially filed under the latter statutes is made only when the Commission determines that disclosure is in the public interest.

The following table indicates the number of applications received and acted upon during the 1949 fiscal year and the number pending at its close:

*Applications for confidential treatment—1949 fiscal year*

| Act under which filed | Number pending July 1, 1948 | Number received | Number granted | Number denied or withdrawn | Number pending June 30, 1949 |
|---|---|---|---|---|---|
| Securities Act of 1933 [1] | 4 | 10 | 13 | 0 | 1 |
| Securities Exchange Act of 1934 [2] | 11 | 46 | 39 | 8 | 10 |
| Investment Co. Act of 1940 [3] | 0 | 52 | 52 | 0 | 0 |
| Total | 15 | 108 | 104 | 8 | 11 |

[1] Filed under rule 485.
[2] Filed under rules X-24B-2 and X-13A-6B.
[3] Filed under rule N-45A-1.

A marked drop in the number of applications filed occurred in the 1949 fiscal year. This resulted particularly from the revision in November 1948, of item 7-A of regulation X-14, which reduced the amount of information about the remuneration of officers and directors called for in proxy soliciting material—information frequently made the subject of requests for confidential treatment. The consequent drop in applications relating to proxy soliciting material amounted to more than 75 percent.

Registrants may obtain a private hearing by the Commission under rule X-24B-2 to offer arguments in support of their applications. Out of 105 applications denied or withdrawn during the past 5 years, there were 6 in which such hearings were requested and conducted. In each of these cases the registrant, after the hearing, withdrew application for confidential treatment. Registrants may also seek judicial review of decisions made by the Commission adverse to them, but no such petitions for such judicial review have been filed during the past several years.

## STATISTICS AND SPECIAL STUDIES

### Saving Study

The Commission continued its series of quarterly releases on the volume and composition of saving by individuals in the United States. These releases show the aggregate volume of individuals' saving; that is, the increase in their assets less the increase in their

liabilities, exclusive of gains or losses from revaluation of assets. The figures also show the components contributing to this total, such as changes in securities, cash, insurance, consumers' indebtedness, and consumers' durable goods.

**Financial Position of Corporations**

The series of quarterly releases on the working capital position of all United States corporations, exclusive of banks and insurance companies, was continued. These releases show the principal components of current assets and current liabilities and an abbreviated analysis of the sources and uses of corporate funds. Semiannual supplementary tables were also released showing a detailed breakdown of current assets and liabilities for various industry and size groups of corporations registered with the Commission.

The Commission, together with the Federal Trade Commission, continued the joint series of quarterly industrial financial reports. These reports were developed as an extension of the working capital series and present a complete balance sheet and abbreviated income account for all manufacturing corporations in the United States. In addition, data are given for various size groups of corporations and for minor industry groups. It is planned to extend this report to cover nonmanufacturing corporations as well.

The Commission, together with the Department of Commerce, continued also the joint series of quarterly releases on plant and equipment expenditures by United States business other than agriculture. Shortly after the close of each quarter, these releases present industry totals on the actual capital expenditures of that quarter and anticipated expenditures for the next two quarters. These data provide a useful index of present and future activity in the capital-goods industries and capital markets and a valuable barometer of business activity in general.

**Survey of American Listed Corporations**

During the 1949 fiscal year the Commission again released for public and Government use the annual financial, operating and statiscal data filed with the Commission by registrants reporting under the Securities Exchange Act of 1934 and the Securities Act of 1933. These data are summarized in a series of reports known as the "Survey of American Listed Corporations" showing individual data for each company as well as industry totals for 1,891 companies in 157 industry groups. The object of these compilations of reports has been to make more readily available to the investor, to the general public, and to Government bureaus and agencies some of the financial information filed with the Commission. The survey as presently constructed covers approximately 2,000 corporations of which about 1,350 are manufacturing companies.

The results of the survey have been presented in two forms, individual industry reports and special statistical studies. The individual industry reports contain both combined and individual data for registrants from 1934 to 1947, inclusive. A postwar study was made of the industry classifications used in the survey reports and as a result the industry groupings were increased to reflect finer categories. The new groupings were first published in the 1945–46 survey series.

The most recent series of reports, Data on Profits and Operations Including Surplus 1946–47, was completed in the current fiscal year. This series, consisting of 7 volumes (volumes 1 to 5 cover manufacturing industry groups and volumes 6 and 7 cover nonmanufacturing industry groups), summarized 1,891 companies in 157 industry groups. The 1946–47 series of surveys also contains a brief analysis of dividends plus a tabulation of reserves showing the number of companies and the dollar amounts and types of reserves created either by charges to income or surplus. The data included are presented on an over-all basis, covering all registrants, and are then presented on an individual basis for each of the registrants comprising the group, with all figures given on a comparative basis with the preceding year. Principal items furnished in these reports on profits and operations, including surplus, are annual data on sales; costs and/or operating expenses; operating profits; net profit before income taxes; net profit after income taxes; depreciation, depletion, amortization, etc.; maintenance and repairs; selling, general, and administrative expenses; earned surplus at the beginning of the period; additions to earned surplus (including net profit after income taxes); deductions from earned surplus (other than dividends); dividends charged to earned surplus, and earned surplus at the end of the period. Also included are capital surplus at the beginning of the period; capital surplus at the end of the period; and net worth at the beginning of each period covered. In addition each item in the profit and loss account is shown as a percentage of net sales, and net profit before and after income taxes as a percentage of net worth. The data presented for the manufacturing industry groups supplement previous reports on Data on Profits and Operations beginning with the year 1936. The data for the nonmanufacturing industry groups supplement previous reports beginning with the year 1942. Surplus was presented for the first time in the 1945–46 series.

A summary presenting a condensed profit and loss statement for the most recent 10-year period from 1938 to 1947 was also publicly released for all manufacturing companies and a similar summary was released for a 5-year period from 1942 to 1946 for nonmanufacturing.

In previous years summaries were made of other important financial items. Thus, in the 1943–44 and 1944–45 series of surveys a tabulation was made showing data on termination and renegotiation of war contracts. In the 1944–45 series two additional analyses were made, which resulted in a summary of charges for depreciation and amortization of emergency facilities and for war costs, losses, and expenses. During the 1945 fiscal year the Commission also published a series of survey releases which covered balance sheet data for the years 1939 to 1943, inclusive.

Until 1942 most reports of the survey were made available to the public, but at present, due to budgetary limitations, it is necessary to limit distribution to depository libraries. Copies of all reports, however, have also been made available for general use in the offices of the Commission in Washington, D. C., and in the Commission's regional offices. Photocopies may also be obtained of all or part of these reports.

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**Investment Company Data**

Data for closed-end and open-end management investment companies were compiled and released to the public quarterly. These reports show, in tabular form, aggregate figures for the purchases and sales in both shares and dollars of the registrants' capital stock and of their own funded debt; portfolio changes during the period, comprising purchases, sales, and balance of change in their portfolio; and the nature of their assets at the close of the quarter. The items included in these assets are cash and cash items, Government securities, securities of other investment companies, other securities, other assets, and total assets.

The data in the published tables were obtained from quarterly reports filed pursuant to sections 13 or 15 (d) of the Securities Exchange Act of 1934 and section 30 (b) (1) of the Investment Company Act of 1940. Such reports are filed by management investment companies registered under the latter act, except companies which issue periodic payment plan certificates or which are sponsors or depositors of companies issuing such certificates. The reports are filed by fiscal quarters, and in most cases these correspond with calendar quarters; when the fiscal quarter is not a calendar quarter, the data are grouped with the calendar quarter to which the reported quarter most closely corresponds.

**Distribution of Registrants by Independent Accounting Firms**

During the 1948 fiscal year a study was made of the distribution of registrants by independent public accounting firms certifying financial statements for 1946. The study included 2,265 registrants, with aggregate assets of 100 billion dollars, which file annual reports with the Commission under the Securities Exchange Act of 1934 and the Securities Act of 1933. These firms' reports were certified by 416 independent public accounting firms. They were classified by aggregate assets of registrants served, showing the number of registrants, number of industry groups, and the percentage of total number of registrants covered. Also shown are a break-down of accounting firms by interval, the number of firms certified to, and the aggregate assets of these registrants.

**Quarterly Sales Data**

Under rule X–13A–13 companies filing annual reports on Form 10K were required to file quarterly sales data. These sales data were compiled and released by the Commission and covered approximately 1,400 companies in 157 industry groups. The data have been released quarterly in two forms, first in the aggregate, showing the comparable totals for most companies, with a break-down of manufacturing, retail trade and "all others" for the last eight calendar quarters, and second for each individual company and for each industry group for the current calendar quarter, the comparable quarter of the previous year and the quarter previous to the current quarter. During 1948 under rule X–15D–13 companies filing annual reports on Form 1MD were also required to file quarterly sales data. As a result thereof the coverage of the quarterly sales data has been increased to include approximately 350 additional companies.

**Financial Highlights**

Another report, Financial Highlights, was released by the Commission for the first time during the 1949 fiscal year. The survey is a compilation of significant operating and balance sheet items for 1,322 corporations covering the years 1948 and 1947. This summary presents net sales, net income, current assets, current liabilities, inventories, land, buildings and equipment (net), total assets, and capital stock and surplus (net worth) with computations of the current ratio, working capital, and return on net worth. A further break-down of the summary total is made to show aggregates for manufacturing, nonmanufacturing, and retail trade. The study presents combined figures for the most current financial data available from the financial statements submitted by registrants under the Securities Exchange Act of 1934 and the Securities Act of 1933.

## PERSONNEL

As of June 30, 1949, the personnel of the Commission consisted of the following:

| | | |
|---|---|---|
| Commissioners | | [1] 4 |
| Staff: | | |
| Headquarters Office | 787 | |
| Regional Offices | 336 | |
| | | 1,123 |
| Total | | 1,127 |

[1] 1 vacancy.

This represents a reduction of 21 employees from the total personnel on June 30, 1948. Average employment has been reduced from 1,686 during the 1940 fiscal year to 1,150 during the 1949 year. Average employment during the last 5 years has been:

AVERAGE EMPLOYMENT—1945 TO 1949

| Fiscal year: | *Average employment* |
|---|---|
| 1945 | 1,130 |
| 1946 | 1,204 |
| 1947 | 1,193 |
| 1948 | 1,160 |
| 1949 | 1,150 |

The preceding 5-year period has presented unusual problems in the administration of the personnel program. The Commission has shared with all agencies the difficulties arising out of the war and has had, in addition, to face the problems presented by the return of its central office from Philadelphia. The Division of Personnel is the staff organization responsible for the administrative aspects of the personnel program. Its regular work embraces employment, placement, and separation; job evaluation and classification; employee relations and services; training; operation of various committees and boards such as the Committee of Expert Examiners (which conducts examinations for positions peculiar to the Securities and Exchange Commission); wage administration; the uniform efficiency rating system; Commission regulations governing the personal securities

and commodities transactions of its employees; and processing, recording and reporting of all personnel matters. In addition the Division is responsible for the conduct of pre-appointment character investigations; leave administration and accounting; and the maintenance of an emergency medical unit staffed by a registered nurse.

Additions to the responsibilities of that Division during the past 5 or 6 years have included: (*a*) Administration of an employee suggestion program; (*b*) administrative work for the Commission's committee of Expert Examiners; (*c*) administrative work in connection with the Federal Employees' Loyalty Program; (*d*) wage administration for duplicating shop employees under wage board procedures; (*e*) the extension of the uniform efficiency rating system and the statutory job classification plan to cover virtually all employees; and (*f*) preparation of more comprehensive reports required by agencies of the legislative and executive branches of government.

The staff of the Division of Personnel has gone down from 27 in 1943 to 16 as of June 30, 1949. This represents a reduction of 41 percent as compared to a reduction of 15 percent in the total staff of the Commission during that period. This economy in operation has been accomplished by the intensification of individual effort, the elimination of records and procedures not absolutely required and constant simplification of remaining functions. This reduction in staff is particularly significant if consideration is given to the added duties and responsibilities imposed upon the Division of Personnel during the past 5 or 6 years.

Five years ago, the Commission's personnel was on a wartime basis. After the cessation of hostilities the Commission was faced with the problem of reemploying those men and women who had served in the armed forces. Despite the fact that total employment remained approximately 500 employees less than during the prewar period, all veterans seeking reemployment were restored promptly to the active rolls. In all more than 300 veterans were reemployed. A number of veterans, although eligible for reemployment, preferred to seek employment in other agencies or in private industry.

In May 1946, the President issued an Executive order authorizing the return of Federal employment to a peacetime basis. Under this Executive order, the Securities and Exchange Commission accorded the opportunity to its war service professional and technical employees to compete for permanent civil service status. At present, approximately 89 percent of the staff has permanent civil service status or permanent tenure, the remaining 11 percent being composed primarily of recent additions to the staff in nonprofessional positions.

In January 1948 the Headquarters Office of the Commission was removed from Philadelphia, Pa., to Washington, D. C. Although the Commission lost very few of its professional employees (48 percent of present executive, professional, and technical personnel have 10 or more years of service with the Commission), the move resulted in a considerable turn-over in the clerical and stenographic brackets. The replacement of those employees unable to move to Washington with the Commission was accomplished with a minimum of disruption of day-to-day work.

## FISCAL AFFAIRS

| Appropriation title | Appropriation | Obligated | Unobligated balance |
|---|---|---|---|
| Salaries and expenses | $6,027,140 | $6,023,450 | $3,690 |
| Printing and binding | 94,000 | 91,960 | 2,040 |
| Total | 6,121,140 | 6,115,410 | 5,730 |

*Receipts for the fiscal year 1949* [1]

| Character of fee: | *Amount* |
|---|---|
| Fees for registration of securities | $454,612 |
| Fees under Trust Indenture Act | 294,173 |
| Fees from registered exchanges | 1,000 |
| Fees from photo duplications | 15,159 |
| Miscellaneous receipts | 22,601 |
| Total | 787,545 |

[1] This money must be turned into the general fund of the Treasury of the United States and is not available for expenditure by the Commission.

## PUBLICATIONS

**Public Releases**

Releases of the Commission consist primarily of official announcements of filings under and actions taken pursuant to the several acts which it administers. These include notices of filings, hearing orders, decisions, regulations and related matters.

During the fiscal year ended June 30, 1949, releases issued under the several acts and in connection with its participation in cases under chapter X of the Bankruptcy Act were as follows:

| Act: | *Releases* |
|---|---|
| Securities Act of 1933 | 57 |
| Securities Exchange Act of 1934 | 160 |
| Public Utility Holding Company Act of 1935 | 583 |
| Trust Indenture Act of 1939 | 6 |
| Investment Company Act of 1940 | 122 |
| Investment Advisers Act of 1940 | 1 |
| Chapter X, Bankruptcy Act | 3 |
| Total | 932 |

The following break-down of these releases for the month of June 1949 is fairly illustrative of their general nature:

| | |
|---|---|
| Announcements of filings, orders for hearing, and notices giving opportunity to request hearing | 38 |
| Interim and final decisions and orders | 56 |

The balance of the Commission's releases are of an informational nature, the following having been issued during the year:

| | |
|---|---|
| Announcements of publication of reports on corporate survey and statistical studies | 98 |
| Reports of court actions in injunction and criminal prosecution cases initiated by the Commission | 53 |
| Miscellaneous (announcements regarding appointments of Commissioners, Staff Officials, and related matters) | 10 |
| Total | 161 |

Total releases for year, 1,187.

**Other Publications**

Daily Registration Record.

Monthly Statistical Bulletin.

Bound Volume 15 of the Decisions and Reports (December 16, 1943, to May 15, 1944).

Twelve monthly issues of the Official Summary of Securities Transactions and Holdings of Officers, Directors and Principal Stockholders.

The Fourteenth Annual Report of the Commission.

List of Securities Traded on Exchanges under the Securities Exchange Act of 1934, as of December 31, 1948.

List of Companies Registered under the Investment Company Act of 1940, as of December 31, 1948.

Working Capital of 1,275 Registered Corporations, December, 1939 to December, 1948.

Survey of American Listed Corporations, Data on Profits and Operations, Including Surplus, 1946–47, Parts I, II, III, IV, V, VI, and VII.

Survey of American Listed Corporations, Investment Companies, Quarterly Data, 1948–49.

Survey of American Listed Corporations, Brokers and Dealers, Resources and Liabilities, 3,284 Companies, 1946–47.

Survey of American Listed Corporations, Quarterly Sales Data, 1948–49.

Survey of American Listed Corporations, Financial Highlights, 1948.

Survey of American Listed Corporations, Ten Years of Manufacturing, 1938–47.

Survey of American Listed Corporations, Five Years of Nonmanufacturing, 1942–46.

Survey by American Listed Corporations, Distribution of Registrants by Independent Public Accounting Firms, 1946.

Work of Securities and Exchange Commission, as of June 6, 1949.

Accounting Series Release 65, June, 1948.

Accounting Series Release 66, October, 1948.

Accounting Series Release 67, April, 1949.

## INFORMATION AVAILABLE FOR PUBLIC INSPECTION

The Commission maintains public reference rooms at the central office in Washington, D. C., and in its regional offices in New York City and Chicago, Ill.

Copies of all public information on file with the Commission, contained in registration statements, applications, reports, declarations, and other public documents, are available for inspection in the public reference room at Washington. During the fiscal year 1949, 1,921 persons visited this public reference room seeking such information. In addition to providing facilities for personal inspection of registered public information, there were received in the public reference room thousands of letters and telephone calls from persons requesting registered information. (This does not include requests for copies of releases, forms, publications, etc.) Through the facilities provided for the sale of copies of public registered information, 2,043 orders, involving a total of 153,123 pages, were filled.

In its New York regional office, located at 120 Broadway, facilities are provided for the inspection of certain public information on file with the Commission. This includes copies of (1) applications for registrations of securities on all national securities exchanges, except the New York Stock Exchange and the New York Curb Exchange, together with copies of annual reports, supplemental reports and amendments thereto and (2) annual reports filed pursuant to the provisions of section 15 (d) of the Securities Exchange Act of 1934 by issuers having securities registered under the Securities Act of 1933, as amended. During the fiscal year 1949, 13,593 persons visited the New York public reference room and more than 6,529 telephone calls were received from persons seeking registered public information, copies of forms, releases, and other material.

In the Chicago regional office, located at 105 West Adams Street, copies of applications for registration of securities on the New York Stock Exchange and the New York Curb Exchange, together with copies of all annual reports, supplemental reports and amendments thereto, are available for public inspection. During the fiscal year 1949, 3,128 members of the public visited this public reference room, and approximately 12,215 telephone calls were received from persons seeking registered public information, forms, releases, and other material of a public nature.

In addition to the material which is available in the New York and Chicago public reference rooms, there are available in each of the Commission's regional offices copies of all prospectuses used in public offerings of securities effectively registered under the Securities Act of 1933. Duplicate copies of applications for registration of brokers or dealers transacting business on over-the-counter markets, together with supplemental statements thereto, filed under the Securities Exchange Act of 1934, and duplicate copies of applications for registration of investment advisers and supplemental statements thereto, filed under the Investment Advisers Act of 1940, are available for inspection in the regional office having jurisdiction over the zone in which the registrant's principal office is located. Also, inasmuch as letters of notification under regulation A exempting small issues of securities from registration requirements of the Securities Act of 1933, as amended, may be filed with the regional office of the Commission for the region in which the issuer's principal place of business is located, copies of such material are available for inspection at the particular regional office where filed.

In the Commission's San Francisco office, in which complete facilities are provided for registration of securities and qualification of indentures, copies of registration statements and applications for qualifications of indentures filed at that office are available for public inspection.

Copies of all applications for permanent registrations of securities on national securities exchanges are available for public inspection at the respective exchange upon which the securities are registered.

## PUBLIC HEARINGS

The following number of public hearings were held by the Commission under the acts indicated during the fiscal year 1949:

| | |
|---|---|
| Securities Act of 1933 | 4 |
| Securities Exchange Act of 1934 | 28 |
| Public Utility Holding Company Act of 1935 | 84 |
| Trust Indenture Act of 1939 | 1 |
| Investment Advisers Act of 1940 | 1 |
| Investment Company Act of 1940 | 3 |
| Total | 124 |
| Formal hearings under Commission's Rules of practice, made public during fiscal year | 1 |
| Formal hearings under Commission's rules of practice, not made public during fiscal year | 2 |
| Total | 3 |

Total hearings for year, 127.

PART IX

# APPENDIX
# STATISTICAL TABLES

TABLE 1.—*Registrations fully effective under the Securities Act of 1933*

PART 1.—DISTRIBUTION BY MONTHS, FISCAL YEAR ENDED JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Year and month | All effectively registered | | | Proposed for sale for account of issuers | | |
|---|---|---|---|---|---|---|
| | Number of statements | Number of issues | Amount | Number of statements | Number of issues | Amount |
| *1948* | | | | | | |
| July | 31 | 36 | 402, 565 | 27 | 30 | 306, 261 |
| August | 26 | 34 | 228, 178 | 21 | 25 | 193, 652 |
| September | 31 | 45 | 306, 373 | 25 | 32 | 289, 209 |
| October | 36 | 55 | 450, 365 | 33 | 46 | 407, 524 |
| November | 34 | 42 | 349, 130 | 32 | 36 | 289, 841 |
| December | 33 | 46 | 386, 988 | 26 | 32 | 315, 371 |
| *1949* | | | | | | |
| January | 26 | 33 | 257, 226 | 19 | 24 | 220, 522 |
| February | 36 | 67 | 328, 544 | 34 | 60 | 305, 084 |
| March | 42 | 72 | 341, 267 | 40 | 67 | 294, 560 |
| April | 55 | 63 | 496, 872 | 47 | 53 | 418, 252 |
| May | 36 | 43 | 1, 252, 366 | 33 | 39 | 675, 954 |
| June | 43 | 52 | 533, 486 | 40 | 44 | 487, 776 |
| Total fiscal year 1949 | [2] 429 | 588 | 5, 333, 362 | 377 | 488 | 4, 204, 008 |

PART 2.—BREAKDOWN BY METHOD OF DISTRIBUTION AND TYPE OF SECURITY OF THE VOLUME PROPOSED FOR CASH SALE FOR ACCOUNT OF THE ISSUERS, FISCAL YEAR ENDED JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Method of distribution and group to whom offered | Type of security | | | | | |
|---|---|---|---|---|---|---|
| | All types | Secured bonds | Unsecured bonds | Preferred stock | Common stock | Other types [3] |
| All methods of distribution | 4, 204, 008 | 1, 026, 595 | 1, 634, 482 | 325, 854 | 918, 802 | 298, 274 |
| To general public | 3, 136, 729 | 1, 026, 595 | 1, 122, 269 | 285, 142 | 423, 701 | 279, 021 |
| To security holders | 984, 559 | 0 | 511, 463 | 38, 389 | 434, 707 | 0 |
| To other special groups | 82, 720 | 0 | 750 | 2, 323 | 60, 394 | 19, 254 |
| Through investment bankers | 3, 315, 814 | 1, 026, 595 | 1, 137, 225 | 289, 728 | 601, 819 | 260, 448 |
| By purchase and resale | 2, 758, 454 | 1, 026, 595 | 1, 131, 745 | 278, 774 | 321, 340 | 0 |
| To general public | 2, 526, 963 | 1, 026, 595 | 1, 097, 531 | 241, 713 | 161, 125 | 0 |
| To security holders | 231, 490 | 0 | 34, 214 | 37, 061 | 160, 215 | 0 |
| To other special groups | 0 | 0 | 0 | 0 | 0 | 0 |
| On best efforts basis | 557, 361 | 0 | 5, 480 | 10, 954 | 280, 479 | 260, 448 |
| To general public | 514, 719 | 0 | 5, 480 | 10, 477 | 238, 314 | 260, 448 |
| To security holders | 42, 641 | 0 | 0 | 477 | 42, 165 | 0 |
| To other special groups | 0 | 0 | 0 | 0 | 0 | 0 |
| By issuers | 888, 194 | 0 | 497, 257 | 36, 126 | 316, 984 | 37, 826 |
| To general public | 95, 046 | 0 | 19, 259 | 32, 953 | 24, 262 | 18, 572 |
| To security holder | 710, 427 | 0 | 477, 249 | 851 | 232, 327 | 0 |
| To other special groups | 82, 720 | 0 | 750 | 2, 323 | 60, 394 | 19, 254 |

See footnotes at end of table.

TABLE 1.—*Registrations fully effective under the Securities Act of 1933*—Continued

PART 3.—PURPOSE OF REGISTRATION AND INDUSTRY OF REGISTRANT, FISCAL YEAR ENDED JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Purpose of registration and use of proceeds | Industry | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | All industries | Extractive | Manufacturing | Financial and investment | Merchandising | Transportation and communication | Electric, gas and water | Other groups |
| Number of statements | 429 | 22 | 82 | 106 | 15 | 25 | 165 | 14 |
| Number of issues | 588 | 28 | 119 | 173 | 19 | 26 | 202 | 21 |
| For all purposes of registration (estimated value) | 5,333,362 | 38,775 | 885,534 | 703,814 | 23,142 | 1,563,320 | 2,102,427 | 16,341 |
| Less: Not for cash sale | 935,484 | 4,911 | 153,120 | 20,078 | 1,947 | 571,500 | 178,380 | 5,549 |
| For account of issuers | 926,363 | 4,832 | 149,789 | 20,078 | 1,757 | 571,500 | 172,863 | 5,544 |
| Reserved for conversion | 797,419 | 0 | 109,651 | 13,938 | 834 | 571,500 | 101,497 | 0 |
| Reserved for option | 11,916 | 3,893 | 4,818 | 555 | 0 | 0 | 2,650 | 0 |
| For substitution [4] | 36,122 | 907 | 29,374 | 0 | 642 | 0 | 0 | 5,200 |
| For exchange for other securities | 54,050 | 33 | 5,815 | 5,586 | 282 | 0 | 41,991 | 344 |
| For other purposes | 26,856 | 0 | 131 | 0 | 0 | 0 | 26,725 | 0 |
| For account of others than issuers | 9,121 | 79 | 3,331 | 0 | 190 | 0 | 5,517 | 5 |
| For cash sale (estimated gross proceeds) | 4,397,878 | 33,864 | 732,414 | 683,736 | 21,204 | 991,820 | 1,924,047 | 10,792 |
| Less: For account of others than issuers | 193,870 | 369 | 52,967 | 3,136 | 6,530 | 1,909 | 127,338 | 1,621 |
| For cash sale for account of issuers | 4,204,008 | 33,495 | 679,447 | 680,600 | 14,675 | 989,911 | 1,796,709 | 9,171 |
| Less: Cost of flotation | 205,831 | 2,696 | 47,460 | 57,809 | 1,045 | 38,438 | 57,932 | 450 |
| Commission and discount | 180,758 | 2,089 | 42,909 | 56,325 | 831 | 34,322 | 43,916 | 366 |
| Expenses | 25,073 | 607 | 4,552 | 1,484 | 214 | 4,116 | 14,016 | 84 |
| Expected net proceeds from sales for account of issuers | 3,998,176 | 30,799 | 631,987 | 622,791 | 13,630 | 951,473 | 1,738,776 | 8,720 |
| New money purposes | 3,043,906 | 25,958 | 384,104 | 104,721 | 9,749 | 909,386 | 1,601,300 | 8,688 |
| Plant and equipment | 2,699,728 | 13,449 | 186,948 | 174 | 4,547 | 905,256 | 1,581,508 | 7,846 |
| Working capital | 309,530 | 5,385 | 183,985 | 104,547 | 4,977 | 4,130 | 5,664 | 842 |
| Other new money purposes | 34,648 | 7,124 | 13,171 | 0 | 225 | 0 | 14,128 | 0 |
| Retirements | 351,613 | 2,615 | 186,685 | 2,565 | 0 | 42,087 | 117,662 | 0 |
| Funded debt | 92,699 | 0 | 192 | 225 | 0 | 34,900 | 57,383 | 0 |
| Other debt | 254,021 | 2,615 | 185,921 | 2,340 | 0 | 7,187 | 55,959 | 0 |
| Preferred stock | 4,892 | 0 | 572 | 0 | 0 | 0 | 4,320 | 0 |
| Purchase of securities | 539,894 | 2,184 | 4,858 | 514,380 | 2,939 | 0 | 15,533 | 0 |
| For investment | 515,526 | 2,184 | 0 | 513,342 | 0 | 0 | 0 | 0 |
| For affiliation | 24,367 | 0 | 4,858 | 1,038 | 2,939 | 0 | 15,533 | 0 |
| Purchase of intangible assets | 93 | 0 | 93 | 0 | 0 | 0 | 0 | 0 |
| Miscellaneous and unaccounted for | 62,670 | 41 | 56,247 | 1,126 | 942 | 0 | 4,282 | 32 |

PART 4.—PURPOSE OF REGISTRATION AND USE OF PROCEEDS OF SECURITIES FOR EACH FIVE FISCAL YEARS FROM SEPT. 1, 1934, TO JUNE 30, 1949, AND FOR EACH FISCAL YEAR FROM JULY 1, 1945, TO JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Purpose of registration and use of proceeds | 5 fiscal years | | | Fiscal year | | | | |
|---|---|---|---|---|---|---|---|---|
| | 1935–39 [5] | 1940–44 | 1945–49 | 1945 | 1946 | 1947 | 1948 | 1949 |
| Number of statements | 2,569 | 1,156 | 2,358 | 340 | 661 | 493 | 485 | [2] 429 |
| Number of issues | 3,748 | 1,670 | 3,356 | 508 | 1,015 | 686 | 559 | 588 |
| For all purposes of registration (estimated value) | 15,280,021 | 8,819,902 | 28,768,306 | 3,224,584 | 7,073,280 | 6,732,447 | 6,404,633 | 5,333,362 |
| Less: Not for cash sale | 3,363,193 | 1,528,786 | 5,095,141 | 357,609 | 1,177,440 | 1,461,276 | 1,163,382 | 935,484 |
| For account of issuers | 2,870,957 | 1,415,130 | 4,984,507 | 337,378 | 1,159,865 | 1,430,245 | 1,130,656 | 926,363 |
| Reserved for conversion | 1,083,717 | 460,861 | 3,056,403 | 74,417 | 420,705 | 895,973 | 867,889 | 797,419 |
| Reserved for option | 264,624 | 120,431 | 191,341 | 23,876 | 79,223 | 70,108 | 6,218 | 11,916 |
| For substitution [6] | 324,951 | 113,565 | 163,113 | 3,948 | 25,931 | 88,352 | 8,760 | 36,122 |
| For exchange for other securities | 884,199 | 682,870 | 1,446,547 | 229,719 | 585,319 | 361,477 | 215,982 | 54,050 |
| For other purposes | 313,467 | 37,402 | 127,102 | 5,418 | 48,687 | 14,334 | 31,807 | 26,856 |
| For account of others than issuers | 492,234 | 113,657 | 110,634 | 20,231 | 17,576 | 31,031 | 32,675 | 9,121 |
| For cash sale (estimated gross proceeds) | 11,916,829 | 7,291,116 | 23,673,164 | 2,866,975 | 5,895,840 | 5,271,170 | 5,241,301 | 4,397,878 |
| Less: For account of others than issuers | 291,193 | 479,451 | 1,424,449 | 152,200 | 472,248 | 397,029 | 209,102 | 193,870 |
| For cash sale for account of issuers | 11,625,637 | 6,811,664 | 22,248,717 | 2,714,776 | 5,423,593 | 4,874,141 | 5,032,199 | 4,204,008 |
| Less: Cost of flotation | 471,264 | 219,513 | 1,172,914 | 101,183 | 288,375 | 268,537 | 308,988 | 205,831 |
| Commission and discount | 389,998 | 180,805 | 1,047,776 | 86,317 | 259,494 | 242,598 | 278,609 | 180,758 |
| Expenses | 81,266 | 38,707 | 125,139 | 14,866 | 28,881 | 25,940 | 30,379 | 25,073 |
| Expected net proceeds from sales for account of issuers | 11,154,372 | 6,592,150 | 21,075,800 | 2,613,592 | 5,135,217 | 4,605,604 | 4,723,211 | 3,998,176 |
| New money purposes | 2,227,768 | 1,308,932 | 11,106,028 | 432.545 | 1,301,294 | 2,508,972 | 3,819,311 | 3,043,906 |
| Plant and equipment | 940,385 | 649,991 | 8,667,565 | 172,408 | 742,810 | 1,891,634 | 3,160,985 | 2,699,728 |
| Working capital | 1,215,437 | 616,153 | 2,254,928 | 258,710 | 457,249 | 595,288 | 634,151 | 309,530 |
| Other new money purposes | 71,947 | 42,787 | 183,533 | 1,426 | 101,235 | 22,050 | 24,174 | 34,648 |
| Retirements | 7,325,058 | 4,408,456 | 6,912,445 | 1,699,618 | 3,047,466 | 1,408,789 | 404,959 | 351,613 |
| Funded debt | 6,330,906 | 3,759,555 | 5,467,142 | 1,495,239 | 2,554,259 | 1,060,063 | 264,882 | 92,699 |
| Other debt | 434,897 | 305,393 | 576,400 | 22,003 | 98,741 | 101,350 | 100,285 | 254,021 |
| Preferred stock | 559,256 | 343,508 | 868,903 | 182,377 | 394,466 | 247,376 | 39,792 | 4,892 |
| Purchase of securities | 1,512,902 | 815,436 | 2,930,484 | 477,603 | 775,920 | 654,528 | 482,539 | 539,894 |
| For investment | 1,450,754 | 770,390 | 2,741,936 | 454,211 | 696,626 | 615,888 | 459,685 | 515,526 |
| For affiliation | 62,149 | 45,045 | 188,546 | 23,392 | 79,294 | 38,640 | 22,853 | 24,367 |
| Purchase of intangible assets [7] | 12,358 | 20,384 | 4,944 | 2,235 | 901 | 1,715 | 0 | 93 |
| Miscellaneous and unaccounted for | 76,285 | 38,941 | 121,900 | 1,591 | 9,636 | 31,600 | 16,403 | 62,670 |

See footnotes at end of table.

TABLE 1.—*Registrations fully effective under the Securities Act of 1933*—Continued

PART 5.—METHOD OF DISTRIBUTION OF SECURITIES FOR CASH SALE FOR ACCOUNT OF ISSUERS FOR EACH FIVE FISCAL YEARS FROM SEPT. 1, 1934, TO JUNE 30, 1949, AND FOR EACH FISCAL YEAR FROM JULY 1, 1945, TO JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Method of distribution and group to whom offered | 5 fiscal years | | | Fiscal year | | | | |
|---|---|---|---|---|---|---|---|---|
| | 1935–39 [2] | 1940–44 | 1945–49 | 1945 | 1946 | 1947 | 1948 | 1949 |
| All methods of distribution | 11,625,637 | 6,811,664 | 22,248,717 | 2,714,776 | 5,423,593 | 4,874,141 | 5,032,199 | 4,204,008 |
| To general public | 10,049,707 | 5,848,359 | 17,638,052 | 2,590,720 | 4,767,365 | 3,835,455 | 3,307,783 | 3,136,729 |
| To security holders | 1,170,074 | 685,207 | 3,909,010 | 104,736 | 622,057 | 967,231 | 1,230,427 | 984,559 |
| To other special groups | 405,857 | 277,598 | 701,655 | 19,320 | 34,171 | 71,455 | 493,989 | 82,720 |
| Through investment bankers | 10,826,739 | 6,008,008 | 18,981,176 | 2,662,416 | 5,195,867 | 4,030,744 | 3,776,335 | 3,315,814 |
| By purchase and resale | 8,899,612 | 5,108,852 | 15,742,378 | 2,187,844 | 4,445,915 | 3,333,621 | 3,016,544 | 2,758,454 |
| To general public | 8,032,069 | 4,773,664 | 14,253,665 | 2,116,711 | 4,006,526 | 3,081,119 | 2,522,346 | 2,526,963 |
| To security holders | 855,059 | 328,914 | 1,452,479 | 70,295 | 437,159 | 242,053 | 471,482 | 231,490 |
| To other special groups | 12,485 | 6,274 | 36,234 | 838 | 2,231 | 10,450 | 22,715 | |
| On best efforts basis | 1,927,126 | 899,156 | 3,238,799 | 474,572 | 749,952 | 697,123 | 759,791 | 557,361 |
| To general public | 1,834,199 | 877,404 | 3,148,697 | 461,925 | 739,298 | 693,058 | 739,697 | 514,719 |
| To security holders | 30,415 | 9,942 | 87,453 | 12,404 | 10,334 | 2,080 | 19,994 | 42,641 |
| To other special groups | 62,513 | 11,809 | 2,649 | 244 | 320 | 1,985 | 100 | |
| By issuers | 798,899 | 803,655 | 3,267,542 | 52,360 | 227,726 | 843,397 | 1,255,865 | 888,194 |
| To general public | 183,439 | 197,791 | 235,687 | 12,083 | 21,541 | 61,278 | 45,739 | 95,046 |
| To security holders | 284,601 | 346,351 | 2,369,079 | 22,038 | 174,565 | 723,098 | 738,951 | 710,427 |
| To other special groups | 330,861 | 259,514 | 662,772 | 18,238 | 31,620 | 59,020 | 471,174 | 82,720 |

PART 6.—TYPE OF SECURITY AND INDUSTRY OF SECURITIES EFFECTIVELY REGISTERED FOR CASH SALE FOR ACCOUNT OF ISSUERS FOR EACH FIVE FISCAL YEARS FROM SEPT. 1, 1934, TO JUNE 30, 1949, AND FOR EACH FISCAL YEAR FROM JULY 1, 1945, TO JUNE 30, 1949

[Amounts in thousands of dollars] [1]

| Type of security and industry | Five fiscal years | | | Fiscal year | | | | |
|---|---|---|---|---|---|---|---|---|
| | 1935–39 [2] | 1940–44 | 1945–49 | 1945 | 1946 | 1947 | 1948 | 1949 |
| **TYPE OF SECURITY** | | | | | | | | |
| Number of issues for all types | 2,470 | 1,173 | 2,579 | 377 | 760 | 519 | 435 | 488 |
| Secured bonds | 388 | 174 | 328 | 57 | 63 | 46 | 87 | 75 |
| Unsecured bonds | 237 | 141 | 255 | 29 | 70 | 63 | 42 | 51 |
| Preferred stock | 458 | 241 | 609 | 97 | 218 | 123 | 94 | 77 |
| Common stock | 1,110 | 433 | 1,006 | 121 | 281 | 213 | 178 | 213 |
| Other types [3] | 277 | 184 | 381 | 73 | 128 | 74 | 34 | 72 |
| Gross proceeds for all types | 11,625,637 | 6,811,664 | 22,248,717 | 2,714,776 | 5,423,593 | 4,874,141 | 5,032,199 | 4,204,008 |
| Secured bonds | 5,345,002 | 2,876,139 | 6,077,991 | 1,386,788 | 1,432,177 | 841,854 | 1,390,577 | 1,026,595 |
| Unsecured bonds | 2,959,259 | 1,822,879 | 6,753,314 | 320,786 | 1,478,119 | 1,936,357 | 1,383,570 | 1,634,482 |
| Preferred stock | 1,003,466 | 811,992 | 3,047,236 | 406,875 | 990,699 | 786,866 | 536,942 | 325,854 |
| Common stock | 1,503,766 | 699,257 | 4,674,924 | 316,178 | 1,028,071 | 840,675 | 1,571,198 | 918,802 |
| Other types [3] | 814,139 | 601,398 | 1,695,250 | 284,149 | 494,528 | 468,388 | 149,911 | 298,274 |
| **INDUSTRY** | | | | | | | | |
| Gross proceeds for all industries [4] | 11,625,637 | 6,811,664 | 22,248,717 | 2,714,776 | 5,423,593 | 4,874,141 | 5,032,199 | 4,204,008 |
| Extractive | 152,709 | 70,107 | 147,500 | | 72,082 | 15,685 | 26,238 | 33,495 |
| Manufacturing | 3,232,577 | 2,087,668 | 5,353,828 | 786,003 | 1,749,852 | 1,266,055 | 872,471 | 679,447 |
| Financial and investment | 2,048,438 | 941,200 | 3,583,289 | 505,374 | 902,344 | 714,529 | 780,542 | 680,600 |
| Merchandising | 220,335 | 139,048 | 478,379 | 36,487 | 174,511 | 201,373 | 51,333 | 14,675 |
| Transportation and communication | 894,420 | 659,085 | 4,897,804 | 77,756 | 964,795 | 1,190,814 | 1,674,528 | 989,911 |
| Electric, gas and water | 4,550,511 | 2,719,299 | 7,399,728 | 1,285,262 | 1,496,860 | 1,214,346 | 1,606,551 | 1,796,709 |
| Foreign governments | 530,133 | 134,248 | 292,317 | 15,000 | 30,212 | 247,105 | | |
| Other groups | 196,514 | 61,009 | 95,872 | 8,994 | 32,937 | 24,234 | 20,536 | 9,171 |

[1] Dollar amounts are rounded and will not necessarily add to totals.

[2] The 429 statements shown in this table as "fully effective" differs from the 415 shown on p. 9 of the text by reason of (*a*) the exclusion of 3 statements which became effective during the 1949 fiscal year subject to amendments which were not filed by the end of the 1949 fiscal year; (*b*) the inclusion of 7 statements which became effective during the preceeding fiscal year, subject to amendments which were filed during the 1949 fiscal year, (*c*) the inclusion of 10 statements which became effective but were later withdrawn.

[3] Consists mainly of certificates of participation and face amount certificates.

[4] Consists entirely of voting trust certificates.

[5] Covers the 4 years and 10 months from Sept. 1, 1934, through June 30, 1939.

[6] Consists of voting trust certificates and certificates of deposit

[7] Previous to the 1946 fiscal year this item was "Purchase of other assets" and included "Other tangible assets" which are nown shown in "Other new money purposes."

[8] Beginning with the 1946 fiscal year foreign companies are included in the industry groups to which they belong rather than "Other groups." "Pipe lines" are included in "Electric, gas, and water" rather than "Transportation and communication."

**TABLE 2.**—*Classification by quality and size of new bond issues registered under the Securities Act of 1933 for cash sale to the general public through investment bankers during the fiscal years 1947, 1948, and 1949*

PART 1.—NUMBER OF BOND ISSUES AND AGGREGATE VALUE

[Amounts in millions of dollars] [1]

| Fiscal year ended June 30 | Size of issue ($000,000) | Quality [2] | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | First grade | | Second grade | | Third grade | | Fourth grade | | Fifth grade | | Below fifth | | Unrated | | All bonds | |
| | | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value | Number of issues | Aggregate value |
| 1947 | 50 and over | 1 | 77.4 | 7 | 875.5 | 2 | 127 5 | 2 | 129 1 | | | | | | | 12 | 1,209.6 |
| | 20–50 | 2 | 66.9 | 3 | 90.3 | 5 | 164.5 | 10 | 330 7 | 1 | 20.2 | | | | | 21 | 672 7 |
| | 5–20 | | | 9 | 107.9 | 12 | 118.9 | 9 | 123.0 | 2 | 19.7 | | | 1 | 7.3 | 33 | 376.8 |
| | 1–5 | | | | | 1 | 4 6 | 7 | 23.9 | 7 | 18.3 | 3 | 4.9 | 5 | 9.6 | 23 | 61.2 |
| | Under 1 | | | | | | | | | 1 | .6 | | | 6 | 2.4 | 7 | 3.0 |
| | All sizes | 3 | 144.4 | 19 | 1,073.7 | 20 | 415.5 | 28 | 606.7 | 11 | 58.8 | 3 | 4.9 | 12 | 19.2 | 96 | 2,323.2 |
| 1948 | 50 and over | 5 | 418.2 | 5 | 416.5 | 2 | 250.0 | | | | | | | | | 12 | 1,084.7 |
| | 20–50 | 4 | 105.6 | 5 | 172.6 | 7 | 205.0 | 4 | 109.5 | | | | | | | 20 | 592.7 |
| | 5–20 | 1 | 27.3 | 14 | 134.2 | 27 | 256 0 | 8 | 76.5 | 3 | 25 [illegible] | | | 1 | 6.8 | 54 | 525.9 |
| | 1–5 | | | 3 | 10.6 | 11 | 36 1 | 6 | 17.6 | | | | | 1 | 1.8 | 21 | 66.1 |
| | Under 1 | | | | | | | | | 2 | 1.5 | | | 5 | 2.8 | 7 | 4.3 |
| | All sizes | 10 | 551.1 | 27 | 733 9 | 47 | 747.1 | 18 | 203.6 | 5 | 26.6 | | | 7 | 11.4 | 114 | 2,273.7 |
| 1949 | 50 and over | 3 | 183.9 | 9 | 703.1 | 3 | 160.9 | 1 | 50.4 | | | | | | | 16 | 1,098.3 |
| | 20–50 | 1 | 40.5 | 5 | 131.3 | 5 | 160.9 | 3 | 95.0 | | | | | 1 | 27.8 | 15 | 455.6 |
| | 5–20 | | | 15 | 147.8 | 28 | 246.7 | 11 | 106.1 | 2 | 16.5 | | | | | 56 | 517.1 |
| | 1–5 | | | 5 | 16 2 | 10 | 29.9 | 2 | 6 2 | 1 | 3.0 | | | 2 | 5 5 | 20 | 60.8 |
| | Under 1 | | | | | | | | | | | | | 4 | 1.5 | 4 | 1.5 |
| | All sizes | 4 | 224.4 | 34 | 998.4 | 46 | 598.4 | 17 | 257.7 | 3 | 19.8 | | | 7 | 34.8 | 111 | 2,133.3 |

PART 2.—COMPENSATION [1] TO DISTRIBUTORS

[Percent of gross proceeds]

| Fiscal year ended June 30— | Size of issue ($000,000) | Quality [2] | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | First grade | Second grade | Third grade | Fourth grade | Fifth grade | Below Fifth | Unrated | All bonds |
| 1947 | 50 and over | 0 6 | 0.5 | 1.1 | 1.2 | | | | 0.6 |
| | 20–50 | .5 | .6 | .8 | 1.4 | 1.4 | | | 1.0 |
| | 5–20 | | .7 | .7 | 1.7 | .7 | | 1 8 | 1 1 |
| | 1–5 | | | .4 | 1.4 | 2.2 | 4 3 | 3 3 | 2.1 |
| | Under 1 | | | | | 4 5 | | 5 1 | 5.0 |
| | All sizes | .6 | .5 | .9 | 1.4 | 1.4 | 4.3 | 3.0 | .9 |
| 1948 | 50 and over | .5 | 6 | .4 | | | | | .5 |
| | 20–50 | .6 | .4 | .7 | 1.2 | | | | .7 |
| | 5–20 | .1 | .5 | .7 | 1.3 | 2.5 | | .4 | .8 |
| | 1–5 | | 5 | .6 | 1 5 | | | 7.2 | 1.0 |
| | Under 1 | | | | | 3 6 | | 7.5 | 6.1 |
| | All sizes | .5 | 5 | .6 | 1.3 | 2 6 | | 3 2 | .6 |
| 1949 | 50 and over | .4 | .7 | .9 | .4 | | | | .7 |
| | 20–50 | .5 | .4 | .9 | 1.3 | | | 5.7 | 1.1 |
| | 5–20 | | .5 | .5 | 1 3 | 3 1 | | | .7 |
| | 1–5 | | .3 | .5 | .6 | 4 0 | | 5 9 | 1.1 |
| | Under 1 | | | | | | | 7 6 | 7.6 |
| | All sizes | .5 | .6 | 7 | 1.1 | 3 3 | | 5.8 | .8 |

[1] Dollar amounts are rounded and will not necessarily add to the totals.

[2] The grades are according to the classification of the bonds by investment rating services: "first grade" corresponds to Moody's Aaa, Standard & Poor's A1+, "second grade" to Aa, A1, etc.

[3] The compensation figures are based on the data reported in the registration statements as of their effective dates. They do not, therefore, include additional compensation that may have been realized later from the exercise of options that had no realizable value on the effective dates

862940—50——15

TABLE 3.—*New securities offered for cash sale in the United States* [1]

PART 1.—TYPE OF OFFERING

[Estimated gross proceeds in thousands of dollars] [2]

| Fiscal year ended June 30— | All offerings | Public [3] | | | | Private | | |
|---|---|---|---|---|---|---|---|---|
| | | Registered | Exempt because of— | | | Registered | Exempt because of— | |
| | | | Type of issue or issuer [4] | Size of issue [5] | Intrastate offering | | Type of issue or issuer [4] | Purchase by limited group [6] |
| 1935 | 3,553,976 | 496,505 | 2,711,097 | ---------- | 4,298 | ---------- | 80,568 | 261,508 |
| 1936 | 11,060,996 | 3,265,199 | 7,372,131 | ---------- | 11,514 | 67,161 | 19,499 | 325,493 |
| 1937 | 7,601,506 | 3,006,992 | 4,244,812 | ---------- | 17,577 | 8,666 | 20,869 | 302,590 |
| 1938 | 3,454,156 | 891,614 | 2,196,440 | ---------- | 5,092 | 2,953 | 7,219 | 350,838 |
| 1939 | 6,817,226 | 1,651,696 | 4,356,446 | ---------- | 7,604 | 61,304 | 69,188 | 670,988 |
| 1940 | 5,511,591 | 1,295,916 | 3,417,451 | ---------- | 6,532 | 14,712 | 45,659 | 731,322 |
| 1941 | 9,842,273 | 1,682,442 | 7,142,634 | ---------- | 10,005 | 111,866 | 57,800 | 837,526 |
| 1942 | 19,920,551 | 1,280,345 | 18,104,723 | ---------- | 2,125 | 5,375 | 7,886 | 520,098 |
| 1943 | 47,489,692 | 419,942 | 46,754,376 | ---------- | 603 | ---------- | ---------- | 314,770 |
| 1944 | 52,399,938 | 1,050,882 | 50,750,658 | ---------- | 1,013 | ---------- | 56,829 | 540,556 |
| 1945 | 54,004,501 | 2,127,668 | 51,019,957 | 3,343 | 20,554 | 12,063 | 34,433 | 786,483 |
| 1946 | 36,159,537 | 4,651,402 | 30,179,815 | 111,892 | 4,211 | 5,000 | 6,070 | 1,201,144 |
| 1947 | 18,996,848 | 4,080,237 | 12,685,311 | 143,366 | 8,817 | ---------- | 20,944 | 2,058,171 |
| 1948 | 19,530,183 | 4,002,192 | 12,353,440 | 140,845 | 9,063 | 5,000 | 13,228 | 3,006,415 |
| 1949 | 20,701,688 | 3,443,423 | 14,292,906 | 121,358 | 1,834 | ---------- | 19,595 | 2,822,572 |
| *1948* | | | | | | | | |
| July | 2,574,262 | 287,753 | 2,001,557 | 12,366 | ---------- | ---------- | ---------- | 272,586 |
| August | 1,215,608 | 87,635 | 846,679 | 12,362 | ---------- | ---------- | ---------- | 268,932 |
| September | 1,733,685 | 256,137 | 1,295,913 | 8,292 | ---------- | ---------- | ---------- | 173,343 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| October | 1,895,287 | 262,548 | 1,166,789 | 9,442 | | | 11,920 | 444,587 |
| November | 1,425,908 | 179,741 | 990,472 | 9,623 | | | 4,860 | 241,212 |
| December | 1,992,099 | 415,128 | 1,256,238 | 8,843 | 600 | | | 311,289 |
| *1949* | | | | | | | | |
| January | 1,408,484 | 209,749 | 1,101,708 | 11,974 | 150 | | | 84,902 |
| February | 1,289,151 | 98,631 | 1,024,430 | 8,852 | 284 | | | 156,955 |
| March | 1,395,287 | 202,067 | 1,056,323 | 7,441 | 800 | | 2,815 | 125,841 |
| April | 1,606,409 | 391,949 | 926,866 | 13,925 | | | | 273,669 |
| May | 1,493,214 | 194,931 | 1,154,329 | 11,329 | | | | 132,625 |
| June | 2,672,296 | 857,154 | 1,471,602 | 6,909 | | | | 336,631 |

See footnotes at end of table.

TABLE 3.—*New securities offered for cash sale in the United States* [1]—Continued

PART 2.—TYPE OF SECURITY

[Estimated gross proceeds in thousands of dollars] [2]

| Fiscal year ended June 30— | All types of securities | | | Bonds, debentures and notes | | | Preferred stock | Common stock |
|---|---|---|---|---|---|---|---|---|
| | All issuers | Noncorporate | Corporate | All issuers | Noncorporate | Corporate | | |
| 1935 | 3,553,976 | 2,658,791 | 895,184 | 3,534,933 | 2,658,791 | 876,142 | 12,161 | 6,881 |
| 1936 | 11,060,996 | 6,853,177 | 4,207,819 | 10,765,721 | 6,853,177 | 3,912,544 | 188,752 | 106,524 |
| 1937 | 7,601,506 | 3,896,145 | 3,705,361 | 6,772,299 | 3,896,145 | 2,876,154 | 410,020 | 419,188 |
| 1938 | 3,454,156 | 2,165,081 | 1,289,075 | 3,207,377 | 2,165,081 | 1,042,296 | 186,029 | 60,749 |
| 1939 | 6,817,226 | 4,371,626 | 2,445,601 | 6,636,832 | 4,371,626 | 2,265,206 | 106,650 | 73,745 |
| 1940 | 5,511,591 | 3,189,573 | 2,322,017 | 5,280,499 | 3,189,573 | 2,090,926 | 135,681 | 95,411 |
| 1941 | 9,842,273 | 6,811,670 | 3,030,603 | 9,604,238 | 6,811,495 | 2,792,743 | 172,313 | 65,721 |
| 1942 | 19,920,551 | 17,933,427 | 1,987,124 | 19,620,469 | 17,933,427 | 1,687,042 | 184,270 | 115,813 |
| 1943 | 47,489,692 | 46,747,286 | 742,406 | 47,427,238 | 46,747,286 | 679,952 | 33,311 | 29,144 |
| 1944 | 52,399,938 | 50,665,588 | 1,734,349 | 51,990,392 | 50,665,588 | 1,324,804 | 325,670 | 83,875 |
| 1945 | 54,004,501 | 49,767,097 | 4,237,403 | 53,419,331 | 49,767,097 | 3,652,234 | 370,174 | 214,995 |
| 1946 | 36,159,537 | 28,824,909 | 7,334,628 | 34,203,542 | 28,824,909 | 5,378,632 | 1,181,463 | 774,532 |
| 1947 | 18,996,848 | 12,634,337 | 6,362,511 | 17,413,403 | 12,634,337 | 4,779,065 | 885,644 | 697,800 |
| 1948 | 19,530,183 | 12,128,144 | 7,402,038 | 17,996,086 | 12,128,144 | 5,867,942 | 694,444 | 839,653 |
| 1949 | 20,701,688 | 13,822,761 | 6,878,928 | 19,661,162 | 13,822,761 | 5,838,401 | 395,736 | 644,790 |
| *1948* | | | | | | | | |
| July | 2,574,262 | 1,933,037 | 641,224 | 2,524,736 | 1,933,037 | 591,698 | 14,344 | 35,182 |
| August | 1,215,608 | 963,445 | 252,163 | 1,141,418 | 963,445 | 177,974 | 39,748 | 34,441 |
| September | 1,733,685 | 1,250,112 | 483,573 | 1,660,984 | 1,250,112 | 410,872 | 12,193 | 60,509 |
| October | 1,895,287 | 1,104,126 | 791,160 | 1,808,392 | 1,104,126 | 704,265 | 51,980 | 34,955 |
| November | 1,425,908 | 918,424 | 507,484 | 1,373,847 | 918,424 | 455,423 | 21,224 | 30,837 |
| December | 1,992,099 | 1,209,407 | 782,691 | 1,909,815 | 1,209,407 | 700,408 | 14,494 | 67,790 |
| *1949* | | | | | | | | |
| January | 1,408,484 | 1,063,219 | 345,265 | 1,336,383 | 1,063,219 | 273,164 | 7,528 | 64,573 |
| February | 1,289,151 | 967,725 | 321,426 | 1,275,497 | 967,725 | 307,772 | 5,414 | 8,240 |
| March | 1,395,287 | 984,690 | 410,597 | 1,314,388 | 984,690 | 329,698 | 40,044 | 40,855 |
| April | 1,606,409 | 908,288 | 698,121 | 1,423,356 | 908,288 | 515,068 | 49,715 | 133,338 |
| May | 1,493,214 | 1,105,066 | 388,148 | 1,351,045 | 1,105,066 | 245,979 | 82,248 | 59,921 |
| June | 2,672,296 | 1,415,220 | 1,257,075 | 2,541,301 | 1,415,220 | 1,126,081 | 56,845 | 74,149 |

## PART 3.—TYPE OF ISSUER

[Estimated gross proceeds in thousands of dollars] [2]

| Fiscal year ended June 30— | Corporate [7] | | | | | Total non-corporate | Non-corporate United States Government (including agency issues guaranteed) | Federal agency (issues not guaranteed) | State and municipal | Foreign government | Eleemosynary and other non-profit |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total corporate | Industrial | Public utility | Rail | Real estate and financial | | | | | | |
| 1935 | 895,184 | 328,948 | 377,605 | 137,404 | 51,228 | 2,658,791 | 1,572,410 | 60,109 | 1,020,326 | 4,978 | 968 |
| 1936 | 4,207,819 | 1,340,552 | 2,008,143 | 659,857 | 199,268 | 6,853,177 | 5,354,660 | 94,827 | 1,248,675 | 130,538 | 24,477 |
| 1937 | 3,705,361 | 1,203,865 | 1,637,526 | 501,036 | 362,934 | 3,896,145 | 2,589,372 | 25,446 | 1,060,212 | 163,239 | 57,877 |
| 1938 | 1,289,075 | 659,730 | 577,281 | 41,428 | 10,636 | 2,165,081 | 1,206,754 | 81,670 | 863,794 | 3,250 | 9,613 |
| 1939 | 2,445,601 | 954,950 | 1,365,540 | 106,351 | 18,759 | 4,371,626 | 2,904,127 | 63,269 | 1,322,048 | 66,797 | 15,385 |
| 1940 | 2,322,017 | 691,039 | 1,108,325 | 297,935 | 224,719 | 3,189,573 | 2,140,357 | 47,258 | 952,491 | 27,939 | 21,527 |
| 1941 | 3,030,603 | 1,047,929 | 1,530,509 | 375,026 | 77,139 | 6,811,670 | 5,411,505 | 73,742 | 1,295,248 | 4,120 | 27,055 |
| 1942 | 1,987,124 | 779,472 | 977,422 | 174,202 | 56,029 | 17,933,427 | 17,209,070 | 35,172 | 679,850 | ---------- | 9,334 |
| 1943 | 742,406 | 291,823 | 331,753 | 106,265 | 12,565 | 46,747,286 | 46,193,211 | 2,912 | 457,405 | 89,700 | 4,058 |
| 1944 | 1,734,349 | 854,064 | 657,746 | 163,404 | 59,136 | 50,665,588 | 50,141,375 | 1,185 | 496,970 | 19,398 | 6,661 |
| 1945 | 4,237,403 | 1,200,521 | 1,724,396 | 1,191,006 | 121,480 | 49,767,097 | 48,856,299 | 114,463 | 778,788 | 15,000 | 2,548 |
| 1946 | 7,334,628 | 3,067,101 | 2,612,257 | 1,356,588 | 298,686 | 28,824,909 | 27,257,610 | 608,424 | 928,211 | 30,213 | 452 |
| 1947 | 6,362,511 | 3,195,453 | 2,569,459 | 273,734 | 323,864 | 12,634,337 | 10,264,412 | 139,825 | 1,976,844 | 247,106 | 6,152 |
| 1948 | 7,402,038 | 2,951,816 | 3,459,285 | 448,218 | 542,719 | 12,128,144 | 9,348,522 | ---------- | 2,525,953 | [8] 249,300 | 4,370 |
| 1949 | 6,878,928 | 2,476,861 | 3,337,505 | 615,259 | 449,303 | 13,822,761 | 11,135,188 | ---------- | 2,513,408 | 166,000 | 8,165 |
| *1948* | | | | | | | | | | | |
| July | 641,224 | 331,289 | 192,810 | 68,519 | 48,605 | 1,933,037 | 1,812,800 | ---------- | 119,903 | ---------- | 334 |
| August | 252,163 | 131,232 | 79,779 | 30,234 | 10,918 | 963,445 | 526,374 | ---------- | 286,793 | 150,000 | 277 |
| September | 483,573 | 139,579 | 253,085 | 41,659 | 49,250 | 1,250,112 | 1,128,363 | ---------- | 121,749 | ---------- | ---------- |
| October | 791,160 | 409,917 | 272,165 | 64,283 | 44,795 | 1,104,127 | 824,612 | ---------- | 279,162 | ---------- | 352 |
| November | 507,484 | 166,091 | 230,597 | 74,604 | 36,192 | 918,424 | 763,080 | ---------- | 151,793 | ---------- | 3,552 |
| December | 782,691 | 231,163 | 496,682 | 45,481 | 9,365 | 1,209,407 | 1,080,242 | ---------- | 128,915 | ---------- | 251 |
| [2] *1949* | | | | | | | | | | | |
| January | 345,265 | 168,756 | 119,723 | 36,489 | 20,297 | 1,063,219 | 870,073 | ---------- | 192,894 | ---------- | 252 |
| February | 321,426 | 129,014 | 105,696 | 54,602 | 32,113 | 967,725 | 763,299 | ---------- | 204,073 | ---------- | 353 |
| March | 410,597 | 117,140 | 182,891 | 87,633 | 22,932 | 984,690 | 791,917 | ---------- | 175,490 | 16,000 | 1,282 |
| April | 698,121 | 339,992 | 281,455 | 17,578 | 59,097 | 908,288 | 716,502 | ---------- | 190,274 | ---------- | 1,513 |
| May | 388,148 | 101,681 | 197,909 | 49,263 | 39,295 | 1,105,066 | 758,691 | ---------- | 346,375 | ---------- | ---------- |
| June | 1,257,075 | 211,006 | 924,714 | 44,913 | 76,444 | 1,415,220 | 1,099,236 | ---------- | 315,985 | ---------- | ---------- |

See footnotes at end of table

TABLE 3.—*New securities offered for cash sale in the United States* [1]—Continued

PART 4.—PRIVATE PLACEMENTS OF CORPORATE SECURITIES [6]

[Estimated gross proceeds in thousands of dollars] [2]

| Fiscal year ended June 30— | All private placements | Type of security | | Type of issuer [7] | | | |
|---|---|---|---|---|---|---|---|
| | | Bonds, debentures and notes | Stocks | Industrial | Public utility | Railroad | Real estate and financial |
| 1935 | 261,508 | 259,459 | 2,050 | 158,469 | 77,700 | | 25,340 |
| 1936 | 412,152 | 409,264 | 2,889 | 165,324 | 215,530 | 19,499 | 11,800 |
| 1937 | 325,525 | 321,961 | 3,564 | 121,638 | 151,905 | 13,386 | 38,595 |
| 1938 | 357,759 | 357,158 | 601 | 226,698 | 123,343 | 7,219 | 500 |
| 1939 | 748,435 | 748,036 | 399 | 360,771 | 364,232 | 23,432 | |
| 1940 | 756,643 | 747,715 | 8,927 | 138,703 | 418,614 | 9,592 | 189,734 |
| 1941 | 991,392 | 989,094 | 2,298 | 361,090 | 563,160 | 24,142 | 43,000 |
| 1942 | 531,458 | 523,188 | 8,270 | 272,472 | 221,017 | 5,986 | 31,984 |
| 1943 | 314,770 | 312,720 | 2,050 | 144,537 | 152,233 | 18,000 | |
| 1944 | 592,485 | 585,270 | 7,215 | 347,521 | 162,660 | 77,979 | 4,325 |
| 1945 | 832,979 | 822,610 | 10,369 | 437,456 | 345,154 | 34,433 | 15,936 |
| 1946 | 1,212,214 | 1,172,424 | 39,790 | 803,387 | 300,976 | 51,545 | 56,309 |
| 1947 | 2,075,955 | 2,011,036 | 64,918 | 1,598,822 | 256,798 | 3,839 | 216,499 |
| 1948 | 3,024,233 | 2,922,349 | 101,883 | 1,917,278 | 722,220 | 1,000 | 383,734 |
| 1949 | 2,676,167 | 2,616,857 | 59,310 | 1,713,646 | 687,193 | 4,800 | 270,529 |
| *1948* | | | | | | | |
| July | 272,586 | 263,836 | 8,750 | 212,651 | 23,810 | | 36,124 |
| August | 118,932 | 108,877 | 10,056 | 98,915 | 13,518 | | 6,499 |
| September | 173,343 | 172,143 | 1,200 | 53,000 | 95,822 | | 24,520 |
| October | 456,507 | 455,125 | 1,382 | 367,153 | 44,384 | 1,920 | 43,050 |
| November | 246,072 | 246,072 | | 136,572 | 80,119 | 2,880 | 26,500 |
| December | 311,289 | 304,277 | 7,012 | 210,847 | 95,617 | | 4,825 |
| *1949* | | | | | | | |
| January | 84,902 | 83,502 | 1,400 | 58,900 | 10,002 | | 16,000 |
| February | 156,955 | 156,655 | 300 | 117,850 | 30,855 | | 8,250 |
| March | 112,656 | 91,556 | 21,100 | 58,501 | 33,155 | | 21,000 |
| April | 273,669 | 272,819 | 850 | 228,671 | 44,998 | | |
| May | 132,625 | 127,965 | 4,660 | 82,000 | 31,715 | | 18,910 |
| June | 336,631 | 334,031 | 2,600 | 88,585 | 183,196 | | 64,850 |

[1] The data in these tables cover substantially all new issues of securities offered for cash sale in the United States in amounts over $100,000 and with terms to maturity of more than 1 year. The figures represent offerings, not actual sales. However, the proportion of the total remaining unsold is believed to be quite minor, and is composed chiefly of nonunderwritten issues of small companies. Included in the coverage are issues privately placed as well as issues publicly offered, and unregistered issues as well as those registered under the Securities Act of 1933. Excluded are: intercorporate transactions; United States Government "Special Series" issues, and other sales directly to Federal agencies and trust accounts; notes issued exclusively to commercial banks; and corporate issues sold through continuous offering, such as issues of open-end investment companies. The chief sources of data are the financial press and documents filed with the Commission. Data for offerings of State and municipal securities are from totals published by the Commercial and Financial Chronicle; unlike the other data in table 2, these represent principal amounts instead of gross proceeds. All figures are subject to revision as new data are received.

[2] Gross proceeds are derived by multiplying principal amounts or numbers of units by offering prices, except for municipal issues where principal amount is used. Slight discrepancies between the sum of figures in the tables and the totals shown are due to rounding.

[3] Issues sold by competitive bidding directly to ultimate investors are classified as publicly offered issues.

[4] Issues exempt because of type of issue or issuer include offerings of Federal, State, and local governments, banks, issuers subject to regulation by the Interstate Commerce Commission, and eleemosynary and other nonprofit institutions.

[5] Issues in this group include those between $100,000 and $300,000 in size which are exempt because of amendment to regulation A of the Securities Act of 1933, effective May 21, 1945.

[6] Securities for which registration under the Securities Act of 1933 would be required if they were publicly offered.

[7] The classification by type of issuer of the offerings of corporate securities in this table is less detailed than that of Securities Act registrations in pt. 3 of table 2. In comparing the 2 distributions the following points should be noted: (1) The "public utility" classification in this table embraces both the "heat, light, power, and water" and the "transportation and communication" categories of the other with the principal exception of air lines, which have been included in the "industrial "classification of table 4; (2) the "real estate and financial" category in this table includes offerings of securities of the type of issuer represented in the "financial and investment" classification of table 1 except that it does not include issues offered on a continuous basis by open-end investment companies; (3) the "industrial" classification in table 4 includes the type of issuers represented in the "extractive," "manufacturing," "merchandising," and "other" classification of table 2 except foreign governments. (See footnote 8 to table 2.)

[8] Bonds of the International Bank for Reconstruction and Development.

[9] Excludes issues sold by competitive bidding directly to ultimate investors.

TABLE 4.—*Proposed uses of net proceeds from the sale of new corporate securities offered for cash sale in the United States*

PART 1.—ALL CORPORATE

[Amounts in thousands of dollars] [1]

| Fiscal year ended June 30— | Proceeds | | New money | | | Retirements | | | | All other purposes |
|---|---|---|---|---|---|---|---|---|---|---|
| | Total gross proceeds [2] | Total net proceeds [2] | Total new money | Plant and equipment | Working capital | Total retirements | Funded debt | Other debt | Preferred stock | |
| 1935 | 895,184 | 872,204 | 112,067 | 55,796 | 56,272 | 728,959 | 628,633 | 99,661 | 665 | 31,178 |
| 1936 | 4,207,819 | 4,080,791 | 419,055 | 260,586 | 158,469 | 3,637,122 | 3,167,120 | 253,312 | 216,691 | 24,613 |
| 1937 | 3,705,361 | 3,589,334 | 1,195,768 | 561,909 | 633,859 | 2,332,519 | 1,986,784 | 91,786 | 253,949 | 61,047 |
| 1938 | 1,289,075 | 1,255,763 | 650,750 | 412,191 | 238,559 | 599,720 | 453,021 | 129,247 | 17,452 | 5,294 |
| 1939 | 2,445,601 | 2,391,738 | 587,503 | 379,369 | 208,133 | 1,790,275 | 1,489,212 | 174,461 | 126,602 | 13,961 |
| 1940 | 2,322,017 | 2,267,785 | 292,377 | 184,099 | 108,278 | 1,948,865 | 1,695,787 | 182,657 | 70,420 | 26,543 |
| 1941 | 3,030,603 | 2,970,499 | 782,268 | 616,578 | 165,691 | 2,167,477 | 1,923,831 | 99,685 | 143,961 | 20,753 |
| 1942 | 1,987,124 | 1,954,957 | 862,499 | 589,342 | 273,157 | 1,061,176 | 800,818 | 206,535 | 53,824 | 31,283 |
| 1943 | 742,406 | 728,304 | 242,444 | 123,906 | 118,538 | 459,101 | 397,737 | 26,832 | 34,532 | 26,759 |
| 1944 | 1,734,349 | 1,699,741 | 458,620 | 229,009 | 229,611 | 1,200,933 | 915,837 | 97,368 | 187,728 | 40,188 |
| 1945 | 4,237,403 | 4,160,331 | 759,837 | 295,294 | 464,542 | 3,352,344 | 2,966,618 | 51,362 | 334,364 | 48,150 |
| 1946 | 7,334,628 | 7,180,841 | 1,617,185 | 1,038,956 | 578,229 | 5,309,950 | 4,436,705 | 240,354 | 632,892 | 253,706 |
| 1947 | 6,362,511 | 6,254,136 | 4,065,938 | 2,600,152 | 1,465,787 | 2,054,850 | 1,298,770 | 454,186 | 301,894 | 133,348 |
| 1948 | 7,402,038 | 7,271,587 | 5,887,340 | 4,354,844 | 1,532,496 | 1,136,498 | 679,710 | 357,091 | 99,697 | 247,750 |
| 1949 | 6,878,928 | 6,774,047 | 5,779,238 | 4,545,646 | 1,233,592 | 776,763 | 151,020 | 597,368 | 28,375 | 218,046 |
| *1948* | | | | | | | | | | |
| July | 641,224 | 630,587 | 457,245 | 317,812 | 139,433 | 112,800 | 8,239 | 102,990 | 1,570 | 60,543 |
| August | 252,163 | 246,107 | 232,320 | 178,002 | 54,319 | 12,705 | 1,897 | 10,808 | ---------- | 1,082 |
| September | 483,573 | 475,346 | 398,158 | 277,551 | 120,607 | 50,254 | 12,284 | 33,819 | 4,152 | 26,933 |
| October | 791,160 | 782,461 | 733,914 | 559,184 | 174,730 | 45,390 | 23,451 | 21,731 | 208 | 3,157 |
| November | 507,484 | 501,273 | 462,522 | 313,880 | 148,642 | 34,395 | ---------- | 26,096 | 8,299 | 4,356 |
| December | 782,691 | 770,985 | 677,047 | 585,928 | 91,118 | 79,596 | 7,280 | 69,560 | 2,755 | 14,342 |
| *1949* | | | | | | | | | | |
| January | 345,265 | 335,898 | 311,735 | 274,214 | 37,521 | 8,561 | ---------- | 6,610 | 1,951 | 15,602 |
| February | 321,426 | 317,727 | 219,716 | 171,820 | 47,895 | 31,639 | 7,066 | 24,573 | ---------- | 66,372 |
| March | 410,597 | 402,602 | 318,974 | 252,651 | 66,324 | 80,690 | 37,020 | 43,670 | ---------- | 2,937 |
| April | 698,121 | 687,932 | 553,422 | 401,956 | 151,466 | 127,049 | 697 | 126,352 | ---------- | 7,461 |
| May | 358,148 | 379,604 | 339,706 | 254,343 | 85,363 | 33,171 | 13,313 | 14,839 | 5,019 | 6,727 |
| June | 1,257,075 | 1,243,526 | 1,074,480 | 958,305 | 116,175 | 160,513 | 39,773 | 116,319 | 4,420 | 8,533 |

PART 2.—INDUSTRIAL

[Amounts in thousands of dollars] [1]

| Fiscal year ended June 30— | Proceeds | | New money | | | Retirements | | | | All other purposes |
|---|---|---|---|---|---|---|---|---|---|---|
| | Total gross proceeds [2] | Total net proceeds [2] | Total new money | Plant and equipment | Working capital | Total retirements | Funded debt | Other debt | Preferred stock | |
| 1935 | 328,948 | 321,656 | 49,900 | 19,500 | 30,400 | 251,652 | 239,139 | 11,847 | 665 | 20,104 |
| 1936 | 1,340,552 | 1,295,398 | 191,242 | 96,764 | 94,478 | 1,092,997 | 809,426 | 151,178 | 132,392 | 11,159 |
| 1937 | 1,203,865 | 1,150,608 | 602,828 | 239,994 | 362,833 | 507,499 | 334,333 | 57,772 | 115,394 | 40,282 |
| 1938 | 659,730 | 642,079 | 461,609 | 268,473 | 193,136 | 177,228 | 114,241 | 45,993 | 16,993 | 3,243 |
| 1939 | 954,950 | 933,170 | 444,029 | 253,524 | 190,505 | 478,368 | 328,521 | 126,882 | 22,966 | 10,773 |
| 1940 | 691,039 | 666,063 | 118,932 | 50,408 | 68,524 | 532,202 | 455,255 | 44,203 | 32,745 | 14,929 |
| 1941 | 1,047,929 | 1,021,150 | 184,436 | 98,553 | 85,883 | 822,631 | 676,337 | 60,309 | 85,986 | 14,082 |
| 1942 | 779,472 | 762,093 | 401,354 | 157,220 | 244,135 | 337,521 | 130,170 | 164,111 | 43,240 | 23,217 |
| 1943 | 291,823 | 284,453 | 127,442 | 22,669 | 104,774 | 139,758 | 91,792 | 20,067 | 27,899 | 17,253 |
| 1944 | 854,064 | 833,347 | 358,077 | 157,769 | 200,308 | 446,987 | 223,835 | 84,091 | 139,062 | 28,283 |
| 1945 | 1,200,521 | 1,167,725 | 534,361 | 159,734 | 374,628 | 610,337 | 432,760 | 40,021 | 137,555 | 23,027 |
| 1946 | 3,067,101 | 2,970,324 | 1,305,493 | 859,797 | 445,698 | 1,525,263 | 989,848 | 174,091 | 361,323 | 139,568 |
| 1947 | 3,195,453 | 3,126,975 | 2,189,777 | 1,092,851 | 1,096,927 | 839,248 | 394,053 | 325,497 | 119,698 | 97,950 |
| 1948 | 2,951,816 | 2,886,982 | 2,274,326 | 1,194,978 | 1,079,348 | 499,348 | 185,467 | 268,159 | 45,722 | 113,309 |
| 1949 | 2,476,861 | 2,432,716 | 1,798,668 | 977,831 | 820,837 | 486,226 | 23,476 | 458,013 | 4,737 | 147,821 |
| *1948* | | | | | | | | | | |
| July | 331,289 | 324,314 | 187,901 | 92,561 | 95,341 | 104,182 | 4,979 | 98,475 | 728 | 32,230 |
| August | 131,232 | 127,141 | 117,863 | 74,231 | 43,632 | 8,291 | 745 | 7,546 | ---------- | 987 |
| September | 139,579 | 136,313 | 117,018 | 23,307 | 93,711 | 13,206 | 1,470 | 11,243 | 493 | 6,089 |
| October | 409,917 | 406,485 | 382,609 | 256,156 | 126,453 | 21,313 | 2,759 | 18,554 | ---------- | 2,563 |
| November | 166,091 | 164,019 | 145,147 | 84,827 | 60,320 | 16,207 | ---------- | 16,202 | 5 | 2,666 |
| December | 231,163 | 228,079 | 166,095 | 83,156 | 82,938 | 49,880 | 4,801 | 43,520 | 1,558 | 12,104 |
| *1949* | | | | | | | | | | |
| January | 168,756 | 162,061 | 138,711 | 120,170 | 18,542 | 8,509 | ---------- | 6,558 | 1,951 | 14,840 |
| February | 129,014 | 127,620 | 38,720 | 19,496 | 19,224 | 22,576 | 1,800 | 20,776 | ---------- | 66,324 |
| March | 117,140 | 113,705 | 85,132 | 41,864 | 43,268 | 25,786 | ---------- | 25,786 | ---------- | 2,788 |
| April | 339,992 | 336,101 | 214,795 | 114,624 | 100,171 | 118,021 | 202 | 117,818 | ---------- | 3,285 |
| May | 101,681 | 99,918 | 91,634 | 27,503 | 64,130 | 7,403 | 2,463 | 4,940 | ---------- | 881 |
| June | 211,006 | 206,960 | 113,043 | 39,935 | 73,108 | 90,852 | 4,257 | 86,595 | ---------- | 3,064 |

See footnotes at end of table.

TABLE 4.—*Proposed uses of net proceeds from the sale of new corporate securities offered for cash sale in the United States*—Continued

PART 3.—PUBLIC UTILITY

[Amounts in thousands of dollars] [1]

| Fiscal year ended June 30— | Proceeds | | New money | | | Retirements | | | | All other purposes |
|---|---|---|---|---|---|---|---|---|---|---|
| | Total gross proceeds [2] | Total net proceeds [3] | Total new money | Plant and equipment | Working capital | Total retirements | Funded debt | Other debt | Preferred stock | |
| 1935 | 377,605 | 366,631 | 10,351 | 4,673 | 5,678 | 348,489 | 316,537 | 31,952 | | 7,792 |
| 1936 | 2,008,143 | 1,955,387 | 63,863 | 43,300 | 20,563 | 1,888,828 | 1,786,965 | 33,169 | 68,694 | 2,697 |
| 1937 | 1,637,526 | 1,595,666 | 73,207 | 64,923 | 8,284 | 1,508,983 | 1,388,098 | 12,342 | 108,543 | 13,476 |
| 1938 | 577,281 | 563,894 | 151,898 | 114,885 | 37,013 | 410,704 | 327,027 | 83,219 | 458 | 1,292 |
| 1939 | 1,365,540 | 1,337,126 | 86,882 | 77,017 | 9,864 | 1,249,107 | 1,105,117 | 47,579 | 96,411 | 1,138 |
| 1940 | 1,108,325 | 1,086,454 | 65,275 | 54,556 | 10,719 | 1,012,482 | 939,338 | 35,738 | 37,407 | 8,697 |
| 1941 | 1,530,509 | 1,504,828 | 306,804 | 280,971 | 25,834 | 1,194,029 | 1,129,516 | 13,390 | 51,122 | 3,995 |
| 1942 | 977,422 | 966,212 | 307,830 | 305,421 | 2,408 | 655,354 | 609,805 | 34,966 | 10,583 | 3,028 |
| 1943 | 331,753 | 326,315 | 67,935 | 61,908 | 6,027 | 249,493 | 236,095 | 6,765 | 6,633 | 8,888 |
| 1944 | 657,746 | 646,761 | 17,898 | 7,160 | 10,738 | 619,136 | 561,768 | 10,862 | 46,505 | 9,727 |
| 1945 | 1,724,396 | 1,697,841 | 49,113 | 36,522 | 12,591 | 1,630,274 | 1,434,820 | 6,546 | 188,908 | 18,454 |
| 1946 | 2,612,257 | 2,578,384 | 80,638 | 70,683 | 9,954 | 2,429,140 | 2,164,629 | 41,898 | 222,614 | 68,607 |
| 1947 | 2,569,459 | 2,537,009 | 1,477,069 | 1,294,219 | 182,850 | 1,086,686 | 822,188 | 42,289 | 172,208 | 23,253 |
| 1948 | 3,459,285 | 3,406,893 | 2,846,503 | 2,784,721 | 61,782 | 509,085 | 402,272 | 58,406 | 48,406 | 51,305 |
| 1949 | 3,337,505 | 3,289,318 | 3,005,989 | 2,992,033 | 13,957 | 248,356 | 119,437 | 106,477 | 22,441 | 34,973 |
| *1948* | | | | | | | | | | |
| July | 192,810 | 190,808 | 157,927 | 157,107 | 820 | 6,078 | 968 | 4,268 | 842 | 26,803 |
| August | 79,779 | 78,324 | 77,489 | 74,757 | 2,732 | 811 | 452 | 359 | | 24 |
| September | 253,085 | 249,922 | 212,131 | 211,377 | 753 | 36,327 | 10,483 | 22,186 | 3,658 | 1,464 |
| October | 272,165 | 267,639 | 245,695 | 245,649 | 46 | 21,856 | 20,468 | 1,181 | 208 | 87 |
| November | 230,597 | 228,015 | 209,204 | 209,204 | | 18,188 | | 9,895 | 8,294 | 623 |
| December | 496,682 | 488,625 | 460,680 | 457,560 | 3,120 | 27,457 | 2,479 | 24,978 | | 488 |
| *1949* | | | | | | | | | | |
| January | 119,723 | 117,677 | 117,677 | 117,528 | 148 | | | | | |
| February | 105,696 | 104,349 | 102,053 | 101,950 | 104 | 2,296 | 2,296 | | | |
| March | 182,891 | 179,334 | 125,421 | 123,595 | 1,825 | 53,914 | 36,030 | 17,884 | | |
| April | 281,455 | 276,439 | 269,774 | 269,451 | 323 | 6,600 | 495 | 6,105 | | 65 |
| May | 197,909 | 192,164 | 171,446 | 170,133 | 1,313 | 20,692 | 10,850 | 4,823 | 5,019 | 25 |
| June | 924,714 | 916,023 | 856,493 | 853,721 | 2,773 | 54,137 | 34,917 | 14,799 | 4,420 | 5,394 |

PART 4.—RAILROAD

[Amounts in thousands of dollars] [1]

| Fiscal year ended June 30— | Proceeds | | New money | | | Retirements | | | | All other purposes |
|---|---|---|---|---|---|---|---|---|---|---|
| | Total gross proceeds [2] | Total net proceeds [2] | Total new money | Plant and equipment | Working capital | Total retirements | Funded debt | Other debt | Preferred stock | |
| 1935 | 137,404 | 133,871 | 31,540 | 31,323 | 217 | 101,186 | 63,429 | 37,758 | | 1,145 |
| 1936 | 659,857 | 637,588 | 122,603 | 120,522 | 2,080 | 514,986 | 452,073 | 62,913 | | |
| 1937 | 501,036 | 489,861 | 265,753 | 256,654 | 9,099 | 224,108 | 203,891 | 16,480 | 3,738 | |
| 1938 | 41,428 | 40,815 | 29,328 | 28,827 | 500 | 11,487 | 11,487 | | | |
| 1939 | 106,351 | 104,352 | 48,778 | 48,778 | | 55,574 | 55,574 | | | |
| 1940 | 297,935 | 293,481 | 80,585 | 79,136 | 1,450 | 212,896 | 212,683 | 212 | | |
| 1941 | 375,026 | 368,981 | 236,711 | 236,711 | | 131,981 | 110,942 | 18,039 | 3,000 | 289 |
| 1942 | 174,202 | 171,726 | 126,699 | 126,699 | | 45,027 | 45,027 | | | |
| 1943 | 106,265 | 105,187 | 39,330 | 39,330 | | 65,858 | 65,858 | | | |
| 1944 | 163,404 | 162,007 | 64,080 | 64,080 | | 97,928 | 97,928 | | | |
| 1945 | 1,191,006 | 1,175,776 | 98,240 | 98,240 | | 1,077,536 | 1,077,536 | | | |
| 1946 | 1,356,588 | 1,340,579 | 98,541 | 98,541 | | 1,242,038 | 1,240,248 | 1,171 | 619 | |
| 1947 | 273,734 | 271,056 | 204,962 | 202,968 | 1,994 | 66,095 | 61,906 | 4,189 | | |
| 1948 | 448,218 | 443,624 | 362,544 | 362,544 | | 75,095 | 61,230 | 13,864 | | 5,985 |
| 1949 | 615,259 | 609,418 | 604,325 | 544,147 | 60,177 | 5,094 | | 5,094 | | |
| *1948* | | | | | | | | | | |
| July | 68,519 | 67,524 | 67,524 | 67,524 | | | | | | |
| August | 30,234 | 29,956 | 28,659 | 28,659 | | 1,297 | | 1,297 | | |
| September | 41,659 | 41,382 | 41,382 | 41,382 | | | | | | |
| October | 64,283 | 63,761 | 63,761 | 57,379 | 6,383 | | | | | |
| November | 74,604 | 73,394 | 73,394 | 19,600 | 53,795 | | | | | |
| December | 45,481 | 45,146 | 45,146 | 45,146 | | | | | | |
| *1949* | | | | | | | | | | |
| January | 36,489 | 36,218 | 36,218 | 36,218 | | | | | | |
| February | 54,602 | 54,172 | 50,375 | 50,375 | | 3,797 | | 3,797 | | |
| March | 87,633 | 86,993 | 86,993 | 86,993 | | | | | | |
| April | 17,578 | 17,441 | 17,441 | 17,441 | | | | | | |
| May | 49,263 | 48,869 | 48,869 | 48,869 | | | | | | |
| June | 44,913 | 44,562 | 44,562 | 44,562 | | | | | | |

See footnotes at end of table.

TABLE 4.—*Proposed uses of net proceeds from the sale of new corporate securities offered for cash sale in the United States*—Continued

PART 5.—REAL ESTATE AND FINANCIAL

[Amounts in thousands of dollars] [1]

| Fiscal year ended June 30— | Proceeds | | New money | | | Retirements | | | | All other purposes |
|---|---|---|---|---|---|---|---|---|---|---|
| | Total gross proceeds [2] | Total net proceeds [2] | Total new money | Plant and equipment | Working capital | Total retirements | Funded debt | Other debt | Preferred stock | |
| 1935 | 51,228 | 50,046 | 20,276 | 300 | 19,976 | 27,632 | 9,528 | 18,104 | | 2,137 |
| 1936 | 199,268 | 192,418 | 41,348 | | 41,348 | 140,313 | 118,655 | 6,052 | 15,605 | 10,758 |
| 1937 | 362,934 | 353,199 | 253,981 | 338 | 253,643 | 91,928 | 60,462 | 5,191 | 26,275 | 7,290 |
| 1938 | 10,636 | 8,976 | 7,916 | 6 | 7,910 | 301 | 266 | 35 | | 759 |
| 1939 | 18,769 | 17,090 | 7,813 | 50 | 7,763 | 7,226 | | | 7,226 | 2,051 |
| 1940 | 224,719 | 221,787 | 27,585 | | 27,585 | 191,284 | 88,511 | 102,504 | 269 | 2,917 |
| 1941 | 77,139 | 75,540 | 54,317 | 343 | 53,974 | 18,837 | 7,036 | 7,948 | 3,853 | 2,386 |
| 1942 | 56,029 | 54,927 | 26,616 | 2 | 26,614 | 23,274 | 15,816 | 7,458 | | 5,037 |
| 1943 | 12,565 | 12,349 | 7,737 | | 7,737 | 3,992 | 3,992 | | | 619 |
| 1944 | 59,136 | 57,626 | 18,565 | | 18,565 | 36,883 | 32,306 | 2,415 | 2,162 | 2,179 |
| 1945 | 121,480 | 118,989 | 78,122 | 799 | 77,324 | 34,197 | 21,502 | 4,794 | 7,901 | 6,670 |
| 1946 | 298,686 | 291,555 | 132,512 | 9,933 | 122,579 | 113,511 | 41,981 | 23,193 | 48,336 | 45,532 |
| 1947 | 323,864 | 319,094 | 194,129 | 10,118 | 184,011 | 112,819 | 20,624 | 82,208 | 9,988 | 12,146 |
| 1948 | 542,719 | 534,088 | 403,967 | 12,601 | 391,366 | 52,970 | 30,740 | 16,661 | 5,569 | 77,151 |
| 1949 | 449,303 | 442,595 | 370,256 | 31,636 | 338,621 | 37,087 | 8,106 | 27,784 | 1,197 | 35,252 |
| *1948* | | | | | | | | | | |
| July | 48,605 | 47,943 | 43,893 | 620 | 43,273 | 2,540 | 2,292 | 248 | | 1,509 |
| August | 10,918 | 10,687 | 8,309 | 355 | 7,954 | 2,307 | 700 | 1,607 | | 71 |
| September | 49,250 | 47,728 | 27,628 | 1,484 | 26,143 | 721 | 330 | 390 | | 19,380 |
| October | 44,795 | 44,576 | 41,848 | | 41,848 | 2,221 | 225 | 1,996 | | 507 |
| November | 36,192 | 35,844 | 34,777 | 249 | 34,528 | | | | | 1,068 |
| December | 9,365 | 9,135 | 5,126 | 66 | 5,060 | 2,259 | | 1,062 | 1,197 | 1,750 |
| *1949* | | | | | | | | | | |
| January | 20,297 | 19,942 | 19,129 | 299 | 18,831 | 52 | | 52 | | 761 |
| February | 32,113 | 31,586 | 28,568 | | 28,568 | 2,970 | 2,970 | | | 49 |
| March | 22,932 | 22,569 | 21,429 | 198 | 21,231 | 990 | 990 | | | 150 |
| April | 59,097 | 57,951 | 51,412 | 440 | 50,972 | 2,428 | | 2,428 | | 4,112 |
| May | 39,295 | 38,654 | 27,757 | 7,838 | 19,920 | 5,076 | | 5,076 | | 5,821 |
| June | 76,444 | 75,981 | 60,382 | 20,088 | 40,294 | 15,524 | 599 | 14,295 | | 75 |

[1] Slight discrepancies between the sum of figures in the tables and the totals shown are due to rounding.

[2] Total estimated gross proceeds represent the amount paid for the securities by investors, while total estimated net proceeds represent the amount received by the issuer after payment of compensation to distributors and other costs of flotation.

TABLE 5.—*A 16-year summary of corporate bonds*[1] *publicly offered and privately placed in each year—1934 through 1949—by calendar year.*

[Millions of dollars]

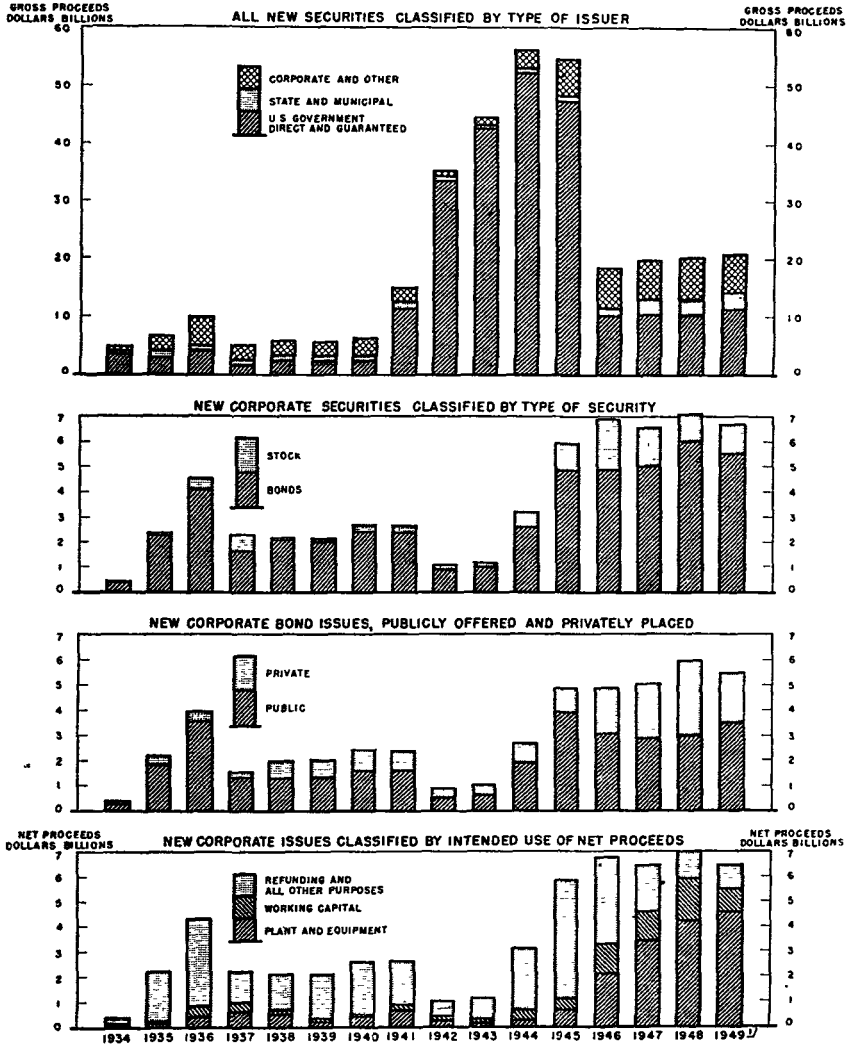
| Year | Total offerings | Publicly offered | Placed privately | Percent of total placed privately |
|---|---|---|---|---|
| 1934 | 372 | 280 | 92 | 24.7 |
| 1935 | 2,225 | 1,840 | 385 | 17.3 |
| 1936 | 4,029 | 3,660 | 369 | 9.2 |
| 1937 | 1,618 | 1,291 | 327 | 20.2 |
| 1938 | 2,044 | 1,353 | 691 | 33.8 |
| 1939 | 1,979 | 1,276 | 703 | 35 5 |
| 1940 | 2,386 | 1,628 | 758 | 31.8 |
| 1941 | 2,389 | 1,578 | 811 | 33.9 |
| 1942 | 917 | 506 | 411 | 44 8 |
| 1943 | 990 | 621 | 369 | 37.3 |
| 1944 | 2,670 | 1,892 | 778 | 29.1 |
| 1945 | 4,855 | 3,851 | 1,004 | 20.7 |
| 1946 | 4,882 | 3,019 | 1,863 | 38.2 |
| 1947 | 5,036 | 2,889 | 2,147 | 42.6 |
| 1948 | 6,008 | 2,965 | 3,043 | 50.6 |
| 1949[2] | 5,508 | 3,466 | 2,042 | 37.1 |

[1] Bonds, notes, and debentures.
[2] Preliminary figures estimated on basis of figures through July 1949.

TABLE 6

# A SIXTEEN-YEAR SUMMARY OF NEW SECURITIES OFFERED FOR CASH IN THE UNITED STATES

AS TO TYPE OF ISSUER, TYPE OF SECURITY, WHETHER PUBLICLY OFFERED OR PRIVATELY PLACED, AND THE INTENDED USE OF THE PROCEEDS -- 1934 THROUGH 1949, BY CALENDAR YEAR




1/ PRELIMINARY FIGURES ESTIMATED ON BASIS OF DATA THROUGH JULY 1949

DS-3107

TABLE 7.—*Brokers and dealers registered under section 15 of the Securities Exchange Act of 1934* [1]*—Effective registrations as of June 30, 1949, classified by type of organization and by location of principal office*

| Location of principal office | Number of registrants | | | | Number of proprietors, partners, officers, etc.[2] | | | | Number of employees | | | | Number of branch offices maintained by registrants | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Sole proprietorships | Partnerships | Corporations[3] | Total | Sole proprietorships | Partnerships | Corporations[3] | Total | Sole proprietorships | Partnerships | Corporations[3] | Total | Sole proprietorships | Partnerships | Corporations[3] |
| Alabama | 22 | 8 | 6 | 8 | 55 | 8 | 18 | 29 | 72 | 20 | 27 | 25 | 4 | ------- | 2 | 2 |
| Arizona | 8 | 6 | 2 | ------- | 13 | 6 | 7 | ------- | 23 | 12 | 11 | ------- | ------- | ------- | ------- | ------- |
| Arkansas | 19 | 10 | 3 | 6 | 40 | 10 | 7 | 23 | 27 | 5 | 7 | 15 | ------- | ------- | ------- | ------- |
| California | 225 | 79 | 82 | 64 | 835 | 126 | 325 | 384 | 3,142 | 194 | 1,668 | 1,280 | 201 | 4 | 108 | 89 |
| Colorado | 59 | 29 | 9 | 21 | 151 | 29 | 24 | 98 | 250 | 34 | 72 | 144 | 6 | ------- | 4 | 2 |
| Connecticut | 52 | 21 | 15 | 16 | 162 | 21 | 57 | 84 | 659 | 46 | 315 | 298 | 27 | 4 | 8 | 15 |
| Delaware | 8 | 3 | 2 | 3 | 37 | 3 | 27 | 7 | 270 | 3 | 265 | 2 | 3 | ------- | 3 | ------- |
| District of Columbia | 59 | 24 | 13 | 22 | 212 | 24 | 53 | 135 | 634 | 33 | 282 | 319 | 9 | ------- | 5 | 4 |
| Florida | 29 | 16 | 5 | 8 | 65 | 16 | 15 | 34 | 90 | 44 | 12 | 34 | 3 | 1 | ------- | 2 |
| Georgia | 26 | 9 | 5 | 12 | 85 | 9 | 18 | 58 | 345 | 8 | 233 | 104 | 28 | ------- | 21 | 7 |
| Idaho | 9 | 5 | 2 | 2 | 18 | 5 | 4 | 9 | 37 | 4 | 21 | 12 | 3 | ------- | 2 | 1 |
| Illinois | 233 | 62 | 79 | 92 | 893 | 62 | 328 | 503 | 4,129 | 93 | 2,387 | 1,649 | 182 | ------- | 136 | 46 |
| Indiana | 53 | 23 | 8 | 22 | 146 | 23 | 19 | 104 | 121 | 17 | 18 | 86 | ------- | ------- | ------- | ------- |
| Iowa | 32 | 11 | 6 | 15 | 98 | 11 | 15 | 72 | 162 | 20 | 33 | 109 | 7 | ------- | ------- | 7 |
| Kansas | 38 | 20 | 4 | 14 | 112 | 20 | 8 | 84 | 127 | 25 | 23 | 79 | 9 | ------- | 1 | 8 |
| Kentucky | 14 | 4 | 5 | 5 | 42 | 4 | 19 | 19 | 104 | 10 | 65 | 29 | 2 | ------- | 2 | ------- |
| Louisiana | 59 | 36 | 17 | 6 | 113 | 36 | 54 | 23 | 221 | 37 | 152 | 32 | 11 | ------- | 8 | 3 |
| Maine | 33 | 15 | 3 | 15 | 78 | 15 | 8 | 55 | 104 | 24 | 19 | 61 | ------- | ------- | ------- | ------- |
| Maryland | 40 | 14 | 19 | 7 | 129 | 14 | 82 | 33 | 562 | 5 | 514 | 43 | 21 | ------- | 11 | 10 |
| Massachusetts | 229 | 106 | 46 | 77 | 788 | 106 | 233 | 449 | 3,608 | 238 | 2,042 | 1,328 | 115 | 4 | 76 | 35 |
| Michigan | 60 | 6 | 25 | 29 | 240 | 6 | 98 | 136 | 719 | 16 | 327 | 376 | 24 | ------- | 16 | 8 |
| Minnesota | 53 | 10 | 9 | 34 | 219 | 10 | 27 | 182 | 2,891 | 46 | 164 | 2,681 | 31 | ------- | 8 | 23 |
| Mississippi | 12 | 6 | 4 | 2 | 19 | 6 | 8 | 5 | 17 | 10 | 3 | 4 | 4 | 3 | 1 | ------- |
| Missouri | 93 | 19 | 31 | 43 | 418 | 19 | 146 | 253 | 1,282 | 30 | 762 | 490 | 63 | ------- | 29 | 34 |
| Montana | 6 | 2 | 1 | 3 | 14 | 2 | 2 | 10 | 10 | 2 | 2 | 6 | ------- | ------- | ------- | ------- |
| Nebraska | 29 | 10 | 3 | 16 | 89 | 10 | 6 | 73 | 226 | 11 | 15 | 200 | 2 | ------- | ------- | 2 |
| Nevada | 4 | 2 | 1 | 1 | 7 | 2 | 2 | 3 | 5 | 1 | 1 | 3 | ------- | ------- | ------- | ------- |
| New Hampshire | 11 | 7 | 1 | 3 | 20 | 7 | 3 | 10 | 17 | 4 | 2 | 11 | ------- | ------- | ------- | ------- |
| New Jersey | 102 | 61 | 19 | 22 | 207 | 61 | 51 | 95 | 206 | 43 | 66 | 97 | 14 | 2 | 5 | 7 |
| New Mexico | 8 | 5 | 2 | 1 | 12 | 5 | 4 | 3 | 11 | 3 | 6 | 2 | ------- | ------- | ------- | ------- |
| New York State (excluding New York City | 229 | 168 | 25 | 36 | 428 | 168 | 117 | 143 | 581 | 133 | 229 | 219 | 19 | 3 | 8 | 8 |
| North Carolina | 26 | 10 | 3 | 13 | 102 | 10 | 6 | 86 | 175 | 12 | 5 | 158 | 10 | ------- | ------- | 10 |
| North Dakota | 3 | 2 | ------- | 1 | 6 | 2 | ------- | 4 | 1 | 1 | ------- | ------- | ------- | ------- | ------- | ------- |
| Ohio | 149 | 41 | 43 | 65 | 517 | 41 | 182 | 294 | 1,203 | 61 | 611 | 531 | 40 | ------- | 18 | 22 |
| Oklahoma | 49 | 40 | 3 | 6 | 73 | 40 | 6 | 27 | 108 | 64 | 5 | 39 | 2 | ------- | ------- | 2 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Oregon | 24 | 8 | 7 | 9 | 62 | 8 | 17 | 37 | 94 | 25 | 18 | 51 | 2 | | | 2 |
| Pennsylvania | 218 | 76 | 91 | 51 | 684 | 76 | 366 | 242 | 2,741 | 129 | 1,977 | 635 | 89 | | 68 | 21 |
| Rhode Island | 29 | 13 | 11 | 5 | 61 | 13 | 29 | 19 | 126 | 11 | 106 | 9 | 1 | 1 | | |
| South Carolina | 28 | 11 | 7 | 10 | 71 | 11 | 25 | 35 | 91 | 20 | 25 | 46 | 5 | | 1 | 4 |
| South Dakota | 2 | 1 | | 1 | 4 | 1 | | 3 | 2 | | | 2 | | | | |
| Tennessee | 34 | 11 | 7 | 16 | 114 | 11 | 22 | 81 | 246 | 9 | 91 | 146 | 21 | | 9 | 12 |
| Texas | 146 | 86 | 25 | 35 | 348 | 86 | 66 | 196 | 459 | 84 | 129 | 246 | 18 | 1 | 9 | 8 |
| Utah | 18 | 9 | 4 | 5 | 47 | 9 | 12 | 26 | 209 | 15 | 179 | 15 | 12 | 1 | 11 | |
| Vermont | 2 | | | 2 | 11 | | | 11 | 7 | | | 7 | | | | |
| Virginia | 25 | 9 | 9 | 7 | 78 | 9 | 38 | 31 | 158 | 18 | 61 | 79 | 1 | | | 1 |
| Washington | 80 | 46 | 7 | 27 | 204 | 46 | 20 | 138 | 461 | 59 | 56 | 346 | 17 | 1 | 3 | 13 |
| West Virginia | 9 | 4 | 3 | 2 | 37 | 4 | 9 | 24 | 91 | 3 | 18 | 70 | 10 | | 2 | 8 |
| Wisconsin | 54 | 17 | 5 | 32 | 200 | 17 | 21 | 162 | 385 | 23 | 83 | 279 | 14 | 1 | 3 | 10 |
| Wyoming | 5 | 5 | | | 5 | 5 | | | 3 | 3 | | | | | | |
| Total (excluding New York City) | 2,755 | 1,186 | 677 | 892 | 8,369 | 1,233 | 2,604 | 4,532 | 27,212 | 1,708 | 13,107 | 12,397 | 1,030 | 26 | 578 | 426 |
| New York City | 1,200 | 385 | 608 | 207 | 4,405 | 385 | 2,911 | 1,109 | 28,916 | 459 | 24,304 | 4,153 | 839 | 17 | 646 | 176 |
| Total | 3,955 | 1,571 | 1,285 | 1,099 | 12,774 | 1,618 | 5,515 | 5,641 | 56,128 | 2,167 | 37,411 | 16,550 | 1,869 | 43 | 1,224 | 602 |

[1] Domestic registrants only, excludes 39 foreign.

[2] Includes directors, officers, trustees, and all other persons occupying similar status or performing similar functions.

[3] Includes all forms of organizations other than sole proprietorships and partnerships.

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TABLE 8.—*Market value and volume of sales effected on securities exchanges for the fiscal year ended June 30, 1949*

PART 1.—ON ALL REGISTERED EXCHANGES

[In thousands]

| Exchange | Total market value (dollars) | Stocks [1] | | Bonds [2] | | Rights and warrants | |
|---|---|---|---|---|---|---|---|
| | | Market value (dollars) | Number of shares | Market value (dollars) | Principal amount (dollars) | Market value (dollars) | Number of units |
| All registered exchanges | 11,025,766 | 10,321,980 | 443,738 | 676,087 | 924,718 | 27,699 | 30,786 |
| Baltimore [3] | 1,727 | 1,415 | 64 | 312 | 622 | | |
| Boston | 153,957 | 152,905 | 3,950 | 17 | 24 | 1,035 | 892 |
| Chicago Board | 210 | 210 | 24 | | | | |
| Chicago Stock | 179,103 | 178,830 | 7,055 | | | 273 | 462 |
| Cincinnati | 12,061 | 12,016 | 374 | | | 45 | 120 |
| Cleveland | 14,488 | 14,455 | 487 | | | 33 | 55 |
| Detroit | 37,677 | 37,450 | 2,659 | | | 227 | 760 |
| Los Angeles | 122,730 | 122,461 | 8,394 | 36 | 35 | 233 | 377 |
| New Orleans | 633 | 575 | 23 | 58 | 56 | | |
| New York Curb | 874,819 | 827,299 | 64,013 | 36,539 | 49,101 | 10,980 | 7,456 |
| New York Stock | 9,343,310 | 8,692,099 | 322,449 | 637,084 | 872,868 | 14,128 | 19,379 |
| Philadelphia-Baltimore [4] | 101,479 | 100,347 | 3,601 | 809 | 855 | 323 | 528 |
| Pittsburgh | 15,138 | 15,085 | 825 | 2 | 2 | 51 | 124 |
| St Louis | 10,324 | 10,297 | 327 | 5 | 4 | 22 | 20 |
| Salt Lake | 2,125 | 2,125 | 12,828 | | | | |
| San Francisco Mining | 549 | 549 | 4,710 | | | | |
| San Francisco Stock | 147,709 | 146,400 | 9,510 | 960 | 895 | 349 | 613 |
| Spokane | 1,625 | 1,625 | 2,176 | | | | |
| Washington | 6,102 | 5,837 | 269 | 265 | 256 | | |
| | Break-down of fiscal year totals by months | | | | | | |
| *1948* | | | | | | | |
| July | 1,175,815 | 1,105,815 | 44,155 | 68,289 | 90,827 | 1,711 | 1,101 |
| August | 791,412 | 739,358 | 29,583 | 51,238 | 67,315 | 816 | 1,240 |
| September | 796,212 | 744,694 | 30,493 | 50,449 | 67,313 | 1,069 | 1,830 |
| October | 948,993 | 889,722 | 37,016 | 57,712 | 78,581 | 1,559 | 3,578 |
| November | 1,199,706 | 1,134,531 | 48,275 | 63,049 | 88,261 | 2,126 | 5,140 |
| December | 1,140,266 | 1,076,083 | 47,988 | 63,470 | 89,347 | 713 | 1,104 |
| *1949* | | | | | | | |
| January | 915,095 | 853,531 | 36,546 | 60,686 | 80,599 | 878 | 523 |
| February | 772,313 | 719,267 | 30,841 | 52,009 | 70,080 | 1,037 | 668 |
| March | 809,738 | 751,761 | 34,692 | 56,225 | 80,637 | 1,752 | 2,223 |
| April | 905,702 | 845,296 | 37,746 | 53,189 | 76,590 | 7,217 | 2,934 |
| May | 816,042 | 760,298 | 33,135 | 50,767 | 67,997 | 4,977 | 4,276 |
| June | 754,472 | 701,624 | 33,268 | 49,004 | 67,171 | 3,844 | 6,169 |

TABLE 8.—*Market value and volume of sales effected on securities exchanges for the fiscal year ended June 30, 1949*—Continued

PART 2.—ON ALL EXEMPTED EXCHANGES

[In thousands]

| Exchange | Total market value (dollars) | Stocks [1] | | Bonds [2] | | Rights and warrants | |
|---|---|---|---|---|---|---|---|
| | | Market value (dollars) | Number of shares | Market value (dollars) | Principal amount (dollars) | Market value (dollars) | Number of units |
| All exempted exchanges | 7,418 | 7,400 | 759 | 18 | 19 | | |
| Colorado Springs | 225 | 225 | 272 | | | | |
| Honolulu | 4,115 | 4,097 | 349 | 18 | 19 | | |
| Minneapolis-St. Paul | 2,169 | 2,169 | 117 | | | | |
| Richmond | 463 | 463 | 8 | | | | |
| Wheeling | 446 | 446 | 13 | | | | |
| | Break-down of fiscal year totals by months | | | | | | |
| *1948* | | | | | | | |
| July | 633 | 633 | 54 | | | | |
| August | 631 | 629 | 64 | 2 | 2 | | |
| September | 612 | 611 | 101 | 1 | 1 | | |
| October | 555 | 555 | 65 | | | | |
| November | 436 | 436 | 50 | | | | |
| December | 817 | 815 | 77 | 2 | 2 | | |
| *1949* | | | | | | | |
| January | 704 | 699 | 65 | 5 | 6 | | |
| February | 701 | 699 | 44 | 2 | 2 | | |
| March | 594 | 594 | 56 | | | | |
| April | 510 | 508 | 74 | 2 | 2 | | |
| May | 648 | 647 | 69 | 1 | 1 | | |
| June | 577 | 574 | 40 | 3 | 3 | | |

[1] "Stocks" includes voting trust certificates, American depositary receipts, and certificates of deposit for stocks.

[2] "Bonds" includes mortgage certificates and certificates of deposit for bonds.

[3] The Baltimore Stock Exchange and the Philadelphia Stock Exchange effected a plan of merger of the business of the 2 exchanges which resulted in the termination of the activities of the Baltimore Stock Exchange with the close of business Mar. 5, 1949.

[4] Effective Mar. 7, 1949, the name of the Philadelphia Stock Exchange was changed to the Philadelphia-Baltimore Stock Exchange.

NOTE.—Value and volume of sales effected on registered securities exchanges are reported in connection with fees paid under section 31 of the Securities Exchange Act of 1934. For most exchanges the figures represent transactions cleared during the calendar month. Figures may differ from comparable data in the Monthly Statistical Bulletin, due to revision of data by exchanges.

## TABLE 9

### PART 1.—SHARE VOLUME OF TRANSACTIONS ON 16 REGISTERED EXCHANGES[1] BY CALENDAR YEARS

#### 1. IN THOUSANDS OF SHARES

| Exchange | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 | 1941 | 1942 | 1943 | 1944 | 1945 | 1946 | 1947 | 1948 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| New York Stock | 497,052 | 685,951 | 583,319 | 418,591 | 363,610 | 282,651 | 225,690 | 168,114 | 360,581 | 338,172 | 495,980 | 501,818 | 336,553 | 392,668 |
| New York Curb | 83,931 | 155,110 | 121,126 | 55,960 | 52,200 | 47,900 | 38,301 | 25,226 | 77,258 | 76,223 | 152,427 | 141,251 | 74,045 | 79,481 |
| Chicago Stock | 12,027 | 19,345 | 13,397 | 7,505 | 8,444 | 6,897 | 7,124 | 5,204 | 9,744 | 8,748 | 12,406 | 12,087 | 6,882 | 8,035 |
| San Francisco Stock | 10,175 | 15,769 | 13,234 | 7,543 | 6,267 | 5,871 | 4,594 | 3,337 | 5,299 | 6,052 | 9,658 | 14,394 | 10,141 | 11,501 |
| Boston | 6,318 | 6,910 | 6,842 | 5,541 | 5,500 | 4,503 | 4,379 | 3,014 | 3,699 | 3,788 | 5,091 | 5,507 | 4,208 | 4,344 |
| Los Angeles | 8,193 | 12,649 | 13,668 | 6,812 | 4,581 | 4,301 | 3,494 | 2,459 | 4,048 | 5,105 | 13,104 | 12,856 | 9,836 | 10,073 |
| Philadelphia | 4,468 | 5,571 | 4,218 | 3,662 | 3,774 | 3,430 | 3,354 | 2,084 | 3,869 | 3,376 | 4,771 | 5,033 | 3,949 | 3,867 |
| Detroit | 5,777 | 7,085 | 4,949 | 4,058 | 3,569 | 3,087 | 2,699 | 1,999 | 3,110 | 4,021 | 6,044 | 5,017 | 3,409 | 3,170 |
| Pittsburgh | 2,330 | 2,989 | 2,541 | 1,374 | 1,196 | 1,155 | 1,108 | 842 | 891 | 1,202 | 3,039 | 2,265 | 958 | 929 |
| Cleveland | 529 | 788 | 612 | 408 | 503 | 551 | 566 | 422 | 541 | 451 | 685 | 711 | 651 | 557 |
| Cincinnati | 235 | 351 | 224 | 194 | 237 | 318 | 356 | 269 | 325 | 278 | 339 | 371 | 344 | 384 |
| St. Louis | 150 | 424 | 467 | 304 | 304 | 281 | 221 | 190 | 242 | 220 | 262 | 309 | 274 | 314 |
| New Orleans | 154 | 177 | 285 | 110 | 117 | 58 | 60 | 64 | 147 | 139 | 169 | 142 | 41 | 36 |
| Washington | 18 | 25 | 21 | 17 | 14 | 18 | 30 | 31 | 20 | 28 | 42 | 44 | 38 | 216 |
| Baltimore | 682 | 998 | 1,038 | 609 | 568 | 419 | 336 | 279 | 269 | 273 | 240 | 190 | 141 | 92 |
| Chicago Board of Trade | 261 | 405 | 262 | 68 | 46 | 30 | 21 | 13 | 11 | 9 | 36 | 41 | 18 | 26 |
| Total[2] | 632,300 | 914,547 | 766,203 | 512,756 | 450,930 | 361,470 | 292,333 | 213,347 | 470,504 | 448,085 | 704,293 | 702,036 | 451,487 | 515,693 |

#### 2. IN PERCENT

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| New York Stock | 78 610 | 75 001 | 76 131 | 81.636 | 80.636 | 78.195 | 77 203 | 78 798 | 76 711 | 75.471 | 70.422 | 71.480 | 74 543 | 76.144 |
| New York Curb | 13.274 | 16.961 | 15.809 | 10.913 | 11.576 | 13.251 | 13 102 | 11.824 | 16 436 | 17.011 | 21.643 | 20.120 | 16 400 | 15.412 |
| Chicago Stock | 1.902 | 2.115 | 1.748 | 1 464 | 1.873 | 1 908 | 2 437 | 2 439 | 2.073 | 1.952 | 1.762 | 1.722 | 1 524 | 1.558 |
| San Francisco Stock | 1.609 | 1.724 | 1.727 | 1.471 | 1.390 | 1.624 | 1.571 | 1.564 | 1 127 | 1.351 | 1.371 | 2 050 | 2 246 | 2.230 |
| Boston | .999 | .760 | .893 | 1.081 | 1.220 | 1.246 | 1.498 | 1.413 | .787 | 845 | .723 | .784 | .932 | .842 |
| Los Angeles | 1 296 | 1.383 | 1.784 | 1.329 | 1.016 | 1.190 | 1.196 | 1.152 | .861 | 1.139 | 1.861 | 1.831 | 2.179 | 1.953 |
| Philadelphia | .707 | .609 | .551 | .714 | 837 | .949 | 1.147 | 977 | .823 | .753 | .677 | .717 | .875 | .750 |
| Detroit | .914 | 775 | .646 | .791 | .791 | .854 | 923 | .937 | .662 | .897 | .858 | .715 | 755 | .615 |
| Pittsburgh | .368 | .327 | .332 | .268 | .265 | .320 | .379 | .301 | .190 | 268 | .431 | .323 | .212 | .180 |
| Cleveland | .084 | .086 | .080 | .080 | .111 | .152 | .194 | .198 | .115 | .101 | .097 | .101 | .144 | .108 |
| Cincinnati | .037 | .038 | .029 | .038 | .053 | .088 | .122 | .126 | 069 | .062 | 048 | .053 | .076 | .074 |
| St. Louis | .024 | 046 | .061 | .059 | .067 | .078 | .076 | 089 | 051 | .049 | 037 | .044 | .061 | .061 |
| New Orleans | 024 | .019 | .037 | .021 | .026 | .016 | .020 | 030 | .031 | .031 | .024 | .020 | .009 | .007 |
| Washington | .003 | .003 | .003 | .003 | .003 | .005 | .010 | .015 | .004 | .006 | .006 | .006 | .008 | .042 |
| Baltimore | 108 | .109 | .135 | .119 | .126 | .116 | .115 | .131 | .057 | .061 | .034 | .027 | .031 | .018 |
| Chicago Board of Trade | .041 | .044 | .034 | .013 | .010 | .008 | .007 | .006 | .002 | .002 | 005 | .006 | .004 | .005 |

3. PERCENT DISTRIBUTION EXCLUDING 2 NEW YORK EXCHANGES

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Chicago Stock | 23.44 | 26.32 | 21.69 | 19.64 | 24 04 | 22.30 | 25.13 | 26.01 | 30.24 | 25.97 | 22.20 | 20.50 | 16.83 | 18.45 |
| San Francisco | 19.83 | 21.46 | 21.43 | 19.74 | 17.84 | 18.99 | 16.21 | 16.68 | 16.45 | 17.96 | 17.28 | 24.41 | 24.80 | 26.41 |
| Boston | 12.31 | 9 40 | 11.08 | 14.50 | 15.66 | 14.56 | 15.45 | 15.06 | 11.48 | 11.24 | 9.11 | 9.34 | 10.29 | 9 98 |
| Los Angeles | 15.96 | 17.21 | 22.13 | 17.83 | 13 04 | 13.91 | 12.33 | 12.29 | 12.57 | 15.15 | 23.45 | 21.80 | 24.05 | 23.13 |
| Philadelphia | 8.70 | 7.58 | 6.83 | 9.59 | 10.75 | 11.09 | 11.83 | 10.42 | 12.01 | 10.02 | 8.54 | 8.54 | 9.66 | 8.88 |
| Detroit | 11.26 | 9.64 | 8.01 | 10.62 | 10.16 | 9.98 | 9.52 | 9 99 | 9.65 | 11.94 | 10.81 | 8.51 | 8.34 | 7.28 |
| Pittsburgh | 4.54 | 4.07 | 4.11 | 3.60 | 3.41 | 3 74 | 3.91 | 3.21 | 2 77 | 3 57 | 5 44 | 3.84 | 2.34 | 2.13 |
| Cleveland | 1.03 | 1.07 | .99 | 1.07 | 1.43 | 1.78 | 2.00 | 2.11 | 1 68 | 1.34 | 1.23 | 1.21 | 1.59 | 1.28 |
| Cincinnati | .46 | .48 | .36 | .51 | .67 | 1.03 | 1.26 | 1.34 | 1.01 | .83 | .60 | .63 | .84 | .88 |
| St. Louis[2] | .29 | .58 | .76 | .80 | .87 | .91 | .78 | .95 | .75 | .65 | .47 | .52 | .67 | .72 |
| New Orleans | .30 | .24 | .46 | .29 | .33 | .19 | .21 | .32 | .46 | .41 | .30 | .24 | .10 | .08 |
| Washington | .04 | .03 | .03 | .04 | .04 | .06 | .11 | .16 | .06 | .08 | .08 | .07 | .09 | .50 |
| Baltimore | 1.33 | 1.36 | 1.68 | 1 59 | 1.62 | 1.36 | 1.19 | 1.39 | .84 | .81 | .43 | .32 | .35 | .21 |
| Chicago Board of Trade | .51 | .55 | 42 | .18 | .13 | .10 | .07 | .07 | .03 | .03 | .06 | .07 | .05 | .06 |
| Total volume 14 exchanges (in thousands of shares) | 51,317 | 73,486 | 61,758 | 38,206 | 35,120 | 30,919 | 28,342 | 20,007 | 32,215 | 33,690 | 55,886 | 58,967 | 40,890 | 43,544 |

4. NEW YORK VERSUS OTHER EXCHANGES

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2 New York exchanges | 91 88 | 91.96 | 91 94 | 92.55 | 92.21 | 91.45 | 90 30 | 90.62 | 93 15 | 92 48 | 92.07 | 91 60 | 90.94 | 91.57 |
| 14 other exchanges | 8 12 | 8 04 | 8 06 | 7.45 | 7 79 | 8.55 | 9 70 | 9 38 | 6.85 | 7.52 | 7.93 | 8.40 | 9 06 | 8 43 |

[1] Mining exchanges (San Francisco Mining, Salt Lake, Spokane), retired exchanges and exempted exchanges not included. Rights and warrants not included. San Francisco Curb figures included in those of San Francisco Stock Exchange prior to 1938 merger.

## TABLE 9—Continued

### PART 2.—DOLLAR VALUE OF STOCK TRANSACTIONS ON 16 REGISTERED EXCHANGES[1] BY CALENDAR YEARS

#### 1. IN MILLIONS OF DOLLARS

| Exchange | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 | 1941 | 1942 | 1943 | 1944 | 1945 | 1946 | 1947 | 1948 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| New York Stock | 13,335.4 | 20,365.7 | 18,432.4 | 11,013.4 | 9,968.2 | 7,166.1 | 5,252.9 | 3,673.5 | 7,670.5 | 8,243.7 | 13,461.9 | 15,519.9 | 9,706.6 | 10,921.3 |
| New York Curb | 1,204.8 | 2,049.9 | 1,584.0 | 683.1 | 747.6 | 642.7 | 464.3 | 284.6 | 799.7 | 904.1 | 1,727.9 | 1,971.6 | 999.5 | 1,032.0 |
| Chicago Stock | 183.0 | 292.7 | 190.1 | 110.1 | 175.8 | 155.3 | 144.5 | 92.8 | 165.8 | 188.9 | 296.6 | 336.7 | 181.5 | 212.0 |
| San Francisco Stock | 142.6 | 204.1 | 171.9 | 95.3 | 99.4 | 83.8 | 66.0 | 45.5 | 76.8 | 103.3 | 185.8 | 228.8 | 159.9 | 183.6 |
| Boston | 206.2 | 248.3 | 231.4 | 187.0 | 194.7 | 161.4 | 141.3 | 100.4 | 117.9 | 126.3 | 188.9 | 229.5 | 173.9 | 171.1 |
| Los Angeles | 71.1 | 111.5 | 91.1 | 62.2 | 57.5 | 44.3 | 37.7 | 28.3 | 52.1 | 63.5 | 103.1 | 122.6 | 100.6 | 141.5 |
| Philadelphia | 92.5 | 127.6 | 109.8 | 80.2 | 84.6 | 70.7 | 61.1 | 36.3 | 65.6 | 72.3 | 126.8 | 140.7 | 100.6 | 106.6 |
| Detroit | 62.4 | 73.5 | 50.7 | 45.4 | 39.0 | 30.4 | 20.8 | 14.5 | 27.1 | 33.3 | 57.7 | 62.2 | 41.5 | 43.8 |
| Pittsburgh | 30.1 | 48.0 | 41.9 | 22.6 | 20.7 | 15.6 | 13.3 | 9.9 | 14.0 | 14.6 | 23.5 | 29.4 | 15.8 | 17.9 |
| Cleveland | 14.0 | 22.0 | 16.8 | 7.3 | 10.6 | 12.2 | 11.8 | 8.2 | 9.9 | 11.0 | 18.5 | 24.6 | 18.5 | 16.1 |
| Cincinnati | 5.9 | 8.1 | 6.2 | 4.4 | 6.4 | 7.9 | 7.4 | 5.5 | 6.7 | 7.5 | 10.2 | 12.7 | 12.1 | 12.9 |
| St. Louis | 3.5 | 9.3 | 11.6 | 6.4 | 4.3 | 4.3 | 3.1 | 2.3 | 4.7 | 4.2 | 6.2 | 9.1 | 7.1 | 8.9 |
| New Orleans | 1.1 | .9 | 1.7 | .5 | .63 | .33 | .37 | .3 | .9 | 1.2 | 2.3 | 4.5 | 1.3 | 1.1 |
| Washington | 1.0 | 1.6 | 1.1 | 1.0 | .65 | .7 | 1.0 | .8 | 1.0 | 1.2 | 1.9 | 2.4 | 1.5 | 4.4 |
| Baltimore | 10.8 | 17.6 | 15.4 | 7.6 | 9.0 | 6.4 | 6.7 | 4.4 | 5.3 | 4.4 | 5.4 | 5.6 | 2.8 | 2.2 |
| Chicago Board of Trade | 2.5 | 2.2 | 1.3 | .25 | .12 | .05 | .03 | .01 | .02 | .03 | .1 | .3 | .1 | .2 |
| Total | 15,366.9 | 23,583.0 | 20,957.4 | 12,326.8 | 11,419.4 | 8,402.2 | 6,232.3 | 4,307.3 | 9,018.0 | 9,779.5 | 16,215.8 | 18,700.6 | 11,523.3 | 12,875.6 |

#### 2. IN PERCENT

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| New York Stock | 86.780 | 86.358 | 87.952 | 89.345 | 87.292 | 85.289 | 84.285 | 85.285 | 85.058 | 84.296 | 83.012 | 82.991 | 84.235 | 84.822 |
| New York Curb | 7.840 | 8.692 | 7.558 | 5.542 | 6.547 | 7.650 | 7.450 | 6.607 | 8.868 | 9.245 | 10.655 | 10.543 | 8.674 | 8.015 |
| Chicago Stock | 1.191 | 1.241 | .907 | .893 | 1.539 | 1.848 | 2.319 | 2.154 | 1.839 | 1.932 | 1.829 | 1.800 | 1.575 | 1.647 |
| San Francisco Stock | .928 | .865 | .820 | .773 | .870 | .997 | 1.059 | 1.056 | .852 | 1.056 | 1.146 | 1.223 | 1.388 | 1.426 |
| Boston | 1.342 | 1.053 | 1.104 | 1.517 | 1.705 | 1.921 | 2.267 | 2.331 | 1.307 | 1.291 | 1.165 | 1.227 | 1.509 | 1.329 |
| Los Angeles | .463 | .473 | .435 | .505 | .504 | .527 | .605 | .657 | .578 | .649 | .636 | .656 | .873 | 1.099 |
| Philadelphia | .602 | .541 | .524 | .651 | .741 | .841 | .980 | .843 | .727 | .739 | .782 | .762 | .873 | .828 |
| Detroit | .406 | .312 | .242 | .368 | .341 | .362 | .334 | .337 | .300 | .341 | .356 | .333 | .360 | .340 |
| Pittsburgh | .196 | .204 | .200 | .183 | .181 | .186 | .213 | .230 | .155 | .149 | .145 | .157 | .137 | .139 |
| Cleveland | .091 | .093 | .081 | .059 | .094 | .145 | .189 | .190 | .110 | .112 | .114 | .132 | .160 | .125 |
| Cincinnati | .038 | .034 | .030 | .036 | .056 | .094 | .119 | .128 | .074 | .077 | .063 | .068 | .105 | .100 |
| St. Louis | .023 | .039 | .055 | .052 | .038 | .051 | .050 | .053 | .052 | .043 | .038 | .049 | .063 | .069 |
| New Orleans | .007 | .004 | .008 | .004 | .006 | .004 | .006 | .007 | .010 | .012 | .014 | .024 | .011 | .008 |
| Washington | .007 | .007 | .005 | .008 | .008 | .008 | .016 | .019 | .011 | .012 | .012 | .013 | .013 | .034 |
| Baltimore | .070 | .075 | .073 | .062 | .079 | .076 | .107 | .102 | .059 | .045 | .033 | .030 | .024 | .017 |
| Chicago Board of Trade | .016 | .009 | .006 | .002 | .001 | .001 | .001 | .001 | .000 | .000 | .000 | .002 | .001 | .002 |

3. PERCENT DISTRIBUTION EXCLUDING 2 NEW YORK EXCHANGES

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Chicago Stock | 22.14 | 25.07 | 20.20 | 17.47 | 24.99 | 26.17 | 28.05 | 26.57 | 30.27 | 29.90 | 28.88 | 27.85 | 22.21 | 22.99 |
| San Francisco | 17.25 | 17.48 | 18.27 | 15.12 | 14.13 | 14.12 | 12.81 | 13.03 | 14.02 | 16.35 | 18.09 | 18.92 | 19.57 | 19.91 |
| Boston | 24.94 | 21.27 | 24.59 | 29.67 | 27.67 | 27.20 | 27.43 | 28.75 | 21.52 | 19.99 | 18.39 | 18.98 | 21.28 | 18.55 |
| Los Angeles | 8.60 | 9.55 | 9.68 | 9.87 | 8.17 | 7.47 | 7.32 | 8.10 | 9.51 | 10.05 | 10.04 | 10.14 | 12.31 | 15.34 |
| Philadelphia | 11.19 | 10.93 | 11.67 | 12.72 | 12.03 | 11.91 | 11.86 | 10.40 | 11.97 | 11.45 | 12.35 | 11.64 | 12.31 | 11.56 |
| Detroit | 7.55 | 6.30 | 5.39 | 7.20 | 5.54 | 5.12 | 4.04 | 4.15 | 4.95 | 5.27 | 5.62 | 5.15 | 5.08 | 4.75 |
| Pittsburgh | 3.64 | 4.11 | 4.45 | 3.59 | 2.94 | 2.63 | 2.58 | 2.83 | 2.55 | 2.31 | 2.29 | 2.43 | 1.93 | 1.94 |
| Cleveland | 1.69 | 1.88 | 1.78 | 1.16 | 1.51 | 2.06 | 2.29 | 2.35 | 1.81 | 1.74 | 1.80 | 2.04 | 2.26 | 1.74 |
| Cincinnati | .71 | .69 | .66 | .70 | .91 | 1.33 | 1.44 | 1.57 | 1.22 | 1.19 | .99 | 1.05 | 1.48 | 1.40 |
| St. Louis | .42 | .80 | 1.23 | 1.02 | .61 | .72 | .60 | .66 | .86 | .66 | .60 | .75 | .87 | .96 |
| New Orleans | .13 | .08 | .18 | .08 | .09 | .06 | .07 | .08 | .16 | .19 | .22 | .37 | .16 | .12 |
| Washington | .12 | .14 | .12 | .16 | .09 | .12 | .19 | .23 | .18 | .19 | .19 | .20 | .18 | .48 |
| Baltimore | 1.30 | 1.51 | 1.64 | 1.20 | 1.28 | 1.08 | 1.30 | 1.26 | .97 | .69 | .53 | .46 | .34 | .24 |
| Chicago Board of Trade | .30 | .19 | .14 | .04 | .02 | .01 | .01 | .01 | .01 | .01 | .01 | .02 | .01 | .02 |
| Total volume 14 exchanges (in millions of dollars) | 826.7 | 1,167.4 | 941.0 | 630.3 | 703.6 | 593.4 | 515.1 | 349.2 | 547.8 | 631.7 | 1,027.0 | 1,209.1 | 817.2 | 922.3 |

4. NEW YORK VERSUS OTHER EXCHANGES

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2 New York exchanges | 94.62 | 95.05 | 95.51 | 94.89 | 93.84 | 92.94 | 91.74 | 91.89 | 93.93 | 93.54 | 93.67 | 93.53 | 92.91 | 92.84 |
| 14 Other exchanges | 5.38 | 4.95 | 4.49 | 5.11 | 6.16 | 7.06 | 8.26 | 8.11 | 6.07 | 6.46 | 6.33 | 6.47 | 7.09 | 7.16 |

[1] Mining exchanges (San Francisco Mining, Salt Lake, Spokane), retired exchanges and exempted exchanges not included. Rights and warrants not included. San Francisco Curb figures included in those of San Francisco Stock Exchange prior to 1938 merger.

TABLE 10.—*Round-lot stock transactions [1] effected on the New York Stock Exchange for the accounts of members and nonmembers, weekly, June 28, 1948–June 25, 1949*

[Thousands of shares]

| Week ended | All round-lot sales | | Round-lot transactions for the account of members [2] | | | | | | | | | | | | Round-lot transactions for the account of nonmembers | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Transactions of specialists in stocks in which they are registered | | | Transactions for the odd-lot accounts of specialists and odd-lot dealers | | | Other transactions initiated on the floor | | | Other transactions initiated off the floor | | | | | |
| | Total | Short [3] | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | |
| | | | | Total | Short [3] | | Total | Short [3] | | Total | Short [3] | | Total | Short [3] | | Total | Short [3] |
| *1948* | | | | | | | | | | | | | | | | | |
| July 3 | 4,988 | 147 | 551 | 514 | 71 | 184 | 173 | | 128 | 134 | 18 | 171 | 256 | 20 | 3,954 | 3,911 | 38 |
| July 10 | 4,464 | 122 | 423 | 423 | 63 | 172 | 145 | | 114 | 98 | 12 | 188 | 251 | 20 | 3,567 | 3,547 | 27 |
| July 17 | 7,716 | 244 | 710 | 768 | (119 | 268 | 235 | | 173 | 229 | 29 | 259 | 430 | 35 | 6,306 | 6,054 | 61 |
| July 24 | 7,367 | 229 | 825 | 837 | (115 | 263 | 231 | | 188 | 207 | 18 | 237 | 320 | 35 | 5,854 | 5,772 | 61 |
| July 31 | 4,729 | 188 | 508 | 524 | 94 | 220 | 150 | | 73 | 97 | 11 | 173 | 223 | 28 | 3,755 | 3,735 | 60 |
| Aug. 7 | 4,102 | 150 | 440 | 428 | 76 | 203 | 126 | | 78 | 86 | 14 | 125 | 194 | 27 | 3,256 | 3,268 | 33 |
| Aug. 14 | 4,134 | 139 | 445 | 474 | 68 | 203 | 134 | | 69 | 89 | 16 | 153 | 197 | 19 | 3,264 | 3,240 | 36 |
| Aug. 21 | 3,200 | 126 | 354 | 350 | 63 | 182 | 111 | | 63 | 72 | 11 | 126 | 164 | 21 | 2,475 | 2,503 | 31 |
| Aug. 28 | 2,964 | 113 | 317 | 307 | 63 | 151 | 117 | | 52 | 45 | 5 | 126 | 134 | 15 | 2,318 | 2,361 | 29 |
| Sept. 4 | 3,921 | 126 | 411 | 427 | 64 | 180 | 129 | | 107 | 90 | 13 | 141 | 189 | 23 | 3,082 | 3,086 | 23 |
| Sept. 11 | 4,200 | 119 | 472 | 469 | 59 | 151 | 141 | | 82 | 113 | 9 | 197 | 227 | 23 | 3,298 | 3,250 | 28 |
| Sept. 18 | 3,571 | 101 | 355 | 354 | 53 | 165 | 121 | | 75 | 78 | 9 | 135 | 182 | 15 | 2,841 | 2,836 | 24 |
| Sept. 25 | 4,396 | 146 | 406 | 426 | 66 | 205 | 134 | | 104 | 111 | 12 | 193 | 194 | 16 | 3,488 | 3,531 | 52 |
| Oct. 2 | 4,958 | 170 | 480 | 501 | 81 | 219 | 161 | | 119 | 129 | 15 | 239 | 229 | 19 | 3,901 | 3,938 | 55 |
| Oct. 9 | 3,695 | 135 | 379 | 367 | 64 | 188 | 117 | | 66 | 74 | 8 | 153 | 187 | 33 | 2,909 | 2,950 | 30 |
| Oct. 16 | 4,065 | 118 | 355 | 331 | 61 | 173 | 122 | | 91 | 87 | 7 | 239 | 167 | 20 | 3,207 | 3,358 | 30 |
| Oct. 23 | 7,696 | 251 | 695 | 711 | 126 | 303 | 201 | | 201 | 201 | 23 | 361 | 339 | 37 | 6,136 | 6,244 | 65 |
| Oct. 30 | 5,716 | 219 | 584 | 598 | 113 | 233 | 207 | | 132 | 174 | 26 | 237 | 257 | 32 | 4,530 | 4,480 | 48 |
| Nov. 6 | 9,964 | 291 | 1,176 | 1,189 | 149 | 359 | 308 | | 268 | 302 | 20 | 447 | 431 | 28 | 7,714 | 7,734 | 94 |
| Nov. 13 | 7,497 | 263 | 741 | 822 | 131 | 358 | 136 | | 173 | 200 | 18 | 268 | 286 | 22 | 5,957 | 6,053 | 92 |
| Nov. 20 | 5,835 | 248 | 520 | 554 | 136 | 348 | 114 | | 100 | 109 | 16 | 216 | 238 | 24 | 4,651 | 4,820 | 72 |
| Nov. 27 | 5,074 | 181 | 393 | 429 | 102 | 223 | 120 | | 75 | 85 | 7 | 181 | 212 | 16 | 4,202 | 4,228 | 56 |
| Dec. 4 | 6,785 | 287 | 656 | 624 | 148 | 324 | 143 | | 171 | 158 | 28 | 229 | 243 | 22 | 5,405 | 5,617 | 89 |
| Dec. 11 | 6,674 | 250 | 595 | 551 | 133 | 296 | 161 | | 187 | 151 | 23 | 234 | 317 | 25 | 5,362 | 5,494 | 69 |
| Dec. 18 | 5,767 | 151 | 470 | 437 | 92 | 254 | 170 | | 103 | 98 | 7 | 187 | 199 | 14 | 4,753 | 4,863 | 38 |
| Dec. 25 | 5,380 | 122 | 464 | 377 | 72 | 210 | 155 | | 81 | 63 | 3 | 186 | 167 | 16 | 4,439 | 4,618 | 31 |

| 1949 | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan. 1 | 7,423 | 155 | 649 | 601 | 94 | 258 | 239 | | 131 | 129 | 11 | 254 | 185 | 14 | 6,131 | 6,269 | 36 |
| Jan. 8 | 5,602 | 282 | 540 | 770 | 139 | 333 | 144 | | 153 | 177 | 16 | 207 | 275 | 22 | 4,369 | 4,236 | 105 |
| Jan. 15 | 4,313 | 181 | 436 | 387 | 80 | 268 | 119 | | 112 | 114 | 11 | 155 | 215 | 17 | 3,342 | 3,478 | 73 |
| Jan. 22 | 4,319 | 156 | 462 | 386 | 72 | 214 | 127 | | 127 | 95 | 6 | 222 | 178 | 23 | 3,294 | 3,533 | 55 |
| Jan. 29 | 4,912 | 217 | 459 | 505 | 88 | 260 | 161 | | 114 | 149 | 16 | 177 | 222 | 21 | 3,902 | 3,875 | 92 |
| Feb. 5 | 4,900 | 184 | 393 | 448 | 74 | 247 | 165 | | 102 | 112 | 7 | 202 | 197 | 28 | 3,956 | 3,978 | 75 |
| Feb. 12 | 5,353 | 290 | 469 | 456 | 93 | 264 | 145 | | 128 | 123 | 11 | 229 | 166 | 22 | 4,263 | 4,463 | 164 |
| Feb. 19 | 4,117 | 220 | 384 | 377 | 91 | 199 | 141 | | 88 | 81 | 10 | 174 | 134 | 24 | 3,272 | 3,384 | 95 |
| Feb. 26 | 3,642 | 181 | 289 | 286 | 68 | 176 | 118 | | 68 | 82 | 8 | 121 | 112 | 16 | 2,988 | 3,044 | 89 |
| Mar. 5 | 4,106 | 236 | 404 | 363 | 93 | 204 | 133 | | 99 | 93 | 11 | 207 | 159 | 26 | 3,192 | 3,358 | 106 |
| Mar. 12 | 4,851 | 194 | 447 | 411 | 86 | 218 | 151 | | 104 | 95 | 6 | 248 | 199 | 23 | 3,834 | 3,995 | 79 |
| Mar. 19 | 4,108 | 175 | 348 | 394 | 79 | 196 | 141 | | 69 | 105 | 11 | 171 | 171 | 15 | 3,324 | 3,297 | 70 |
| Mar. 26 | 4,505 | 194 | 399 | 415 | 86 | 227 | 133 | | 111 | 141 | 12 | 174 | 192 | 17 | 3,594 | 3,624 | 79 |
| Apr. 2 | 7,038 | 379 | 677 | 704 | 166 | 307 | 178 | | 177 | 226 | 24 | 265 | 280 | 32 | 5,612 | 5,650 | 157 |
| Apr. 9 | 5,254 | 230 | 465 | 451 | 84 | 243 | 159 | | 160 | 187 | 13 | 192 | 254 | 25 | 4,194 | 4,203 | 108 |
| Apr. 16 | 4,020 | 169 | 310 | 300 | 54 | 172 | 133 | | 102 | 152 | 9 | 182 | 171 | 20 | 3,254 | 3,264 | 86 |
| Apr. 23 | 5,695 | 251 | 410 | 420 | 79 | 231 | 181 | | 129 | 200 | 13 | 237 | 265 | 39 | 4,688 | 4,629 | 120 |
| Apr. 30 | 4,593 | 230 | 358 | 355 | 79 | 213 | 162 | | 113 | 137 | 15 | 201 | 216 | 29 | 3,708 | 3,723 | 107 |
| May 7 | 4,976 | 227 | 388 | 395 | 83 | 214 | 168 | | 107 | 112 | 12 | 284 | 245 | 34 | 3,983 | 4,056 | 98 |
| May 14 | 4,328 | 188 | 382 | 335 | 69 | 166 | 163 | | 88 | 62 | 7 | 201 | 156 | 28 | 3,491 | 3,612 | 84 |
| May 21 | 4,855 | 168 | 345 | 384 | 72 | 168 | 198 | | 102 | 105 | 16 | 335 | 216 | 19 | 3,905 | 3,952 | 61 |
| May 28 | 4,260 | 153 | 329 | 302 | 62 | 154 | 160 | | 72 | 87 | 6 | 168 | 210 | 17 | 3,537 | 3,501 | 68 |
| June 4 | 4,443 | 165 | 302 | 316 | 63 | 155 | 147 | | 59 | 84 | 7 | 146 | 179 | 17 | 3,781 | 3,717 | 78 |
| June 11 | 5,043 | 237 | 418 | 407 | 69 | 216 | 158 | | 89 | 98 | 12 | 200 | 229 | 34 | 4,120 | 4,151 | 122 |
| June 18 | 5,044 | 250 | 438 | 427 | 78 | 205 | 165 | | 105 | 101 | 17 | 186 | 150 | 20 | 4,110 | 4,201 | 135 |
| June 25 | 3,559 | 200 | 338 | 354 | 87 | 160 | 109 | | 79 | 73 | 9 | 211 | 157 | 17 | 2,771 | 2,866 | 87 |

[1] Round-lot transactions in the unit of trading or multiples thereof; the unit of trading on theNew York Stock Exchange is 100 shares in most stocks, and 10 shares for certain inactive stocks.

[2] The term "members" includes all members, their firms and their partners.

[3] Round-lot short sales which are exempted from restriction by the Commission's or Exchange's rules are not included in short sales, but are included in total sales.

TABLE 11.—*Odd-lot stock transactions effected on the New York Stock Exchange for the odd-lot account of odd-lot dealers, specialists, and customers, weekly, June 28, 1948–June 25, 1949*

| Week ended | Purchases by customers from odd-lot dealers and specialists | | | Sales by customers to odd-lot dealers and specialists | | | Customers' short sales [1] | |
|---|---|---|---|---|---|---|---|---|
| | Number of orders | Number of shares | Market value (dollars) | Number of orders | Number of shares | Market value (dollars) | Number of orders | Number of shares |
| *1948* | | | | | | | | |
| July 3 | 20,584 | 617,892 | 25,022,408 | 21,681 | 589,084 | 21,961,295 | 81 | 2,977 |
| July 10 | 17,914 | 538,108 | 22,026,009 | 19,548 | 529,799 | 19,341,405 | 74 | 2,566 |
| July 17 | 27,113 | 829,114 | 32,055,734 | 26,376 | 763,479 | 27,138,698 | 118 | 4,360 |
| July 24 | 28,335 | 852,218 | 32,226,717 | 26,843 | 804,551 | 28,578,780 | 148 | 5,427 |
| July 31 | 19,747 | 588,337 | 23,475,672 | 18,929 | 530,122 | 19,640,622 | 125 | 4,402 |
| Aug. 7 | 18,438 | 526,559 | 21,572,393 | 16,774 | 457,136 | 16,904,433 | 94 | 3,428 |
| Aug. 14 | 19,117 | 545,052 | 22,062,222 | 16,440 | 457,449 | 16,821,401 | 113 | 4,152 |
| Aug. 21 | 15,559 | 440,204 | 18,665,784 | 14,965 | 401,383 | 14,629,586 | 93 | 3,630 |
| Aug. 28 | 14,373 | 414,755 | 17,094,361 | 13,832 | 372,999 | 13,552,826 | 56 | 1,902 |
| Sept. 4 | 16,865 | 489,011 | 20,244,038 | 16,212 | 438,366 | 15,424,962 | 86 | 3,372 |
| Sept. 11 | 15,453 | 453,139 | 18,668,874 | 15,675 | 430,849 | 15,620,831 | 57 | 2,074 |
| Sept. 18 | 16,005 | 452,499 | 18,560,528 | 15,468 | 401,013 | 14,431,526 | 69 | 2,841 |
| Sept. 25 | 18,966 | 537,919 | 21,220,449 | 17,014 | 460,887 | 16,198,809 | 113 | 4,853 |
| Oct. 2 | 19,791 | 566,045 | 21,923,552 | 18,762 | 525,682 | 18,454,276 | 178 | 7,552 |
| Oct. 9 | 16,929 | 485,663 | 20,035,511 | 15,496 | 412,431 | 14,924,113 | 75 | 2,983 |
| Oct. 16 | 15,048 | 442,097 | 18,094,584 | 15,365 | 409,293 | 15,198,884 | 74 | 2,671 |
| Oct. 23 | 25,683 | 766,874 | 31,329,557 | 24,309 | 695,459 | 25,226,450 | 108 | 3,752 |
| Oct. 30 | 23,299 | 691,150 | 28,002,314 | 22,515 | 630,878 | 23,973,278 | 139 | 5,500 |
| Nov. 6 | 34,751 | 1,035,778 | 38,803,504 | 29,716 | 894,510 | 31,873,918 | 212 | 8,694 |
| Nov. 13 | 30,792 | 880,666 | 32,273,785 | 22,831 | 681,618 | 22,667,359 | 287 | 11,085 |
| Nov. 20 | 25,149 | 712,968 | 27,320,266 | 18,546 | 500,881 | 17,174,804 | 178 | 6,583 |
| Nov. 27 | 20,450 | 586,186 | 21,333,652 | 16,112 | 458,253 | 15,561,038 | 181 | 7,467 |
| Dec. 4 | 26,177 | 757,032 | 27,691,518 | 20,116 | 592,421 | 19,127,655 | 166 | 6,162 |
| Dec. 11 | 25,032 | 737,797 | 26,958,625 | 22,401 | 636,647 | 21,071,080 | 133 | 5,458 |
| Dec. 18 | 23,996 | 702,133 | 26,104,621 | 23,760 | 632,666 | 21,237,083 | 90 | 3,516 |
| Dec. 25 | 20,561 | 596,935 | 22,907,355 | 20,422 | 551,474 | 18,510,087 | 61 | 2,380 |

| 1949 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Jan. 1 | 28,192 | 822,815 | 28,943,651 | 28,458 | 808,699 | 23,876,279 | 58 | 2,358 |
| Jan. 8 | 24,940 | 718,085 | 27,940,680 | 19,126 | 484,010 | 17,117,649 | 239 | 8,298 |
| Jan. 15 | 21,571 | 598,980 | 25,771,118 | 18,303 | 463,695 | 17,051,498 | 186 | 6,944 |
| Jan. 22 | 19,356 | 526,635 | 22,795,512 | 18,197 | 473,702 | 18,745,225 | 140 | 5,711 |
| Jan. 29 | 23,691 | 656,904 | 27,419,644 | 20,307 | 534,547 | 19,857,563 | 251 | 9,916 |
| Feb. 5 | 24,046 | 654,909 | 26,219,172 | 20,495 | 537,377 | 19,547,124 | 245 | 8,772 |
| Feb. 12 | 24,699 | 678,819 | 24,987,555 | 20,818 | 574,974 | 19,743,773 | 414 | 16,475 |
| Feb. 19 | 17,942 | 497,272 | 19,267,494 | 16,690 | 445,551 | 15,267,880 | 198 | 7,807 |
| Feb. 26 | 16,429 | 447,420 | 16,666,468 | 15,380 | 406,300 | 13,751,774 | 223 | 9,088 |
| Mar. 5 | 17,983 | 491,049 | 18,690,884 | 16,183 | 426,529 | 14,180,706 | 227 | 8,627 |
| Mar. 12 | 18,577 | 527,257 | 20,577,307 | 17,898 | 476,465 | 15,897,496 | 217 | 8,102 |
| Mar. 19 | 18,174 | 499,529 | 19,661,564 | 16,316 | 434,590 | 14,820,472 | 196 | 7,821 |
| Mar. 26 | 20,370 | 563,395 | 21,387,880 | 17,748 | 472,042 | 16,070,418 | 171 | 7,200 |
| Apr. 2 | 25,226 | 739,266 | 26,689,369 | 21,709 | 588,260 | 19,332,705 | 272 | 10,595 |
| Apr. 9 | 20,860 | 589,357 | 22,917,003 | 19,945 | 532,544 | 18,075,426 | 257 | 10,692 |
| Apr. 16 | 16,203 | 464,878 | 19,266,747 | 15,379 | 408,517 | 15,350,080 | 183 | 7,227 |
| Apr. 23 | 22,801 | 643,764 | 26,401,544 | 20,402 | 579,609 | 19,987,945 | 305 | 12,098 |
| Apr. 30 | 19,903 | 553,504 | 22,449,226 | 18,147 | 509,597 | 17,847,674 | 254 | 9,963 |
| May 7 | 19,445 | 541,843 | 22,366,643 | 19,087 | 516,812 | 18,201,523 | 216 | 7,756 |
| May 14 | 16,419 | 467,532 | 18,432,120 | 17,827 | 481,455 | 16,640,709 | 157 | 5,826 |
| May 21 | 17,682 | 503,806 | 20,229,968 | 18,698 | 504,287 | 17,992,606 | 141 | 5,410 |
| May 28 | 16,364 | 460,372 | 17,336,932 | 17,535 | 466,116 | 16,058,941 | 174 | 6,965 |
| June 4 | 16,730 | 454,131 | 16,766,078 | 15,119 | 421,104 | 14,350,763 | 215 | 7,808 |
| June 11 | 20,270 | 567,955 | 19,944,215 | 18,017 | 510,978 | 16,268,719 | 315 | 12,419 |
| June 18 | 20,572 | 560,201 | 19,165,927 | 19,061 | 527,860 | 16,998,143 | 383 | 15,314 |
| June 25 | 14,062 | 388,337 | 13,834,953 | 13,717 | 363,141 | 11,678,126 | 141 | 5,577 |

[1]Short sales which are exempted from restriction by the Commission's or Exchange's rules are not included in short sales, but are included in total sales.

TABLE 12.—*Round-lot and odd-lot stock transactions [1] effected on the New York Curb Exchange for accounts of members and nonmembers, weekly, June 28, 1948–June 25, 1949*

[Thousands of shares]

| Week ended | All round-lot sales | | Round-lot transactions for the account of members [2] | | | | | | | | | Round-lot transactions for the account of nonmembers | | | Odd-lot transactions for accounts of customers [3] | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Transactions of specialists in stocks in which they are registered [3] | | | Other transactions initiated on the floor | | | Other transactions initiated off the floor | | | | | | | | |
| | Total | Short [4] | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | | Purchases | Sales | |
| | | | | Total | Short [4] | | Total | Short [4] | | Total | Short [4] | | Total | Short [4] | | Total | Short [4] |
| *1948* | | | | | | | | | | | | | | | | | |
| July 3 | 1,265 | 38 | 111 | 109 | 13 | 23 | 24 | 1 | 42 | 70 | 15 | 1,089 | 1,062 | 9 | 43 | 57 | -------- |
| July 10 | 883 | 8 | 93 | 100 | 4 | 20 | 19 | 1 | 51 | 50 | 2 | 719 | 714 | 1 | 41 | 54 | -------- |
| July 17 | 1,510 | 13 | 123 | 182 | 10 | 28 | 31 | 1 | 51 | 79 | 1 | 1,308 | 1,218 | 1 | 58 | 80 | -------- |
| July 24 | 1,443 | 17 | 166 | 174 | 11 | 29 | 33 | 1 | 79 | 47 | 3 | 1,169 | 1,189 | 2 | 57 | 65 | -------- |
| July 31 | 924 | 14 | 85 | 114 | 8 | 21 | 22 | (5) | 51 | 36 | 2 | 767 | 752 | 4 | 40 | 56 | -------- |
| Aug. 7 | 732 | 12 | 75 | 79 | 6 | 7 | 10 | 1 | 53 | 32 | 2 | 597 | 611 | 3 | 33 | 46 | -------- |
| Aug. 14 | 867 | 15 | 71 | 96 | 4 | 16 | 29 | 4 | 59 | 52 | 5 | 721 | 690 | 2 | 33 | 42 | -------- |
| Aug. 21 | 760 | 17 | 70 | 70 | 6 | 20 | 30 | 4 | 55 | 29 | 4 | 615 | 631 | 3 | 29 | 44 | -------- |
| Aug. 28 | 831 | 10 | 66 | 74 | 6 | 8 | 8 | 1 | 44 | 34 | 1 | 713 | 715 | 2 | 30 | 42 | -------- |
| Sept. 4 | 783 | 7 | 77 | 77 | 4 | 17 | 10 | 1 | 52 | 34 | 1 | 637 | 662 | 1 | 30 | 44 | -------- |
| Sept. 11 | 955 | 17 | 81 | 116 | 7 | 25 | 30 | (5) | 41 | 53 | 5 | 808 | 756 | 5 | 33 | 46 | -------- |
| Sept. 18 | 771 | 15 | 66 | 75 | 6 | 20 | 27 | 5 | 54 | 29 | 2 | 631 | 640 | 2 | 30 | 43 | -------- |
| Sept. 25 | 970 | 23 | 88 | 95 | 6 | 29 | 38 | 8 | 77 | 47 | 3 | 776 | 790 | 6 | 32 | 47 | -------- |
| Oct. 2 | 1,152 | 17 | 93 | 103 | 7 | 47 | 50 | 4 | 73 | 52 | 1 | 939 | 947 | 5 | 41 | 54 | -------- |
| Oct. 9 | 1,013 | 19 | 83 | 99 | 6 | 43 | 38 | 1 | 65 | 47 | 6 | 822 | 829 | 6 | 35 | 47 | -------- |
| Oct. 16 | 928 | 14 | 73 | 68 | 4 | 10 | 10 | 1 | 88 | 82 | 4 | 757 | 768 | 5 | 29 | 40 | -------- |
| Oct. 23 | 1,684 | 23 | 133 | 122 | 9 | 46 | 45 | 2 | 145 | 81 | 5 | 1,360 | 1,436 | 7 | 51 | 61 | -------- |
| Oct. 30 | 1,228 | 21 | 94 | 125 | 9 | 22 | 36 | 1 | 86 | 67 | 2 | 1,026 | 1,000 | 9 | 44 | 57 | -------- |
| Nov. 6 | 1,899 | 24 | 191 | 212 | 11 | 43 | 45 | 2 | 104 | 84 | 3 | 1,561 | 1,558 | 8 | 59 | 63 | -------- |
| Nov. 13 | 1,466 | 26 | 133 | 150 | 8 | 41 | 50 | 9 | 80 | 57 | 3 | 1,212 | 1,209 | 6 | 52 | 53 | -------- |
| Nov. 20 | 1,075 | 27 | 91 | 108 | 9 | 24 | 27 | 9 | 63 | 71 | 2 | 897 | 869 | 7 | 43 | 48 | -------- |
| Nov. 27 | 1,087 | 17 | 68 | 106 | 8 | 22 | 17 | 2 | 73 | 69 | 1 | 924 | 895 | 6 | 39 | 42 | -------- |
| Dec. 4 | 1,357 | 38 | 134 | 109 | 16 | 28 | 33 | 6 | 87 | 49 | 1 | 1,108 | 1,166 | 15 | 47 | 55 | -------- |
| Dec. 11 | 1,360 | 23 | 107 | 106 | 8 | 25 | 31 | 3 | 88 | 66 | 6 | 1,140 | 1,157 | 6 | 41 | 52 | -------- |
| Dec. 18 | 1,445 | 19 | 113 | 109 | 11 | 28 | 19 | 2 | 100 | 70 | 1 | 1,204 | 1,247 | 5 | 45 | 67 | -------- |
| Dec. 25 | 1,134 | 11 | 81 | 81 | 6 | 21 | 17 | 2 | 94 | 38 | 1 | 938 | 998 | 2 | 36 | 55 | -------- |

| 1949 | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan. 1 | 1,543 | 16 | 139 | 123 | 7 | 25 | 22 | 2 | 102 | 38 | 1 | 1,277 | 1,360 | 6 | 45 | 79 | |
| Jan. 8 | 1,109 | 26 | 93 | 130 | 12 | 20 | 27 | 3 | 115 | 50 | 2 | 881 | 902 | 9 | 40 | 43 | |
| Jan. 15 | 1,145 | 19 | 82 | 114 | 9 | 31 | 25 | 1 | 119 | 48 | 2 | 913 | 958 | 7 | 43 | 48 | |
| Jan. 22 | 1,028 | 24 | 84 | 87 | 10 | 22 | 26 | 4 | 86 | 57 | 2 | 836 | 858 | 8 | 34 | 50 | |
| Jan. 29 | 1,098 | 22 | 86 | 112 | 9 | 26 | 21 | 2 | 83 | 58 | 2 | 903 | 907 | 9 | 40 | 50 | |
| Feb. 5 | 1,068 | 40 | 90 | 97 | 9 | 20 | 18 | 2 | 59 | 47 | 11 | 899 | 906 | 18 | 45 | 52 | |
| Feb. 12 | 1,070 | 35 | 80 | 96 | 7 | 22 | 30 | 5 | 57 | 51 | 7 | 911 | 893 | 16 | 40 | 48 | |
| Feb. 19 | 976 | 37 | 67 | 73 | 4 | 23 | 36 | 8 | 51 | 45 | 13 | 835 | 822 | 12 | 34 | 47 | |
| Feb. 26 | 767 | 23 | 52 | 63 | 3 | 14 | 20 | 5 | 31 | 46 | 6 | 670 | 638 | 9 | 27 | 40 | |
| Mar. 5 | 974 | 24 | 63 | 65 | 5 | 21 | 26 | 9 | 53 | 49 | 2 | 837 | 834 | 8 | 28 | 41 | |
| Mar. 12 | 1,010 | 26 | 85 | 88 | 9 | 22 | 29 | 2 | 61 | 52 | 6 | 842 | 841 | 9 | 35 | 54 | |
| Mar. 19 | 812 | 15 | 56 | 80 | 5 | 12 | 15 | 1 | 43 | 31 | 3 | 701 | 686 | 6 | 34 | 43 | |
| Mar. 26 | 930 | 23 | 62 | 88 | 9 | 21 | 21 | 1 | 43 | 52 | 3 | 804 | 769 | 10 | 33 | 46 | |
| Apr. 2 | 1,430 | 50 | 118 | 160 | 25 | 31 | 32 | 2 | 47 | 74 | 6 | 1,234 | 1,164 | 17 | 44 | 62 | |
| Apr. 9 | 1,206 | 33 | 96 | 111 | 13 | 32 | 29 | (3) | 49 | 57 | 7 | 1,029 | 1,009 | 13 | 35 | 55 | |
| Apr. 16 | 1,019 | 25 | 64 | 88 | 6 | 27 | 31 | 1 | 54 | 31 | 5 | 874 | 869 | 13 | 29 | 49 | |
| Apr. 23 | 1,104 | 41 | 93 | 109 | 8 | 23 | 23 | 2 | 37 | 65 | 16 | 951 | 907 | 15 | 40 | 57 | |
| Apr. 30 | 945 | 26 | 94 | 105 | 9 | 27 | 23 | 1 | 38 | 55 | 4 | 786 | 762 | 12 | 34 | 47 | |
| May 7 | 1,056 | 37 | 85 | 98 | 11 | 31 | 27 | 1 | 58 | 56 | 8 | 882 | 875 | 17 | 32 | 51 | |
| May 14 | 1,070 | 24 | 69 | 80 | 4 | 22 | 26 | 1 | 63 | 53 | 5 | 916 | 911 | 14 | 28 | 59 | |
| May 21 | 1,076 | 34 | 90 | 109 | 7 | 18 | 20 | 3 | 57 | 164 | 11 | 911 | 783 | 13 | 35 | 63 | |
| May 28 | 878 | 23 | 57 | 80 | 3 | 10 | 11 | 1 | 28 | 126 | 17 | 783 | 661 | 2 | 28 | 43 | |
| June 4 | 703 | 20 | 73 | 110 | 3 | 11 | 14 | 2 | 29 | 84 | 10 | 590 | 495 | 5 | 28 | 37 | |
| June 11 | 1,108 | 42 | 96 | 103 | 5 | 13 | 13 | 1 | 43 | 115 | 26 | 956 | 877 | 10 | 32 | 44 | |
| June 18 | 1,006 | 42 | 91 | 103 | 5 | 15 | 20 | 1 | 39 | 82 | 25 | 861 | 801 | 11 | 34 | 43 | |
| June 25 | 826 | 50 | 73 | 68 | 9 | 24 | 21 | 1 | 42 | 112 | 36 | 687 | 625 | 4 | 29 | 34 | |

[1] Round-lot transactions in the unit of trading or multiples thereof, while odd-lot transactions involve less than the unit of trading. The unit of trading on the New York Curb Exchange is not the same in all stocks, but ranges from 10 to 100 shares. Right and warrant transactions are not included in these data, although ticker volume for this exchange includes such transactions.

[2] The term "members" includes all members, their firms, and their partners.

[3] On the New York Curb Exchange odd-lot transactions are handled solely by specialists in stocks in which they are registered, and the round-lot transactions resulting from such odd-lot transactions are not segregated from specialists other round-lot transactions.

[4] Short sales which are exempted from restriction by the Commission's or Exchange's rules are not included in short sales, but are included in total sales.

[5] 500 shares or less.

TABLE 13.—*Special offerings effected on national securities exchanges for fiscal year ended June 30, 1949*

| Exchange | Number made | Number of shares | | | Value of shares sold (thousands of dollars) | Aggregate special commission (thousands of dollars) | Number of offerings by duration | | |
|---|---|---|---|---|---|---|---|---|---|
| | | In original offer | Subscribed | Sold | | | Terminated in 15 minutes | Others terminated same day | Not terminated same day |
| All exchanges: | | | | | | | | | |
| Total | 25 | 266,094 | 268,668 | 263,733 | 5,750 | 161 | 6 | 15 | 4 |
| Completed | 24 | 258,094 | 265,447 | 260,512 | 5,613 | 159 | 6 | 15 | 3 |
| Not completed | 1 | 8,000 | 3,221 | 3,221 | 137 | 2 | | | 1 |
| Chicago Stock Exchange: | | | | | | | | | |
| Total | 1 | 2,700 | 2,700 | 2,700 | 103 | 3 | | 1 | |
| Completed | 1 | 2,700 | 2,700 | 2,700 | 103 | 3 | | 1 | |
| Not completed | | | | | | | | | |
| New York Curb Exchange: | | | | | | | | | |
| Total | 3 | 10,600 | 13,255 | 11,200 | 216 | 8 | 2 | 1 | |
| Completed | 3 | 10,600 | 13,255 | 11,200 | 216 | 8 | 2 | 1 | |
| Not completed | | | | | | | | | |
| New York Stock Exchange: | | | | | | | | | |
| Total | 18 | 234,037 | 233,948 | 231,068 | 5,067 | 140 | 4 | 11 | 3 |
| Completed | 17 | 226,037 | 230,727 | 227,847 | 4,930 | 138 | 4 | 11 | 2 |
| Not completed | 1 | 8,000 | 3,221 | 3,221 | 137 | 2 | | | 1 |
| San Francisco Stock Exchange: | | | | | | | | | |
| Total | 3 | 18,757 | 18,765 | 18,765 | 364 | 10 | | 2 | 1 |
| Completed | 3 | 18,757 | 18,765 | 18,765 | 364 | 10 | | 2 | 1 |
| Not completed | | | | | | | | | |

TABLE 14.—*Secondary distributions of listed stocks approved by national securities exchanges for fiscal year ended June 30, 1949* [1]

| Exchange | Number made | Number of shares | | | Value of shares sold (thousands of dollars) | Number of secondaries by duration | | |
|---|---|---|---|---|---|---|---|---|
| | | In original offer | Available for distribution | Sold | | Terminated same day | Others terminated next day | Not terminated next day |
| All exchanges: | | | | | | | | |
| Total | 97 | 4,564,313 | 4,592,679 | 4,480,953 | 129,014 | 59 | 22 | 16 |
| Completed | 87 | 3,966,817 | 3,987,883 | 4,009,346 | 122,444 | 59 | 18 | 10 |
| Not completed | 10 | 597,496 | 604,796 | 471,607 | 6,570 | | 4 | 6 |
| Chicago Stock Exchange: | | | | | | | | |
| Total | 12 | 93,247 | 93,477 | 93,477 | 3,207 | 8 | 2 | 2 |
| Completed | 12 | 93,247 | 93,477 | 93,477 | 3,207 | 8 | 2 | 2 |
| Not completed | | | | | | | | |
| New York Curb Exchange: | | | | | | | | |
| Total | 21 | 348,163 | 344,265 | 340,650 | 10,076 | 12 | 7 | 2 |
| Completed | 20 | 338,163 | 334,265 | 335,975 | 10,030 | 12 | 6 | 2 |
| Not completed | 1 | 10,000 | 10,000 | 4,675 | 46 | | 1 | |
| New York Stock Exchange: | | | | | | | | |
| Total | 63 | 4,119,303 | 4,151,337 | 4,043,226 | 115,641 | 38 | 13 | 12 |
| Completed | 54 | 3,531,807 | 3,556,541 | 3,576,294 | 109,117 | 38 | 10 | 6 |
| Not completed | 9 | 587,496 | 594,796 | 466,932 | 6,524 | | 3 | 6 |
| St. Louis Stock Exchange: | | | | | | | | |
| Total | 1 | 3,600 | 3,600 | 3,600 | 90 | 1 | | |
| Completed | 1 | 3,600 | 3,600 | 3,600 | 90 | 1 | | |
| Not completed | | | | | | | | |

[1] Secondary distributions which exchanges have approved for member participation and have reported to the Commission.

TABLE 15.—*Classification by industry of issuers having securities registered on national securities exchanges as of June 30, 1948 and as of June 30, 1949*

| Industry | As of June 30, 1948 | As of June 30, 1949 |
|---|---|---|
| Agriculture | 8 | 7 |
| Beverages (distilleries, breweries, soft drinks) | 53 | 49 |
| Building and related companies (including lumber building materials, and construction) | 93 | 91 |
| Chemicals, drugs, and allied products | 89 | 88 |
| Financial and investment companies | 130 | 127 |
| Food and related products | 109 | 104 |
| Foreign governments and political subdivisions thereof | 70 | 71 |
| Foreign private issuers other than Canadian, Cuban, and Philippine | 56 | 56 |
| Iron and steel (excluding machinery) | 76 | 77 |
| Machinery and tools (excluding transportation equipment) | 206 | 207 |
| Merchandising (chain stores, department stores) | 168 | 167 |
| Mining, coal | 19 | 19 |
| Mining, other than coal | 221 | 223 |
| Miscellaneous manufacturing | 39 | 40 |
| Oil and gas wells | 52 | 53 |
| Oil refining and distributing | 39 | 36 |
| Paper and paper products | 39 | 40 |
| Printing, publishing, and allied industries | 21 | 21 |
| Real estate | 15 | 15 |
| Rubber and leather products | 36 | 36 |
| Services (advertising, amusements, hotels, restaurants) | 48 | 52 |
| Textiles and related products | 67 | 68 |
| Tobacco products | 18 | 18 |
| Transportation and communication (railroads, telephone, radio) | 238 | 236 |
| Transportation equipment | 173 | 172 |
| Utility holding companies (electric, gas, water) | 31 | 26 |
| Utility operating-holding companies | 15 | 12 |
| Utility operating | 80 | 83 |
| Total | 2,209 | 2,194 |

TABLE 16.—*Number and amount of securities classified according to basis for the admission to dealing on all exchanges as of June 30, 1949*

| | Stocks | | | |
|---|---|---|---|---|
| | Column I [1] | | Column II [2] | |
| | Issues | Number of shares | Issues | Number of shares |
| Registered | 2,570 | 2,965,371,336 | 2,570 | 2,965,371,336 |
| Temporarily exempted from registration [3] | 21 | 56,725,260 | 21 | 56,725,260 |
| Admitted to unlisted trading privileges on registered exchanges | 883 | 1,952,242,012 | 344 | 353,595,077 |
| Listed on exempted exchanges | 126 | 118,490,763 | 81 | 33,578,686 |
| Admitted to unlisted trading privileges on exempted exchanges | 42 | 11,192,108 | 36 | 5,924,794 |
| Unduplicated total of stock issues and number of shares admitted to dealing on all exchanges | | | 3,052 | 3,415,195,153 |
| | **Bonds** | | | |
| | Issues | Principal amount | Issues | Principal amount |
| Registered [4] | 979 | $20,777,298,047 | 979 | $20,0777,298,047 |
| Temporarily exempted from registration [3] | 4 | 51,758,000 | 4 | 51,758,000 |
| Admitted to unlisted trading privileges on registered exchanges | 91 | 1,297,434,936 | 84 | 774,251,036 |
| Listed on exempted exchanges | 7 | 22,250,000 | 7 | 22,250,000 |
| Admitted to unlisted trading privileges on an exempted exchange | 1 | 140,000 | 1 | 140,000 |
| Unduplicated total of bond issues and principal amount admitted to dealing on all exchanges | | | 1,075 | 21,625,697,083 |

[1] The purpose of column I is to show the number and amount of securities admitted to dealing under the various bases for the admission of securities to dealing on exchanges under the act. (Issues exempted from registration under sec. 3 (a) (12) of the act, such as obligations of the United States, States, counties, cities, and United States-owned corporations, are not shown in this table.) Each security is counted once under each basis for its admission to dealing. Thus, a security which is registered on 2 exchanges and also admitted to unlisted trading privileges on 3 exchanges would be counted once under "registered" and once under "admitted to unlisted trading privileges" Because of such duplications, column I is not totaled.

[2] The purpose of column II is to show the unduplicated total of all securities admitted to dealing on all exchanges. Each security is counted only once, and the elimination of the duplication in column I is made in column II in the order in which the various bases for admission to dealing is given above.

[3] Includes securities for which the Commission has granted, by general rules, temporary exemption from registration for stated periods and under certain conditions, such as stock issues of certain operating banks and securities resulting from modification of previously listed securities.

[4] Includes 8 bond issues in pounds sterling in the aggregate amount of £17,305,840. This amount in sterling has been excluded from the amount in dollars given above.

## TABLE 17

PART 1.—NUMBER AND AMOUNT OF SECURITIES CLASSIFIED ACCORDING TO THE NUMBER OF REGISTERED EXCHANGES ON WHICH EACH ISSUE WAS ADMITTED TO DEALING AS OF JUNE 30, 1949

| | Stocks | | Bonds | |
|---|---|---|---|---|
| | Issues | Shares | Issues | Principal amount |
| 1. Registered on 1 exchange | 1,632 | 1,102,654,327 | 894 | $17,284,283,547 |
| 2. Unlisted on 1 exchange | 332 | 325,355,241 | 84 | 774,251,036 |
| 3. Registered on 2 or more exchanges | 401 | 312,668,022 | 78 | 2,969,830,600 |
| 4. Unlisted on 2 or more exchanges | 12 | 28,239,836 | | |
| 5. Registered on 1 exchange and unlisted on 1 exchange | 223 | 222,009,670 | 5 | 82,755,500 |
| 6. Registered on 2 or more exchanges and unlisted on 1 exchange | 71 | 138,398,389 | 1 | 271,562,300 |
| 7. Registered on 1 exchange and unlisted on 2 or more exchanges | 149 | 611,736,001 | | |
| 8. Registered on 2 or more exchanges and unlisted on 2 or more exchanges | 94 | 577,904,927 | 1 | 168,866,100 |
| 9. Temporarily exempted from registration on 1 exchange | 20 | 52,960,780 | 3 | 45,016,000 |
| 10. Temporarily exempted from registration on 2 or more exchanges | 1 | 3,764,480 | 1 | 6,742,000 |
| Total | 2,935 | 3,375,691,673 | 1,067 | 21,603,307,083 |

PART 2.—PROPORTION OF REGISTERED ISSUES THAT ARE ALSO ADMITTED TO UNLISTED TRADING PRIVILEGES ON OTHER EXCHANGES AS OF JUNE 30, 1949

| | | | | |
|---|---|---|---|---|
| 1. All registered issues (pt. 1, lines 1, 3, 5, 6, 7, and 8) | 2,570 | 2,965,371,336 | 979 | $20,777,298,047 |
| 2. Registered issues that are also admitted to unlisted trading privileges on other exchanges (pt. 1, lines 5, 6, 7, and 8) | 537 | 1,550,048,987 | 7 | $523,183,900 |
| 3. Percent of registered issues that are also admitted to unlisted trading privileges on other exchanges (percent) | 20.9 | 52.3 | .7 | 2.5 |

PART 3.—PROPORTION OF ISSUES ADMITTED TO UNLISTED TRADING PRIVILEGES THAT ARE ALSO REGISTERED ON OTHER EXCHANGES AS OF JUNE 30, 1949

| | | | | |
|---|---|---|---|---|
| 1. All issues admitted to unlisted trading privileges (pt. 1, lines 2, 4, 5, 6, 7, 8, and 1 stock issue each under lines 9 and 10) | 883 | 1,952,242,012 | 91 | $1,297,434,936 |
| 2. Unlisted issues that are also registered on other exchanges (pt. 1, lines 5, 6, 7, and 8) | 537 | 1,550,048,987 | 7 | $523,183,900 |
| 3. Percent of issues admitted to unlisted trading privileges that are also registered on other exchanges (percent) | 60.8 | 79.4 | 7.7 | 40.3 |

PART 4.—PROPORTION OF ALL ISSUES ADMITTED TO DEALING ON REGISTERED EXCHANGES THAT ARE ADMITTED TO DEALING ON MORE THAN 1 REGISTERED EXCHANGE

| | | | | |
|---|---|---|---|---|
| 1. All issues admitted to dealing on registered exchanges (pt. 1, total) | 2,935 | 3,375,691,673 | 1,067 | $21,603,307,083 |
| 2. Issues on more than 1 exchange (pt. 1, all lines except 1, 2, and 9) | 951 | 1,894,721,325 | 86 | $3,499,756,500 |
| 3. Percent of all issues admitted to dealing on all registered exchanges that are admitted to dealing on more than one registered exchange (percent) | 32.4 | 56.1 | 8.1 | 16.2 |

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TABLE 18.—*Number of issuers having securities admitted to dealings on all exchanges as of June 30, 1949, classified according to the basis for admission of their securities to dealing*

| Basis of admission of securities to dealing | Column I [1] | Column II [2] |
|---|---|---|
| | Number of issuers | Number of issuers |
| Registered | 2,194 | 2,194 |
| Temporarily exempted from registration | 21 | 17 |
| Admitted to unlisted trading privileges on registered exchanges | 843 | 316 |
| Listed on exempted exchanges | 110 | 71 |
| Admitted to unlisted trading privileges on exempted exchanges | 40 | 35 |
| Total number of issuers having securities admitted to dealing on all exchanges | | 2,633 |

[1] The purpose of column I is to show the number of issuers having securities admitted to dealing on exchanges under the various bases for the admission of securities to dealing under the act. (Issuers whose securities are exempted under sec. 3 (a) (12) of the act, such as obligations of the United States, States, counties, cities, and United States-owned corporations, are not shown in this table.) Each issuer is counted once under each basis for admission of securities to dealing. Thus, an issuer having securities registered on two or more exchanges and unlisted on two or more exchanges is counted once under "registered" and once under "unlisted." Because of these duplications, column I is not totaled.

[2] The purpose of column II is to show the net number of issuers having securities admitted to dealing on all exchanges under the act. Each issuer is counted only once, and the elimination of the duplications in column I is made in column II in the order of the various bases for admission to dealing given above.

TABLE 19.—*Number of issuers having stocks only, bonds only, and both stocks and bonds admitted to dealings on all exchanges as of June 30, 1949*

| | Number of issuers | Percent of total issuers |
|---|---|---|
| 1. Issuers having only stocks admitted to dealings on exchanges | 2,134 | 81.1 |
| 2. Issuers having only bonds admitted to dealings on exchanges | 275 | 10.4 |
| 3. Issuers having both stocks and bonds admitted to dealings on exchanges | 224 | 8.5 |
| Total issuers | 2,633 | 00.0 |
| 4. Issuers having stocks admitted to dealings on exchanges (lines 1 plus 3) | 2,358 | 89.6 |
| 5. Issuers having bonds admitted to dealings on all exchanges (lines 2 plus 3) | 499 | 18.9 |

TABLE 20.—*For each exchange as of June 30, 1949, the number of issuers and securities, basis for admission of securities to trading, and the percentage of stocks and bonds admitted to trading on one or more other exchanges*

| Name of exchange | Total issuers | Total issues | Stocks | | | | | | | Bonds | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Basis of admission to trading [1] | | | | | Total stocks | Percent traded on 1 or more other exchanges | Basis of admission to trading [1] | | | | | Total bonds | Percent traded on 1 or more other exchanges |
| | | | R | X | U | XL | XU | | | R | X | U | XL | XU | | |
| Boston | 334 | 388 | 115 | | 249 | | | 364 | 86.5 | 24 | | | | | 24 | 62.5 |
| Chicago Board of Trade | 23 | 24 | 19 | | 5 | | | 24 | 54.2 | | | | | | | |
| Chicago Stock | 266 | 321 | 267 | 1 | 43 | | | 311 | 73.0 | 10 | | | | | 10 | 80.0 |
| Cincinnati | 79 | 97 | 61 | 1 | 30 | | | 92 | 51.1 | 4 | 1 | | | | 5 | 100.0 |
| Cleveland | 91 | 106 | 71 | | 35 | | | 106 | 71.7 | | | | | | | |
| Colorado Springs [2] | 14 | 15 | | | | 15 | | 15 | 26.7 | | | | | | | |
| Detroit | 183 | 193 | 110 | | 83 | | | 193 | 86.5 | | | | | | | |
| Honolulu [2] | 86 | 101 | | | | 56 | 37 | 93 | 24.7 | | | | 7 | 1 | 8 | |
| Los Angeles | 225 | 257 | 141 | 2 | 108 | | | 251 | 88.8 | 5 | | 1 | | | 6 | 100.0 |
| Minneapolis-St. Paul [2] | 12 | 15 | | | | 13 | 2 | 15 | 60.0 | | | | | | | |
| New Orleans | 13 | 20 | 3 | | 14 | | | 17 | 23.5 | 1 | | 2 | | | 3 | 33.3 |
| New York Curb | 761 | 910 | 439 | 2 | 363 | | | 804 | 27.3 | 19 | | 87 | | | 106 | 4.3 |
| New York Stock | 1,264 | 2,382 | 1,455 | 7 | | | | 1,462 | 49.1 | 916 | 4 | | | | 920 | 9.7 |
| Philadelphia-Baltimore | 432 | 541 | 99 | | 377 | | | 476 | 94.1 | 65 | | | | | 65 | 64.6 |
| Pittsburgh | 123 | 135 | 57 | | 77 | | | 134 | 84.3 | 1 | | | | | 1 | |
| Richmond [2] | 20 | 26 | | | | 26 | | 26 | 19.2 | | | | | | | |
| St. Louis | 44 | 52 | 44 | | 5 | | | 49 | 46.9 | 3 | | | | | 3 | 100.0 |
| Salt Lake | 96 | 97 | 93 | | 4 | | | 97 | 8.2 | | | | | | | |
| San Francisco Mining | 41 | 42 | 42 | | | | | 42 | 14.3 | | | | | | | |
| San Francisco Stock | 292 | 358 | 182 | 6 | 151 | | | 339 | 77.3 | 17 | | 2 | | | 19 | 100.0 |
| Spokane | 29 | 32 | 24 | | 8 | | | 32 | 28.1 | | | | | | | |
| Washington | 32 | 52 | 30 | 9 | 1 | | | 40 | 22.5 | 12 | | | | | 12 | 66.7 |
| Wheeling [2] | 17 | 19 | | | | 16 | 3 | 19 | 52.4 | | | | | | | |

[1] R—registered; X—temporarily exempted from registration; U—admitted to unlisted trading privileges on a registered national securities exchange; XL—listed on an exempted exchange; XU—admitted to unlisted trading privileges on an exempted exchange.

[2] These 5 exchanges are exempted from registration as a national securities exchange.

Issues exempted under sec. 3 (a) (12) of the act, such as obligations of the United States, States, counties, cities, and United States-owned corporations, are not shown in this table.

TABLE 21.—*Number of issues admitted to unlisted trading pursuant to clauses 2 and 3 of sec. 12 (f) of the Securities Exchange Act of 1934 and volume of transactions therein* [1]

[Stock volumes in shares; bond volumes in dollars of principal amount]

| Name of stock exchange | Number of issues | | Volume reported for the calendar year 1948 | Percent of total 1948 volume on each exchange in stocks and bonds respectively | Aggregate volume reported for the calendar years 1937 to 1948, inclusive |
|---|---|---|---|---|---|
| | Admitted total | Remaining June 30, 1949 | | | |
| Stocks pursuant to clause 2: | | | | | |
| Boston | 87 | [2] 81 | 602,213 | 13.9 | 4,222,013 |
| Chicago | 43 | 42 | 2,344,993 | 29.2 | 11,614,339 |
| Cincinnati | 30 | 30 | 155,191 | 40.4 | 836,230 |
| Cleveland | 35 | 35 | 127,132 | 22.8 | 860,997 |
| Detroit | 71 | 68 | 632,916 | 20.0 | 3,737,834 |
| Los Angeles | 67 | 65 | 1,030,366 | 10.2 | 4,574,971 |
| New York Curb | 6 | 2 | 987,320 | 1.2 | 6,676,310 |
| Philadelphia | 102 | [3] 94 | 545,692 | 14.1 | 2,889,093 |
| Pittsburgh | 67 | [4] 60 | 166,609 | 17.9 | 1,476,349 |
| St. Louis | 6 | [5] 5 | 46,294 | 14.7 | 95,708 |
| Salt Lake | 1 | | | | 35,633 |
| San Francisco Stock | 40 | [6] 38 | 667,362 | 5.8 | 3,364,257 |
| Washington | 1 | 1 | 5,862 | 2.7 | 5,862 |
| Wheeling | 6 | [7] 3 | 530 | [8] 5.5 | 16,094 |
| Total | 562 | 524 | 7,312,480 | | 40,405,690 |
| Stocks pursuant to clause 3: | | | | | |
| Chicago | 1 | 1 | | | 13,986 |
| New York Curb | 9 | 7 | 945,035 | 1.2 | 2,876,886 |
| Salt Lake | 1 | 1 | 6,713 | .04 | 6,713 |
| Total stocks | [9] 573 | [9] 533 | 8,264,228 | | 43,303,275 |
| Bonds pursuant to clause 2: | | | | | |
| Los Angeles | 1 | 1 | $16,000 | 100.0 | $16,000 |
| New York Curb | 3 | 1 | $1,156,000 | 2.0 | $14,111,000 |
| San Francisco Stock | 3 | 2 | $377,900 | 100.0 | $2,654,100 |
| Bonds pursuant to clause 3: | | | | | |
| New York Curb | 45 | 19 | $20,410,000 | 34.2 | $144,339,000 |
| Total bonds | [10] 52 | 23 | $21,959,900 | | $161,120,100 |

[1] For enactment of clauses 2 and 3 and procedure thereunder, see tenth annual report under "Unlisted Trading Privileges on Securities Exchanges." For volume reported in each of the years 1937 through 1944, see eleventh annual report, appendix table 18. For subsequent volumes see tables in subsequent reports.

[2] Only odd-lot trading is permitted in 6 of these issues.

[3] Only odd-lot trading is permitted in 1 of these issues.

[4] Only odd-lot trading is permitted in 3 of these issues.

[5] Only odd-lot trading is permitted in these 5 issues.

[6] San Francisco Stock Exchange figures include San Francisco Curb Exchange figures prior to the 1938 merger.

[7] Wheeling Stock Exchange is an exempted exchange. All other exchanges shown are registered exchanges.

[8] 40 of these issues had been removed to June 30, 1949.

[9] This figure includes duplications arising from admission of various issues to unlisted trading on more than 1 exchange. The net number of issues admitted as of June 30, 1949, was 271 pursuant to clause 2 and 7 pursuant to clause 3.

[10] 29 of these issues had been removed to June 30, 1949, principally on account of redemptions.

TABLE 22.—*Reorganization cases instituted under ch. X and sec. 77-B in which the Commission filed notice of appearance and in which the Commission actively participated during the fiscal year ended June 30, 1949*

PART 1.—DISTRIBUTION OF DEBTORS BY TYPE OF INDUSTRY

| Industry | Number of debtors | | Total assets | | Total indebtedness | |
|---|---|---|---|---|---|---|
| | Principal | Subsidiary | Amount (thousands of dollars) | Percent of grand total | Amount (thousands of dollars) | Percent of grand total |
| Agricultural | | | | | | |
| Mining and other extractive | 3 | 1 | $6,113 | .37 | $4,212 | .36 |
| Manufacturing | 12 | 2 | 37,590 | 2.25 | 24,953 | 2.15 |
| Financial and investment | 5 | 1 | 102,113 | 6.11 | 63,489 | 5.46 |
| Merchandising | 1 | 1 | 1,135 | .07 | 981 | .08 |
| Real Estate | 35 | 3 | 235,729 | 14.11 | 231,032 | 19.86 |
| Construction and allied | | | | | | |
| Transportation and communication | 11 | 8 | 389,872 | 23.34 | 360,067 | 30.96 |
| Service | 6 | | 24,914 | 1 49 | 13,837 | 1.19 |
| Utilities: light, power, and gas | 7 | 5 | 872,979 | 52 26 | 464,478 | 39.64 |
| Other: religious, charitable, etc. | | | | | | |
| Grand total | 80 | 21 | 1,670,445 | 100.00 | $1,163,049 | 100.00 |

PART 2.—DISTRIBUTION OF DEBTORS BY AMOUNT OF INDEBTEDNESS

| Range of indebtedness (thousands of dollars) | Number of debtors | | Total indebtedness | |
|---|---|---|---|---|
| | Principal | Subsidiary | Amount (thousands of dollars) | Percent of grand total |
| Less than 100 | 3 | 8 | $434 | 0.04 |
| 100–249 | 3 | 3 | 1,044 | .09 |
| 250–499 | 4 | 2 | 2,078 | .18 |
| 500–999 | 12 | 4 | 11,647 | 1.00 |
| 1,000–1,999 | 11 | 1 | 16,127 | 1.39 |
| 2,000–2,999 | 10 | 1 | 26,939 | 2.32 |
| 3,000–4,999 | 13 | | 50,454 | 4.34 |
| 5,000–9,999 | 8 | | 65,051 | 5.59 |
| 10,000–24,999 | 11 | | 177,603 | 15.27 |
| 25,000–49,999 | 1 | | 34,635 | 2.98 |
| Over 50,000 | 4 | 2 | 777,037 | 66.81 |
| Grand total | 80 | 21 | 1,163,049 | 100.00 |

TABLE 23.—*Reorganization proceedings in which the Commission participated during the fiscal year ended June 30, 1949*

| Debtor | District court | Proceedings instituted under | Petition | | Participation [1] | Securities and Exchange Commission notice of appearance filed |
|---|---|---|---|---|---|---|
| | | | Filed | Approved | | |
| Aireon Manufacturing Corp. | D. Kans. | Ch. X | Nov. 22, 1947 | Nov. 22, 1947 | Motion | Jan. 7, 1948 |
| American Acoustics, Inc. | D. N. J. | do | Mar. 21, 1947 | May 5, 1947 | do | Apr. 21, 1947 |
| American Fuel & Power Co. | E. D. Ky. | Sec. 77-B | Dec. 6, 1935 | Dec. 20, 1935 | Request | May 1, 1940 |
| Buckeye Fuel Co. | do | Ch. X | Nov. 28, 1939 | Nov. 28, 1939 | do | Do. |
| Buckeye Gas Service Co. | do | do | do | do | do | Do. |
| Carbreath Gas Co. | do | do | do | do | do | Do. |
| Inland Gas Distributing Co. | do | do | do | do | do | Do. |
| American Silver Corp. | S. D. Calif. | do | May 6, 1948 | May 7, 1948 | do | May 11, 1948 |
| Bankers Building, Inc. | N. D. Ill. | do | Sept. 21, 1943 | Oct. 5, 1943 | Motion | Oct. 19, 1943 |
| Bellevue-Stratford Co. | E. D. Pa. | Sec. 77-B | Oct. 31, 1936 | Oct. 31, 1936 | Request | Feb. 24, 1939 |
| Brand's Restaurant Control Corp. | S. D. N. Y. | Ch. X | Aug. 2, 1939 | Aug. 10, 1939 | Motion | Aug. 30, 1939 |
| Broadway Exchange Corp. | do | do | Apr. 9, 1942 | Apr. 9, 1942 | Request | Apr. 11, 1942 |
| Broadway Garage, Inc. | S. D. Ohio | do | Apr. 26, 1946 | Apr. 26, 1946 | Motion | June 24, 1946 |
| Calumet & South Chicago Railway Co. | N. D. Ill. | do | June 29, 1944 | Sept. 18, 1944 | do | Oct. 20, 1944 |
| Central States Electric Corp. | E. D. Va. | do | Feb. 26, 1942 | Feb. 27, 1942 | Request | Mar. 11, 1942 |
| Cenwest Corp. | S. D. N. Y. | do | Mar. 17, 1942 | Apr. 3, 1942 | Motion | Mar. 21, 1942 |
| Chicago City Railway Co. | N. D. Ill. | do | Nov. 27, 1939 | Sept. 18, 1944 | do | Oct. 20, 1944 |
| Chicago Railways Co. | do | do | Oct. 15, 1938 | do | do | Do. |
| Chicago & West Towns Railways, Inc. | do | do | June 30, 1947 | July 1, 1947 | do | July 24, 1947 |
| Childs Co. | S. D. N. Y. | do | Aug. 26, 1943 | Aug 27, 1943 | do | Aug. 26, 1943 |
| Congress & Senate Co. | E. D. Mo. | do | Nov. 20, 1944 | Nov. 20, 1944 | do | Jan. 31, 1945 |
| Cosmos Records, Inc. | E. D. N. Y. | do | Jan. 27, 1947 | Jan. 27, 1947 | do | Jan. 30, 1947 |
| Cosmopolitan Records, Inc. | do | do | do | do | do | Do. |
| Automatic Industries, Inc. | do | do | do | do | do | Do. |
| Dorbank Corp. | do | do | do | do | do | Do. |
| Diversey Hotel Corp. | N. D. Ill. | do | May 29, 1947 | | Request | June 13, 1947 |
| Drake Stadium & Field House Corp. | S. D. Iowa | do | Dec. 27, 1947 | Dec. 27, 1947 | do | Feb. 16, 1948 |
| 80 John Street Corp. | S. D. N. Y. | do | Sept. 14, 1945 | Sept. 14, 1945 | Motion | Oct. 8, 1945 |
| Equitable Office Building Corp. | do | do | Apr. 10, 1941 | Apr. 10, 1941 | do | Apr. 14, 1941 |
| Federal Facilities Realty Trust. | N. D. Ill. | Sec. 77-B | Dec. 26, 1934 | Apr. 25, 1935 | do | Oct. 29, 1940 |
| Franklin Building Co. | E. D. Wisc. | Ch. X | May 5, 1947 | May 5, 1947 | do | Aug. 18, 1947 |
| General Public Utilities Corp. (formerly Associated Gas & Electric Co.). | S. D. N. Y. | do | Jan. 10, 1940 | Jan. 10, 1940 | do | Jan. 15, 1940 |
| Associated Gas & Electric Corp. | do | do | do | do | do | Do. |
| Adolf Gobel, Inc. | do | do | Sept. 29, 1941 | Sept. 30, 1941 | do | Oct. 1, 1941 |
| Garmott Corp. | do | do | Mar. 1, 1946 | Mar. 4, 1946 | do | Mar. 21, 1946 |
| Hotel Martin Co. of Utica. | N. D. N. Y. | Sec. 77-B | June 6, 1935 | June 19, 1935 | do | June 24, 1939 |
| Hotels Majestic, Inc. | E. D. Pa. | do | Oct. 30, 1936 | Oct. 31, 1936 | do | Feb. 26, 1942 |
| Industrial Office Building Corp. | D. N. J. | Ch. X | Oct. 3, 1947 | Oct. 3, 1947 | do | Oct. 10, 1947 |
| Inland Gas Corp. | E. D. Ky. | Sec. 77-B | Oct. 14, 1935 | Nov. 1, 1935 | Request | Mar. 28, 1939 |

| | | | | | | |
|---|---|---|---|---|---|---|
| International Mining & Milling Co | D. Nev | Ch. X | June 29, 1939 | June 29, 1939 | Motion | Aug. 7, 1939 |
| Mount Gaines Mining Co | do | do | do | do | do | Do. |
| International Power Securities Corp | D. N. J | do | Feb. 24, 1941 | Feb. 24, 1941 | do | Mar. 3, 1941 |
| International Railway Co | W. D. N. Y | do | July 28, 1947 | July 28, 1947 | do | Aug. 4, 1947 |
| Isham Garden Apartments | S. D. N. Y | do | Apr. 7, 1943 | Apr. 8, 1943 | do | Apr. 13, 1943 |
| Keeshin Freight Lines, Inc | N. D. Ill | do | Jan. 31, 1946 | Jan. 31, 1946 | Request | Apr. 25, 1949 |
| Keeshin Motor Express Co., Inc | do | do | do | do | do | Do. |
| Seaboard Freight Lines, Inc | do | do | do | do | do | Do. |
| National Freight Lines, Inc | do | do | do | do | do | Do. |
| Kellett Aircraft Corp | E. D. Pa | do | Oct. 18, 1946 | Oct. 18, 1946 | Motion | Dec. 4, 1946 |
| Kentucky Fuel Gas Corp | E. D. Ky | Sec. 77-B | Oct. 25, 1935 | Nov. 1, 1935 | Request | Mar. 28, 1939 |
| Keystone Realty Holding Co | W. D. Pa | Ch. X | Feb. 10, 1939 | Feb. 11, 1939 | do | Mar. 8, 1939 |
| Lorraine Castle Apartments Building Corp | N. D. Ill | do | Apr. 7, 1942 | May 5, 1942 | do | July 22, 1943 |
| Lower Broadway Properties, Inc | S. D. N. Y | do | Nov. 24, 1942 | Nov. 24, 1942 | Motion | Dec. 2, 1942 |
| Majestic Radio & Television Corp | N. D. Ill | do | Mar. 31, 1948 | June 24, 1948 | Request | Sept. 15, 1948 |
| Manufacturers Trading Corp | N. D. Ohio | do | Oct. 15, 1948 | Oct. 15, 1948 | Motion | Oct. 25, 1948 |
| Manufacturers Discount | do | do | do | do | do | Do. |
| Moorhead Knitting Co | M. D. Pa | do | June 19, 1941 | June 24, 1941 | do | Aug. 6, 1941 |
| National Realty Trust | N. D. Ill | Sec. 77-B | Dec. 26, 1934 | Apr. 25, 1935 | do | Oct. 29, 1940 |
| New Union Building Co | E. D. Mich | Ch. X | May 5, 1949 | May 6, 1949 | do | June 1949 |
| Neville Island Glass Co., Inc | W. D. Pa | do | Mar. 1, 1948 | Mar. 1, 1948 | do | Mar. 17, 1948 |
| Norwalk Tire & Rubber Co | D. Conn | do | May 20, 1949 | May 20, 1949 | do | June 8, 1949 |
| Novo Engine Co | E.D. Mich | do | Mar. 14, 1949 | Mar. 14, 1949 | Request | Apr. 26, 1949 |
| P. R. Holding Corp | S. D. N. Y | do | Apr. 24, 1942 | May 21, 1942 | Motion | May 21, 1942 |
| Philadelphia & Western Railway Co | E. D. Pa | Sec. 77-B | July 2, 1934 | July 3, 1934 | do | Dec. 17, 1940 |
| Pittsburgh Railways Co | W. D. Pa | do | May 10, 1938 | May 10, 1938 | Request | Jan. 4, 1939 |
| Pittsburgh Motor Coach Co | do | do | do | do | do | Do. |
| Pittsburgh Terminal Coal Corp | do | Ch. X | Dec. 4, 1939 | Jan. 2, 1940 | do | Jan. 6, 1940 |
| Plankinton Building Co | E. D. Wis | do | June 25, 1940 | June 27, 1940 | do | July 16, 1940 |
| Polar Frosted Foods, Inc | W. D. Wash | do | May 21, 1947 | May 23, 1947 | do | June 19, 1947 |
| Portland Electric Power Co | D. Oreg | do | Apr. 3, 1939 | Apr. 3, 1939 | do | Apr. 16, 1939 |
| Pratts Fresh Frozen Foods, Inc | D. N. J | do | Apr. 13, 1948 | Apr. 13, 1948 | Motion | May 29, 1948 |
| Pratts Distributors, Inc | do | do | May 17, 1948 | May 17, 1948 | do | Do. |
| Quaker City Cold Storage Co | E. D. Pa | do | Dec. 17, 1941 | Feb. 13, 1942 | do | Jan. 28, 1942 |
| R. A. Security Holding, Inc | E. D. N. Y | do | May 7, 1942 | July 31, 1942 | do | May 22, 1942 |
| Realty Associates Securities Corp | do | do | Sept. 28, 1943 | Sept. 28, 1943 | do | Oct. 4, 1943 |
| Espade Realty Corp | do | do | Mar. 17, 1944 | Mar. 20, 1944 | do | Apr. 19, 1944 |
| Savannah-Sabula Bridge Co | N. D. Ill | do | May 24, 1946 | May 25, 1946 | do | July 5, 1946 |
| Silesian American Corp | S. D. N. Y | do | July 29, 1941 | July 29, 1941 | do | Aug. 1, 1941 |
| Solar Manufacturing Co., Inc | D. N. J | do | Dec. 14, 1948 | Dec. 14, 1948 | do | Dec. 27, 1948 |
| South Bay Consolidated Water Co., Inc | S. D. N. Y | do | Apr. 26, 1949 | Apr. 26, 1949 | do | May 23, 1949 |
| Sponsor Realty Co | do | do | July 17, 1942 | Mar. 19, 1943 | do | Sept. 25, 1942 |
| Third Avenue Transit Corp | do | do | Oct. 25, 1948 | Oct. 25, 1948 | do | Jan. 3, 1949 |
| 32-36 North State Street Building Corp | N. D. Ill | do | Mar. 14, 1944 | Apr. 24, 1944 | Request | June 7, 1944 |
| 32 West Randolph Corp | do | do | Apr. 15, 1946 | | do | May 20, 1946 |
| 322 Eight Avenue Corp | S. D. N. Y | do | Dec. 3, 1945 | Dec. 4, 1945 | Motion | Dec. 18, 1945 |
| Trinity Buildings Corp. of New York | do | do | Jan. 18, 1945 | Jan. 18, 1945 | do | Feb. 19, 1945 |
| 263 West 38th Street Corp | do | do | Dec. 26, 1940 | Mar. 5, 1941 | do | Jan. 29, 1941 |
| U. S. Realty & Improvement Co | do | do | Feb. 1, 1944 | Feb. 1, 1944 | Request | Feb. 7, 1944 |

See footnote at end of table.

TABLE 23.—*Reorganization proceedings in which the Commission participated during the fiscal year ended June 30, 1949*—Continued

| Debtor | District court | Proceedings instituted under | Petition | | Participation [1] | Securities and Exchange Commission notice of appearance filed |
|---|---|---|---|---|---|---|
| | | | Filed | Approved | | |
| Van Rensselaer Estates, Inc | S. D. N. Y | Sec. 77-B | July 12, 1935 | July 12, 1935 | Motion | July 22, 1941 |
| Van Sweringen Corp | N. D. Ohio | do | Oct. 13, 1936 | Oct. 15, 1936 | do | Jan. 23, 1940 |
| Cleveland Terminal Buildings Co | do | do | do | do | do | Do. |
| Wade Park Manor Corp | do | Ch. X | June 28, 1947 | June 30, 1947 | do | July 28, 1947 |
| Warner Sugar Corp | S. D. N. Y | do | June 7, 1940 | July 9, 1940 | Request | July 9, 1940 |
| Washington Gas & Electric Co | do | do | Sept. 29, 1941 | Sept. 29, 1941 | Motion | Oct. 14, 1941 |
| Westover, Inc | do | do | Mar. 18, 1943 | Mar. 24, 1943 | do | Mar 24, 1943 |
| Wilkes Barre Railways Corp | M. D. Pa | do | July 1, 1943 | July 1, 1943 | do | July 15, 1943 |
| Wilkes Barre Railway Co | do | do | do | do | do | Do. |
| Wilkes Barre Trackless Trolley Co | do | do | do | do | do | Do. |
| Wyoming Valley Autobus Co | do | do | do | do | do | Do. |
| Wyoming Valley Public Service Co | do | do | do | do | do | Do. |
| Windsor Wilson Liquidation Trust | N. D. Ill | do | Mar. 18, 1941 | May 28, 1941 | Request | June 12, 1941 |

[1] "Request" denotes participation at the request of the judge; "motion" refers to participation upon approval by the judge of the Commission's motion to participate in proceedings.

TABLE 24.—*Summary of cases instituted in the courts by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940*

| Types of cases | Total cases instituted up to end of 1949 fiscal year | Total cases closed up to end of 1949 fiscal year | Cases pending at end of 1949 fiscal year | Cases pending at end of 1948 fiscal year | Cases instituted during 1949 fiscal year | Total cases pending during 1949 fiscal year | Cases closed during 1949 fiscal year |
|---|---|---|---|---|---|---|---|
| Actions to enjoin violations of the above acts | 538 | 520 | 18 | 17 | 18 | 35 | 17 |
| Actions to enforce subpenas under the Securities Act and the Securities Exchange Act | 49 | 47 | 2 | 4 | ---------- | 4 | 2 |
| Actions to carry out voluntary plans to comply with sec. 11 (b) of the Holding Company Act | 71 | 61 | 10 | 13 | 6 | 19 | 9 |
| Miscellaneous actions | 12 | 10 | 2 | 2 | ---------- | 2 | ---------- |
| Total | 670 | 638 | 32 | 36 | 24 | 60 | 28 |

TABLE 25.—*Statistical summary of all cases instituted against the Commission, cases in which the Commission participated as intervenor or amicus curiae, and reorganization cases on appeal under ch. X in which the Commission participated—pending during the fiscal year ended June 30, 1949*

| Types of cases | Total cases instituted up to end of 1949 fiscal year | Total cases closed up to end of 1949 fiscal year | Cases pending at end of 1949 fiscal year | Cases pending at end of 1948 fiscal year | Cases instituted during 1949 fiscal year | Total cases pending during 1949 fiscal year | Cases closed during 1949 fiscal year |
|---|---|---|---|---|---|---|---|
| Actions to enjoin enforcement of Securities Act, Securities Exchange Act and Public Utility Holding Company Act with the exception of subpenas issued by the Commission | 64 | 64 | ---------- | ---------- | ---------- | ---------- | ---------- |
| Actions to enjoin enforcement of or compliance with subpenas issued by the Commission | 8 | 8 | ---------- | ---------- | ---------- | ---------- | ---------- |
| Petitions for review of Commission's orders by circuit court of appeals under the various acts administered by the Commission | 147 | 140 | 7 | 8 | 5 | 13 | 6 |
| Miscellaneous actions against the Commission or officers of the Commission and cases in which the Commission participated as intervenor or amicus curiae | 125 | 101 | 24 | 18 | 13 | 31 | 7 |
| Appeal cases under ch. X in which the Commission participated | 97 | 93 | 4 | 3 | 5 | 8 | 4 |
| Total | 441 | 406 | 35 | 29 | 23 | 52 | 17 |

TABLE 26.—*Injunctive proceedings brought by the Commission, under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Advisers Act of 1940, and the Investment Company Act of 1940, which were pending during the fiscal year ended June 30, 1949*

| Name of principal defendant | Number of defendants | United States District Court | Initiating papers filed | Alleged violations | Status of case |
|---|---|---|---|---|---|
| Aldred Investment Trust | 8 | Massachusetts | May 19, 1944 | Sec. 36, Investment Company Act of 1940. | Judgment June 19, 1946, directing receivers to liquidate and distribute assets of Aldred Investment Trust. Final decree May 31, 1949, allowing receivers' final accounting, discharging receivers and terminating receivership Closed. |
| Aloha Oil Co | 2 | Western District of Oklahoma. | June 28, 1949 | Sec. 5 (a), 1933 act | Injunction by consent June 30, 1949. Pending. |
| American Silver Corp | 3 | Southern District of California. | Apr. 23, 1948 | Secs. 5 (a) (1) and (2), 1933 act | Complaint dismissed May 18, 1949, on motion of the Commission. Closed. |
| Atlas Investment Co | 3 | Western District of Missouri. | Apr. 7, 1948 | Secs. 10 (b), 15 (a), 15 (c) (1), and 17 (a), 1934 Act. | Injunction by consent June 24, 1948. Closed. |
| Banner, Ben Clinton | 1 | Northern District of Texas. | Oct. 3, 1947 | Secs. 17 (a) (1), (2), and (3), 1933 act. | Injunction by consent Dec. 24, 1948. Closed. |
| Burress, John Rogers | 2 | do | Aug. 16, 1948 | Sec. 5 (a), 1933 act | Injunction by consent Aug. 16, 1948. Closed. |
| Caplan, Gabriel | 6 | Southern District of New York. | Feb. 15, 1949 | Sec. 17 (a) (1), 1933 act; sec. 10 (b) and rule X-10B-5, 1934 act. | Injunction by consent as to 1 defendant Mar. 10, 1949. Injunction by consent as to 4 defendants May 3, 1949. Action against defendant, Caplan, discontinued on May 17, 1949, because of his death. Pending. |
| H. P. Carver Corp | 1 | Massachusetts | Sept. 24, 1948 | Secs. 10 (b) and 15 (c) (3) and Rules X-10B-5 and X-15C3-1, 1934 act. | Injunction by consent Sept. 27, 1948. Receiver appointed. Pending. |
| Cuozzo, James M., dba Cuvell & Co. | 1 | do | June 7, 1949 | Secs. 5 (a) and 17 (a), 1933 act | Temporary restraining order entered June 7, 1949. Pending. |
| Delker, Frederick G | 1 | Southern District of New York. | Oct. 25, 1948 | Secs. 5 (a) (1) and (2), 1933 act | Preliminary injunction entered Nov. 8, 1948. Final judgment by the court Dec. 10, 1948 Closed. |
| Derryberry, John | 1 | Western District of Louisiana. | May 4, 1948 | Sec. 5 (a), 1933 act; sec. 15 (a), 1934 act. | Injunction by consent May 4, 1948. Closed. |
| Dixieland Petroleum Corp | 3 | Southern District of New York. | Mar. 11, 1948 | Sec. 5 (a), 1933 act | Injunction by consent Mar. 26, 1948, against 2 defendants. Pending. |
| Ellenburger Exploration Enterprises, Inc. | 2 | Northern District of Texas. | May 31, 1949 | Secs. 5 (a) and 17 (a), 1933 act | Temporary restraining order May 31, 1949. Injunction by consent June 8, 1949. Pending. |
| Engineered Production, Inc. | 2 | Northern District of Oklahoma. | June 9, 1948 | Sec. 5 (a), 1933 act | Injunction by consent June 9, 1948. Closed. |
| Ferrel Industries, Inc | 2 | Northern District of California. | Aug. 18, 1948 | Secs. 5 (a) (1) and (3), 1933 act | Final judgment by default against defendant company Jan. 26, 1949. Temporary restraining order against remaining defendant Jan. 27, 1949. Temporary injunction June 6, 1949. Pending. |
| Fidelity Agency, Inc | 5 | Colorado | Nov. 2, 1943 | Secs. 17 (a) (1), (2) and (3), 1933 act. | Injunction by consent Jan. 4, 1944, as to 4 defendants. Dismissed as to remaining defendant. Closed. |
| Funke, Felix C | 1 | Eastern District of Washington. | Aug. 23, 1948 | Secs. 5 (a) and 17 (a), 1933 act | Injunction by consent Aug. 23, 1948. Closed. |

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| W. J. Howey Co. | 2 | Southern District of Florida. | May 16, 1944 | Sec. 5 (a), 1933 act | Supreme Court on May 27, 1946, reversed ruling of CA-5 which had affirmed district court ruling denying injunction. Petition for rehearing denied Oct. 14, 1946 (328 U. S. 293). Closed. |
| Kirby, Josiah Marshall | 1 | Northern District of Ohio. | July 15, 1948 | Sec. 15 (a), 1934 act | Preliminary injunction entered Aug. 31, 1948. Final judgment by the court Apr. 28, 1949. Pending. |
| Landberg, John Noah | 1 | Southern District of New York. | Feb. 4, 1949 | Sec. 10 (b) and Rule X-10B-5 (1), 1934 act. | Injunction by consent Feb. 4, 1949. Closed. |
| Lucky Friday Extension Mining Co. | 6 | Eastern District of Washington. | Mar. 18, 1948 | Secs. 5 (a) (1) and (2), 1933 act | Preliminary injunction against all defendants Mar. 30, 1948. Pending. |
| May, Jim | 1 | Southern District of Texas. | Mar. 23, 1949 | Secs. 5 (a) and 17 (a), 1933 act | Injunction by consent Mar. 24, 1949. Closed. |
| Michel, Edmond | 2 | Northern District of Illinois. | June 11, 1948 | do | Injunction by consent June 30, 1948. Closed. |
| Muchow, William Mark | 2 | do | Nov. 19, 1948 | Sec. 5 (a), 1933 act | Injunction by consent Dec. 7, 1948. Closed. |
| Oil Traders Bureau, Inc. | 2 | District of Kansas | June 20, 1949 | Secs. 5 (a)(1) and 17 (a) (1), (2) and (3), 1933 act. | Injunction by consent June 20, 1949. Pending. |
| Okin, Samuel | 1 | Southern District of New York. | Oct. 4, 1944 | Sec. 14 (a), 1934 act; sec. 12 (e), 1935 act. | Preliminary injunction Oct. 11, 1944. Notice of appeal filed Oct. 13, 1944. Action dismissed for lack of prosecution. Closed. |
| Pilot Silver-Lead Mines, Inc. | 6 | Eastern District of Washington. | June 3, 1948 | Secs. 5 (a) (1) and (2), 1933 act | Preliminary injunction entered June 11, 1948, against 4 defendants. Pending. |
| Ramsey, Cleo F. | 1 | Western District of Washington. | Apr. 8, 1949 | Sec. 17 (a), 1933 act | Pending. |
| Rose, Charles S. | 1 | Southern District of Indiana. | Apr. 13, 1949 | Secs. 10 (b) and 15 (c) (1), 1934 act; secs. 17 (a) (2) and (3), 1933 act. | Injunction by consent Apr. 13, 1949. Pending. |
| Sound Cities Gas & Oil Co., Inc. | 1 | Western District of Washington. | Oct. 10, 1945 | Sec. 5 (a), 1933 act | Action to enjoin sale of oil and gas interests in violation of the registration provisions of the 1933 act. Pending. |
| Todd, Frank Payson | 1 | Massachusetts | Nov. 14, 1946 | Sec. 206 (2), Investment Advisers Act of 1940. | Final judgment by consent Nov. 14, 1946. Defendant moved to vacate consent judgment. Action dismissed pursuant to stipulation on Oct. 4, 1948. Closed. |
| Topping, John A. | 1 | Southern District of New York. | Apr. 29, 1949 | Sec. 14 (a) and Reg. X-14, 1934 | Plaintiff's motion for preliminary injunction and defendant's motion to dismiss complaint denied June 14, 1949. Pending. |
| Walters, John K., & Co. Inc. | 2 | Delaware | May 10, 1949 | Secs. 15 (c) (1), 17 (a), 20 (b), and rules X-15C1-2 and X-17A-3, 1934 act. | Preliminary injunction June 20, 1949, as to Sec. 17 (a) and Rule X-17A-3 of 1934 act. Pending. |
| Wimer, Nye A. | 1 | Western District of Pennsylvania. | Oct. 29, 1947 | Secs. 5 (a) (1), (2) and 17 (a) (2), 1933 act. | Temporary restraining order entered Oct. 29, 1947. Preliminary injunction entered Nov. 18, 1947. Defendant's motion to dismiss complaint denied Mar. 3, 1948. Pending. |
| Wix, Ernest T. | 4 | Northern District of Illinois. | Oct. 18, 1944 | Secs. 5 (a) and 17 (a), 1933 act | Injunction by consent as to 3 defendants Dec 1, 1944. Hearing on motion for preliminary injunction as to remaining defendant pending. Pending. |

TABLE 27.—*Indictments returned for violation of the acts administered by the Commission, the Mail-Fraud Statute (sec. 338, title 18, U. S. C.), and of the related Federal statutes (where the Commission took part in the investigation and development of the case) which were pending during the 1949 fiscal year*

| Name of principal defendant | Number of defendants | United States District Court | Indictment returned | Charges | Status of case |
|---|---|---|---|---|---|
| Alfred, Claude Cleave (Missouri Oil & Mineral Co.) | 1 | Eastern District of Tennessee. | Dec. 6, 1948 | Sec. 17 (a) (1) of 1933 act; Sec. 1341, title 18, U. S. C. | Defendant pleaded not guilty on April 25, 1949. Pending. |
| Allen, James A. (Lucky Friday Extension Mining Co.). | 3 | Eastern District of Washington. | May 6, 1948 | Sec. 17 (a) of 1933 act; secs. 88 and 338, title 18, U. S. C. | Keane pleaded nolo contendere to all counts of the indictment and Grismer pleaded nolo contendere to conspiracy count only, all other counts dismissed as to him. Allen found guilty by jury on conspiracy count and acquitted on all other counts. Pending. |
| Austin, Benjamin F. (B. F. Austin & Co., Inc.) | 1 | Eastern District of Michigan. | Oct. 19, 1948 | Sec. 5 (a) (2) of 1933 act | Defendant pleaded nolo contendere on Oct. 19, 1948, and was sentenced to 1 year and 1 day and fined $2,500. Prison sentence suspended and defendant placed on probation for 2 years. |
| Baker, Henry L. | 1 | Southern District of California. | Mar. 25, 1939 | Secs. 17 (a) (1) and (3) of 1933 act; sec. 338, title 18, U. S. C. | Defendant not apprehended. Pending. |
| Bank, Harry W. (Cosmo Records, Inc.) | 9 | Southern District of New York. | Dec. 6, 1948 | Sec. 17 (a) (1) of 1933 act; secs. 338 (now sec. 1341) and 88 (now sec. 371), title 18, U. S. C. | 7 defendants pleaded not guilty and were released on bond. 2 remaining defendants, Cosmo Records, Inc. and E. F. Gillespie & Co., Inc., have not entered a plea. Pending. |
| Bauer, Kenneth Leo | 3 | District of New Jersey. | Mar. 24, 1948 | Sec. 17 (a) (1) of 1933 act | Bauer pleaded guilty on Apr. 12, 1948, and was sentenced to 1 year and 1 day imprisonment. Dawes pleaded guilty on Feb. 2, 1949, and was sentenced to 15 years imprisonment. Del Tufo pleaded not guilty. Pending. |
| Boyer, James F. | 2 | Southern District of Florida. | Feb. 23, 1945 | Sec. 17 (a) (1) of 1933 act; secs. 88 and 338, title 18, U. S. C. | Defendant Boyer reported deceased. Reining found guilty on all counts on May 1, 1947, and sentenced to 6 years imprisonment. On Apr. 20, 1948, CA-5 affirmed judgment on 4 counts and reversed on 2 counts. Defendant's sentence reduced from 6 to 4 years. Certiorari denied Oct. 11, 1948. |
| Broadley, Albert E. (Hudson Securities). | 5 | Western District of New York. | July 17, 1947 | Secs. 5 (a) (1), (2) and 17 (a) (1) of 1933 act; secs. 88 and 338, title 18, U. S. C. | Pending. |
| Bronson, Edmond B. (Bagdad Copper Corp.). | 8 | Southern District of New York. | Mar. 8, 1939 | do | 5 defendants previously convicted and 1 acquitted. Case dismissed as to 1 and pending as to Thomas who was granted severance. |
| Cactus Oil Co., Inc. | 3 | District of Delaware | Jan. 21, 1948 | Secs. 5 (a) and 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | Husson withdrew plea of not guilty and pleaded guilty as to counts 1 and 5. Anderson & Cactus Oil Co., Inc., pleaded not guilty. Anderson posted $1,000 bond. Pending. |

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| Cannon, William J. (Graco Oil & Refining Co.). | 1 | District of Colorado | Oct. 11, 1948 | Secs. 5 (a) (1) and 17 (a) (1) of 1933 act; sec. 338 (now sec. 1351) title 18, U. S. C. | On Apr. 25, 1949, defendant withdrew his previous plea of not guilty and entered a plea of nolo contendere as to 2 mail fraud counts, other counts dismissed. Court imposed a fine of $1,000 on each of the 2 counts and the defendant also returned to the Graco Oil & Refining Co. 100,000 shares of its stock. |
| DePalma, Albert Edward (A. E. DePalma & Co.). | 1 | Northern District of Ohio. | June 11, 1947 | Secs. 5 (a) (1), (2) and 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | DePalma apprehended Dec. 17, 1947, and released on $50,000 bond, pending his arraignment on Jan. 26, 1948, in the United States District Court in Cleveland, Ohio. The defendant's bail was forfeited, when he failed to appear in court on that date and he is presently a fugitive. Pending. |
| Diaz, Gabriel (Plaquemines Land Co.). | 13 | Eastern District of Louisiana. | Sept. 4, 1942 | Sec. 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | 9 defendants convicted and sentenced to terms ranging from 5 years and 1 day to 8 years. CA-5 affirmed convictions July 10, 1946. Certiorari denied Oct. 28, 1946. Keifer convicted on nolo contendere plea, Nov. 22, 1948, and sentenced to pay fine of $500. Second indictment nolle prossed as to both defendants on May 28, 1948. Case dismissed as to Manzella, Bryce, and Adler, remaining defendants. |
| Duemling, Gerhardt A. (Steel Conversion Corp.). | 1 | District of Nevada | Oct. 26, 1948 | Sec. 17 (a) (1) of 1933 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Defendant pleaded nolo contendere to all counts of the indictment and was sentenced on Jan. 1, 1949, to a 3 year prison term, to run concurrently with a 3-year sentence imposed upon him in connection with 2 other indictments. |
| Elliott, N. James | 1 | Southern District of New York. | Sept. 29, 1948 | Sec. 17 (a) (1) and (2) of 1933 act; sec. 338, title 18, U. S. C. | Pending. |
| Epstein, Alfred (Pfeiffer Brewing Co.). | 8 | Eastern District of Michigan. | June 7, 1946 | Sec. 338 title 18, U. S. C | All defendants found guilty on May 15, 1948. CA-6 on Apr. 11, 1949, reversed convictions of all defendants and directed their acquittal. |
| Finch, Galen B. (Finch Oil Co.) | 1 | Southern District of California. | Apr. 13, 1949 | Sec. 17 (a) (1) of 1933 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Defendant pleaded not guilty on June 6, 1949, to all 15 counts of the indictment. Released on $5,000 bond. Pending. |
| Freeman, Mark A. (Consolidated Associates, Inc.). | 13 | Northern District of Illinois. | Feb. 26, 1943 | Secs. 88 and 338, title 18, U. S. C. | 7 defendants previously convicted and sentenced, 2 acquitted, 2 dismissed and 1 deceased. On Apr. 15, 1948, CA-7 affirmed conviction of Freeman. Certiorari denied on Oct. 11, 1948. |
| Hancock, William A | 1 | Southern District of New York. | Apr. 27, 1949 | Sec. 10 (b), rule X-10B-5 of 1934 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Pending. |
| Haynes, Melvan D. (Benners Owens & Co.). | 7 | Eastern District of Michigan. | Oct. 19, 1936 | Secs. 17 (a) (1) and (2) of 1933 act; secs. 88 and 338, title 18, U. S. C. | 5 defendants have been previously convicted. Indictment nolle prossed as to Brooks on Nov. 29, 1946. Pending as to Fraino, the remaining defendant. |
| Herck, John | 6 | do | July 30, 1942 | Sec. 17 (a) (1) of 1933 act; secs. 88 and 338, title 18, U. S. C. | Herck entered plea of not guilty on Feb. 13, 1942, and posted $7,000 bond. Remaining defendants are fugitives. Pending as to all defendants. |
| Do | 1 | do | do | Sec. 15 (a) of 1934 act | |
| Do | 5 | do | do | Secs. 5 (a) (1) and (2) of 1933 act, sec. 88, title 18, U. S. C. | |

TABLE 27.—*Indictments returned for violation of the acts administered by the Commission, the Mail-Fraud Statute (sec. 338, title 18, U. S. C.), and other related Federal statutes (where the Commission took part in the investigation and development of the case) which were pending during the 1949 fiscal year*—Continued

| Name of principal defendant | Number of defendants | United States District Court | Indictment returned | Charges | Status of case |
|---|---|---|---|---|---|
| Hildebrand, Glen Jerome (Hildebrand-Osborne & Co.). | 3 | Southern District of Illinois. | June 9, 1945 | Secs. 15 (c) (1), 8 (c) and 17 (a) of 1934 act; secs. 88 and 338, title 18, U. S. C. | Hildebrand entered a plea of guilty and on Mar. 19, 1946, was placed on 5-year probation, on the condition that restitution be made in the amount of $3,000. Frank was found guilty on June 21, 1948, and placed on probation for 5 years and ordered to make restitituon in the amount of $1,600. Case pending as to the remaining defendant Hildebrand-Osborne & Co. |
| Hill, Edward M | 12 | Northern District of Ohio. | May 21, 1940 | Secs. 88 and 338, title 18, U. S. C. | Eleven defendants convicted and sentenced. Dismissed as to remaining defendant, Gould, on Apr. 18, 1949. |
| Knowles, Noel H. (LaSalle Yellowknife Mines, Ltd.). | 3 | Eastern District of New York. | Oct. 1, 1946 | Secs. 5 (a) (1), (2) and 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | Knowles pleaded not guilty on June 21, 1948, and released on $25,000 bail. Knowles' bond forfeited Nov. 1, 1948. Case dismissed as to Newson on Mar. 15, 1949. Pending. |
| Low, Harry (Trenton Valley Distillers Corp.). | 2 | Eastern District of Michigan | Feb. 3, 1939 | Sec. 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | Case pending as to Low and Hardie, who are fugitives. |
| Martin, Clarence Everett | 1 | Northern District of Illinois. | Feb. 27, 1948 | Sec. 10 (b) of 1934 act and rule X-10B-5 thereunder; sec. 338, title 18, U. S. C. | Defendant withdrew previous plea of not guilty and pleaded nolo contendere to all counts and on Apr. 15, 1949, was placed on probation for 1 year. |
| May, Herbert R. (Washington Chemical & Salt Co., et al.). | 2 | Western District of Washington. | Aug. 26, 1948 | Secs. 5 (a) and 17 (a) (1) of 1933 act; secs. 338 and 88, title 18, U. S. C. | May was acquitted by jury on 8 counts. Jury was unable to agree on remaining count (sec. 5 (a) of 1933 act) and this count was dismissed by United States Attorney. Daly was permitted to withdraw his previous plea of nolo contendere and entered a plea of not guilty. Pending. |
| McElfresh, Elden Adam | 1 | Northern District of Ohio. | Oct. 21, 1948 | Sec. 17 (a) (1) of 1933 act | On Feb. 21, 1949, defendant found guilty after trial and sentenced to 2 years, on each of the 4 counts to run concurrently and fined $3,000. |
| E. M. McLean & Co. (Devon Gold Mines, Ltd.). | 2 | Eastern District of Michigan. | Oct. 21, 1941 | Sec. 15 (a) of 1934 act | Case pending as to first indictment. Kaufman and Niditch were convicted after trial on second and third indictments. Kaufman's conviction affirmed on appeal by CA-6 on July 14, 1947. |
| Do | 7 | do | do | Secs. 5 (a) (1) and (2) of 1933 act; sec. 88, title 18, U. S. C. | |
| Do | 12 | do | do | Secs. 17 (a) (1) and (2) of 1933 act; secs. 88 and 338, title 18, U. S. C. | Certiorari denied Mar. 15, 1948. Kaufman's sentence reduced from 7 years and $1,000 fine to 2 years on May 10, 1948. Lewis pleaded guilty to 1 count in the second and third indictments and was fined. Pending as to 9 persons and firms, remaining defendants on the second and third indictments. |
| Moore, Lloyd T. (Fitsum Mining Co.). | 3 | District of Montana | June 18, 1943 | Secs. 5 (a) (1), (2) and 17 (a) (1) of 1933 act; secs. 88 and 338, title 18, U. S. C | Indictment dismissed as to Collier and Treicher on Mar. 23, 1946. Pending as to Moore, who has not been apprehended. |
| Neely, Thomas A | 1 | Northern District of Illinois | Aug. 30, 1946 | Secs. 5 (a) (1), (2) and 17 (a) of 1933 act; sec. 338, title 18, U. S. C. | Neely found guilty and sentenced to 3 years on Feb. 10, 1948. Appeal dismissed on Oct. 11, 1948. |
| Do | 1 | do | Nov. 21, 1946 | do | |

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| Nemec, F. E. (Ronaele Engineering Co., Ltd.). | 7 | Eastern District of Washington. | Jan. 19, 1948 | Sec. 17 (a) of 1933 act; secs. 88 and 338, title 18 U. S. C. | All defendants arraigned and pleaded not guilty. Rector withdrew his not guilty plea and pleaded guilty to conspiracy count at opening of trial. On July 2, 1948, Nemec and Dawson were found guilty of Securities Act, mail fraud, and conspiracy violations. Richardson and Clarke convicted on the conspiracy count. Carpenter and Schwartz the remaining defendants in the conspiracy count were acquitted. On July 3, 1948, the following sentences were imposed; Nemec, total of 4 years imprisonment; Dawson, 18 months concurrent sentence; Rector 3-year sentence suspended and placed on probation; Clarke 3 months imprisonment; Richardson, 3 years probation and fined $1,000. Notice of appeals filed by Richardson, Clarke, Dawson & Nemec. Pending. |
| O'Keefe, Wallace Rice | 1 | Western District of Washington. | June 23, 1948 | Secs. 5 (a) and 17 (a) of 1933 act | Defendant withdrew previous plea of not guilty and pleaded guilty to sec. 17 (a) count, other count dismissed. Defendant sentenced to 5 years and fined $5,000. |
| Plasket, Chester S | 1 | Western District of Texas. | Apr. 9, 1948 | Sec. 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | Defendant pleaded guilty to 4 Securities Act counts and was sentenced to 13 months imprisonment. |
| Platten, Arthur J | 1 | Eastern District of Michigan. | Nov. 23, 1948 | Sec. 17 (a) (1) of 1933 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Indictment dismissed upon motion of United States Attorney because of death of the defendant on Dec. 3, 1948. |
| Poynter, Aubrey M | 1 | District of Louisiana | Apr. 23, 1947 | Sec. 17 of 1933 act; sec. 338, title 18, U. S. C. | Defendant, Poynter, pleaded guilty on May 4, 1949, to 1 count of the second indictment, remaining counts were nolle prossed. Poynter sentenced to 2 years imprisonment on June 22, 1949. Pending as to remaining defendants |
| Do | 6 | do | do | do | |
| Price, Eldridge S | 1 | District of Kansas | Mar. 9, 1945 | Secs. 5 (a) (2) and 17 (a) of 1933 act; sec. 338, title 18, U. S. C. | Indictment nolle prossed. |
| Rubinstein, Serge | 2 | Southern District of New York. | Dec. 16, 1948 | Secs. 5 (a) (1) and 17 (a) of 1933 Act; sec. 9 (a) (4) of 1934 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Rubinstein pleaded not guilty on Apr. 25, 1949, and released on $50,000 bond. Bliss pleaded not guilty and released on $5,000 bond. Pending. |
| Do | 2 | do | Feb. 7, 1949 | Sec 88 (now sec. 371), title 18, U. S. C. | |
| Rubrecht, Charles J. (McLaughlin MacAfee & Co.). | 4 | Western District of Pennsylvania. | Sept. 18, 1946 | Sec. 10 (b) of 1934 act and rule X-10B-5 thereunder; sec. 338, title 18, U. S. C. | Nolle prosse entered on June 17, 1948, as to Glunt who died. Nolle prossed as to remaining defendants on Oct. 25, 1948. |
| Schumpert, Paul A. (National Loan Guaranty Co., Inc.). | 1 | Middle District of Tennessee. | Jan. 26, 1949 | Sec. 17 (a) (1) of 1933 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Schumpert pleaded not guilty to both indictments. Lansford and Morris pleaded not guilty to second indictment. On July 14, 1949, Schumpert and Lansford withdrew their previous pleas of not guilty. Schumpert pleaded guilty to 6 counts of the first indictment and 2 counts of the second indictment, and was sentenced to 22 years and fined $10,000. Lansford pleaded guilty to 2 counts of the second indictment and was sentenced to a 2-year prison term. Remaining counts dismissed as to both defendants. Remaining defendant, Morris, acquitted by court. |
| Do | 3 | do | Feb. 25, 1949 | Secs. 338 (now sec. 1341), and 88 (now sec. 371), title 18, U. S. C. | |

TABLE 27.—*Indictments returned for violation of the acts administered by the Commission, the Mail-Fraud Statute (sec. 338, title 18, U. S. C.), and other related Federal statutes (where the Commission took part in the investigation and development of the case), which were pending during the 1949 fiscal year*—Continued

| Name of principal defendant | Number of defendants | United States District Court | Indictment returned | Charges | Status of case |
|---|---|---|---|---|---|
| Schumpert, Paul A. (National Acceptance Corp.). | 3 | Southern District of Mississippi. | June 8, 1949 | Sec. 17 (a) (1) of 1933 act; secs. 338 (now sec. 1341) and 88 (now sec. 371), title 18, U. S. C. | All defendants apprehended and released on bail. Pending. |
| Taylor, Ellis R. (Taylor Washing Machine Co.). | 1 | Northern District of Illinois. | Aug. 28, 1946 | Sec. 10 (b) of 1934 act and rule X-10B-5 thereunder; sec. 338, title 18, U. S. C. | Defendant found guilty on all counts and sentenced to serve a concurrent prison term of a year and 1 day and fined $1,000. |
| Thurman, Arthur G | 3 | District of Massachusetts. | Jan. 19, 1939 | Sec. 17 (a) (2) of 1933 act; secs. 88 and 338, title 185, U. S. C. | 2 defendants previously convicted and sentenced. Indictment dismissed as to remaining defendant, Thurman. |
| Tucker, Preston T., Sr. (Tucker Corp.). | 8 | Northern District of Illinois. | June 10, 1949 | Sec. 17 (a) of 1933 act; secs. 338 (now sec. 1341) and 88 (now sec. 371), title 18, U. S. C. | All defendants pleaded not guilty on June 23, 1949, and were released on bond, except Karsten who has not yet been arraigned. Pending. |
| Vernor, William H. (Alabama Cooperative Royalty Syndicate). | 1 | Middle District of Alabama. | Aug. 31, 1948 | Sec 17 (a) (1) of 1933 act; sec. 338, title 18, U. S. C. | Defendant found not guilty by direction of the court on Oct. 6, 1948. |
| White, Jack R | 1 | District of Nebraska | Mar. 24, 1949 | Sec. 17 (a) (1) of 1933 act; sec. 338 (now sec. 1341), title 18, U. S. C. | Pending. |
| Wimer, Nye A. (Tennessee Schuylkill Corp.). | 1 | District of New Jersey | Aug. 3, 1948 | Secs. 5 (a) (2) and 17 (a) (1) of 1933 act; secs. 338 and 88, title 18, U. S. C. | Pending. |

TABLE 28.—*Petitions for review of orders of Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940, pending in circuit courts of appeals during the fiscal year ended June 30, 1949*

| Petitioner | United States Circuit Court of Appeals | Initiating papers filed | Commission action appealed from and status of case |
|---|---|---|---|
| Associated Electric Co. | Third | Dec. 10, 1948 | Order of Oct. 15, 1948, requiring payments to be made out of the escrow fund to Pennsylvania Edison Co. preferred stockholders. Pennsylvania Edison Co. preferred stockholders committee granted leave to intervene. Pending. |
| Israel Beckhardt (Electric Bond & Share Co.). | Second | Mar. 26, 1948 | Order of Feb. 27, 1948, awarding $2,000 to Israel Beckhardt, petitioner, for services. Pending. |
| Halsted, J. Donald | Court of Appeals for the District of Columbia. | May 28, 1949 | Order of Mar. 31, 1949, denying effectiveness to post-effective amendment respecting a proposed solicitation of voluntary contributions of funds from holders of common stock of Long Island Lighting Co. Pending. |
| Hughes, Arleen W., d/b/a E. W. Hughes & Co. | do | Apr. 29, 1948 | Order of Apr. 1, 1948, revoking the registration of E. W. Hughes & Co. as a broker and dealer under sec. 15 (b) of the 1934 act. Order affirmed May 9, 1949. Petition for rehearing filed June 7, 1949. Pending. |
| Lewis, Francis J. | Eighth | Feb. 28, 1948 | Order of Dec. 30, 1947, entered in connection with sec. 11(e) proceedings under the 1935 act in the matter of United Light & Railways Co. and American Light & Traction Co. et al. Case transferred to CA-8. United Light & Railways Co. and American Light & Traction Co. granted leave to intervene. Order affirmed Nov. 3, 1948. Closed. |
| Norris & Hirshberg, Inc. | Court of Appeals for the District of Columbia. | Apr. 29, 1946 | Order revoking broker-dealer registration for violation of the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. Application to the Court of Appeals for a writ of certiorari directed to the Commission to secure the completion and perfection of the record filed June 28, 1946. Order entered remanding record to Commission Feb. 17, 1947. New transcript filed Sept. 23, 1947. Motion by petitioners for judgment on the record filed Oct. 6, 1947. Denied Nov. 19, 1947. Motion for rehearing filed Dec. 4, 1947. Denied Jan. 5, 1948. Petition for writ of certiorari filed in Supreme Court. Denied Apr. 5, 1948. Argument on the merits heard in Court of Appeals June 11, 1948. Pending. |
| Panhandle Eastern Pipe Line Co. | Eighth | Feb. 28, 1948 | Orders of Nov. 1947, Dec. 30, 1947, and Jan. 6, 1948, in connection with sec. 11 (e) proceedings under the 1935 act in the matter of United Light & Railways Co. and American Light & Traction Co. et al. United Light & Railways Co. and American Light & Traction Co. granted leave to intervene. Orders affirmed Nov. 3, 1948. Closed. |
| Philadelphia Co. | Court of Appeals for the District of Columbia. | Mar. 22, 1947 | Amendment to rule U-49 (c) under the 1935 act adopted by the Commission effective Feb. 28, 1947. Motion of the Commission to dismiss petition for review for lack of jurisdiction denied and petitioner's motion for stay granted Oct. 8, 1947. Commission's motion to modify stay denied Nov. 4, 1947. Petition to the Supreme Court for review of court of appeals' orders of Oct. 8, 1947, and Nov. 4, 1947, denied Feb. 2, 1948. Order entered by court of appeals Oct. 28, 1948, reversing Commission's action of Feb. 28, 1947, and remanding case to Commission. Petition for writ of certiorari for review of court of appeals' order of Oct. 28, 1948, filed March 1949. Order entered on joint motion of Commission and Philadelphia Co. May 16, 1949, by the Supreme Court granting petition for writ of certiorari, vacating judgment and remanding case to court of appeals with directions to dismiss case as moot. On July 5, 1949, the court of appeals dismissed the petition for review as moot. Closed. |

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TABLE 28.—*Petitions for review of orders of Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940, pending in circuit courts of appeals during the fiscal year ended June 30, 1949*—Continued

| Petitioner | United States Circuit Court of Appeals | Initiating papers filed | Commission action appealed from and status of case |
|---|---|---|---|
| Phillips, Randolph | Second | Feb. 25, 1947 | Petition for review of alleged Commission orders dated Feb. 7, 1947, and Feb. 25, 1947, re an application by United Corp. for permission to submit to its common stockholders for their approval a proposal to change the business of United Corp. to that of an investment company. Application for stay denied from bench, Mar. 3, 1947. Order entered Dec. 20, 1948, dismissing petition for review upon motion of Commission. Petition for rehearing denied Jan. 11, 1949. Closed. |
| South Carolina Public Service Authority. | Fourth | May 22, 1948 | Order of Mar. 25, 1948, under secs. 11 (e) and 12 (d) of the 1935 act, approving proposal of The Commonwealth & Southern Corp. for sale of common stock of a subsidairy without competitive bidding. Commonwealth & Southern Corp. granted leave to intervene as a respondent. Order affirmed Nov. 10, 1948. Petition for writ of certiorari denied Apr. 18, 1949. Closed. |
| Standard Gas & Electric Co.; Philadelphia Co. and certain of its subsidiaries. | Court of Appeals for the District of Columbia. | July 26, 1948 | The Commission issued orders of June 1, 1948, and June 30, 1948 The first order directed pursuant to sec. 11 (b) (1) of the 1935 act that Philadelphia Co. dispose of its direct and indirect interests in its natural gas and transportation properties, and directed further pursuant to sec 11 (b) (2) of the 1935 act that Philadelphia Co. be liquidated and dissolved. The second order denied petitions for rehearing and for leave to adduce additional testimony. Petitions for review were filed by Philadelphia Co. and certain of its subsidiaries and by Standard Gas & Electric Co., the corporate parent of Philadelphia Co. By order of the Court of Appeals dated Oct. 26, 1948, both review proceedings were consolidated. The court further granted a stay of the Commission's orders. The appeals have been briefed and argued and decision is awaited. Pending. |
| Charles J. Thornton and Patricia Thornton, d/b/a Thornton & Co. | Second | July 21, 1948 | Order of July 14, 1948, revoking the registration of Thornton & Co., as a broker and dealer under sec. 15 (b) of the 1934 act, and expelling it from membership in the National Association of Securities Dealers, Inc. Order affirmed Dec. 22, 1948. Closed. |

TABLE 29.—*Civil contempt proceedings pending during the fiscal year ending June 30, 1949*

| Principal defendants | Number of defendants | United States District Court | Initiating papers filed | Status of case |
|---|---|---|---|---|
| Artemisa Mines, Ltd., and Oliver O. Kendall | 2 | Arizona | June 28, 1943 | Order Nov. 15, 1943, adjudging Oliver O. Kendall, president of Artemisa Mine Ltd., an Arizona corporation, in contempt for failure to comply with order of court dated May 18, 1943, requiring the corporation to produce certain documents and papers. Defendant, Kendall, presently out of the United States. Pending. |

TABLE 30.—*Cases in which the Commission participated as intervenor or as amicus curiae, pending during the fiscal year ended June 30, 1949*

| Name of case | Court | Date of entry | Nature and status of case |
|---|---|---|---|
| *Acker* v. *Schulte* | U. S. District Court (Southern District of New York). | Mar. 8, 1947 | Actions brought Feb. 6, 1945, by individual stockholders for damages resulting from alleged violations of secs. 9 and 10 (b) of the Securities Exchange Act of 1934 and rule X-10B-5 thereunder. Defendants seek to require plaintiffs to file undertaking for costs including counsel fees basing their claim for security on a provision of sec. 9 (e) of the act. On Mar. 8 1947, the Commission filed a memorandum as amicus curiae contending that plaintiffs cannot be required to furnish an undertaking for costs in a suit under sec. 10 (b), and as to sec. 9 (e) that the provision therein for an undertaking for costs should not be so construed as in effect to nullify opportunity for relief where claim has merit and is filed in good faith. Defendants' motions for security for costs denied May 26, 1947. Pending. |
| *Arbetman* v. *Playford and Alaska Airlines, Inc.* | do | June 24, 1949 | Action brought under sec. 16 (b) of the Securities Exchange Act of 1934 to recover profits alleged to have been realized from the purchase and sale within six months of common stock of Alaska Airlines, Inc. Pending. |
| *Arcidia et al.* v. *Fusaro, et al* | do | Brief not yet filed | Complaint filed demanding judgments against defendants of certain specified amounts, and charging violations of the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. Pending. |
| *Auburn Savings Bank* v. *Portland R. R. Co.* | Supreme Judicial Court of Maine. | June 25, 1945 | Stockholders' suit filed Feb. 3, 1945, collaterally attacked Dec. 19, 1944, order of Commission under sec. 11 (d) of the Public Utility Holding Company Act of 1935, approving plan for liquidation and dissolution of defendant, a statutory subsidiary of Central Maine Power Co. On June 25, 1945, Commission filed brief as amicus curiae noting subsequent filing (on Feb. 16, 1945) of petition for review of Commission's order in CA-1, and taking position that, under the Act, a State court lacks jurisdiction to enjoin or set aside transactions involved, or to issue decree inconsistent with Commission's order. Judgment was rendered for plaintiff in a comparatively small amount and plaintiff appealed. On Feb. 28, 1949, the Supreme Judicial Court of Maine remanded the case for the entry of a decree dismissing the bill. Pending. |

TABLE 30.—*Cases in which the Commission participated as intervenor or as amicus curiae, pending during the fiscal year ended June 30, 1949*—Continued

| Name of case | Court | Date of entry | Nature and status of case |
|---|---|---|---|
| *Austrian and Butcher as Trustees of Central States Electric Corp.* v. *Harrison Williams.* | U. S. District Court (Southern District of New York). | Nov. 8, 1945; Nov. 4, 1946; Apr. 10, 1947; Nov. 5, 1947. | Trustees of debtor Central States Electric Corp., appointed by district court in Virginia pursuant to ch. X of the Bankruptcy Act, brought suit in New York Federal court to recover from defendants who, as officers, directors, controlling stockholder of debtor, and in other capacities, had allegedly defrauded and otherwise wronged the corporation. Action was instituted following investigation by trustees under Bankruptcy Act and pursuant to order of ch. X court. No allegation of diversity of citizenship or reliance thereon to establish jurisdiction. Defendants moved to dismiss on grounds that (1) Federal court in New York lacked jurisdiction and (2) cause of action was barred by New York State statute of limitation. Commission filed memoranda as amicus curiae in opposition to defendant's motions for dismissal and summary judgment taking position that jurisdiction was conferred upon court by Bankruptcy Act and sec. 24 (1) of Judicial Code, that State statute of limitations was not applicable, and that such action is not barred until after discovery of causes of action which have been fraudulently concealed by defendants. District court dismissed complaint, holding that it had no jurisdiction. As to statute of limitations, court stated it would have denied motion on this ground because issues of fact would have to be determined before legal questions could be decided. Notice of appeal by trustees to CA–2 filed June 19, 1946. Brief filed by Commission as amicus curiae Nov. 4, 1946. Opinion rendered Dec. 10, 1946, reversing district court and holding that trustees have right to bring suit in Federal court on a jurisdiction found in the Bankruptcy Act. Petition for writ of certiorari filed Jan. 4, 1947, and granted Feb. 10, 1947. Commission filed brief as amicus curiae Apr. 10, 1947. On June 16, 1947, the Supreme Court affirmed the court of appeals decision. On Nov. 5, 1947, Commission filed brief as amicus curiae in opposition to defendant's second motion for dismissal. On July 8, 1948, the district court denied defendant's motion, without prejudice to renewal before trial judge. Examinations, before trial, have taken place during the past fiscal year. Pending. |
| *Berkey & Gay Furniture Co.* v. *Brenza*..... | U. S. District Court (Northern District of Ohio). | ..... | Action pursuant to sec. 16 (b) of the Securities Exchange Act. Compromise settlement made. Closed. |
| *Claughton* v. *Missouri-Kansas-Texas Railroad Co.* | U. S. District Court (Southern District of Florida). | Action instituted Apr. 4, 1946, but no brief filed. SEC listed as party defendant. | Action for a declaratory judgment to determine the liability of an insider pursuant to sec. 16 (b) of the Securities Exchange Act of 1934. Pending. |
| *Colby* v. *Klune and Twentieth Century Fox-Film Corp.* | U. S. District Court (Southern District of New York). | Brief not yet filed..... | Suit brought pursuant to sec. 16 (b) of the Securities Exchange Act of 1934 for the recovery of profits realized by defendant Klune from the purchases and sales of the common stock of defendant corporation within periods of less than 6 months. Defendant's motion for summary judgment on the ground that he was not an officer, director, or 10 percent beneficial owner of the securities of the corporation granted. Closed. |

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| *Dederick, suing on behalf of himself and all other stockholders of North American Light & Power Co. v. The North American Co. and North American Light & Power Co.* | do | Aug. 8, 1942 | Derivative suit instituted in October 1941 to have the North American Co. declared agent and trustee of its subsidiary, Light & Power, in the acquisition by former of debentures and preferred stock of its subdidiary at prices below principal amount and liquidation value; to compel parent to sell and subsidiary to reacquire stock at their cost price to parent; and for an accounting. Light & Power moved for dismissal of action. Commission filed brief as amicus curiae (in support of dismissal) to show that Commission has primary jurisdiction to hear and determine the issues, and why court should not take jurisdiction thereof. On Mar. 8, 1940, the Commission had instituted proceedings, under sec. 11 (b) (1) of the Public Utility Holding Company Act of 1935 with respect to North American and subsidiaries, including Light & Power. On Dec. 2, 1941, the Commission had instituted proceedings under sec. 11 (b) (2) of the act with respect to Light & Power. On Dec. 30, 1941, the Commission ordered winding up of Light & Power. Motion to dismiss denied Jan. 12, 1943, on ground that complaint does not seek liquidation of Light & Power, but action is stayed until determination of the proceedings before the Commission. Pending. |
| *Dunbacher v. American Cities Power & Light Corp.* | do | Mar. 2, 1948 | Action instituted against corporation for injunction and damages in the district court. At the time this action was filed, plaintiff also made a motion for temporary injunction. Commission filed a statement as amicus curiae Mar. 2, 1948, regarding the motion for temporary injunction. The plaintiff sought to restrain an offer by the corporation to purchase its own outstanding common stock at asset value through the use of portfolio securities and cash on the ground that the purchase was not in the interest of a corporation but solely to enable its parent corporation, Central States Electric Corp., to obtain a greater percentage of stock of the company for its own tax advantage. The Commission's statement indicated that in its opinion the transaction was fair and reasonable and in the best interests of security holders of both corporations. The motion for temporary injunction was denied by the district court and an appeal was taken to the circuit court. The appeal was heard Mar. 3, 1948. At the time of the argument on the appeal from the denial of the motion, the Commission's statement filed in the district court was submitted to the circuit court judges. The circuit court then affirmed the denial. Thereafter while the lawsuit was pending for trial in the district court where the complaint was filed, the defendants made a motion in the ch. X district court to enjoin the further prosecution of the lawsuit in the original court and to require the plaintiff to present her case before the ch. X court. This motion, supported by the Commission, was granted and subsequently, after notice to all stockholders, the matter was presented to the ch. X court and was dismissed with prejudice. Closed. |
| *Grand Lodge of International Association of Machinists v. Robert T. Highfield et al.* | U. S. District Court (District of Columbia). | December 1948 | Defendants' motion to dismiss count III of the complaint, which count is predicated upon a violation of the Commission's rule X-10B-5 under the Securities Exchange Act of 1934, raises the question whether that rule may validly be applied to transactions in an unregistered security not effected with or through the medium of a broker-dealer. Commission filed brief as amicus curiae answering the question affirmatively. On Jan. 24, 1949, the court entered an order overruling defendants' motion to dismiss count III of complaint. Pending. |

TABLE 30.—*Cases in which the Commission participated as intervenor or as amicus curiae, pending during the fiscal year ended June 30, 1949*—Continued

| Name of case | Court | Date of entry | Nature and status of case |
|---|---|---|---|
| *Gratz* v. *Claughton* | U. S. District Court (Southern District of New York). | May 20, 1946 | Suit under sec. 16 (b) of the Securities Exchange Act of 1934 to recover profits from short-term trading in securities by an insider. Defendant moved to dismiss for improper venue. Commission filed a memorandum in support of venue as laid. On Apr 2, 1947, court denied motion to dismiss. On June 15, 1948, defendant filed an application for approval by the special master of a proposal for settlement and disposition of action. The Commission filed an answer June 21, 1948. Special master's report filed May 25, 1949. Pending. |
| *Grossman and Temin (L. A. Young Spring & Wire Corp.)* v. *Young.* | do | Aug. 26, 1946 | Suit under sec. 16 (b) of the Securities Exchange Act of 1934 to recover profits from short-term trading in securities by an insider. The district court denied defendant's motion to dismiss, made on the ground that venue was improperly laid and that the court lacked jurisdiction. Defendant then moved to dismiss on the grounds that the statute of limitation barred the action and that the corporation had not been given the opportunity to institute the suit. This motion to dismiss was denied July 3, 1947. Pending. |
| *Kardon* v. *National Gypsum Co.* | U. S. District Court (Eastern District of Pennsylvania). | Oct. 22, 1946 | Private action founded on alleged violations of sec. 10 (b) of the Securities Exchange Act of 1934 and rule X-10B-5 thereunder. The Commission filed as amicus curiae taking the position that such action for damages resulting from a violation of sec. 10 (b) and rule X-10B-5 is maintainable by application of the general common law rule and under the express provisions of sec. 29 (b) of the act. Motions to dismiss denied Dec. 2, 1946. Argument set for July 15, 1947. On Sept. 9, 1947, a decree was entered directing defendants to produce all records covering the transactions under question, and appointing a special master. On Jan. 2, 1948, an order was entered directing defendants to file an account in debit and credit form and to afford plaintiffs opportunity to inspect the books and records. Pending. |
| *Kogan* v. *Arthur D. Schulte et al.* | U. S. District Court (Southern District of New York). | No brief filed | Suit brought May 15, 1945, under sec. 16 (b) of the Securities Exchange Act of 1934 in behalf of Park & Tilford, Inc., to recover profits realized from short-term trading in securities by insiders. Notice of motion for summary judgment filed by Kogan on Oct. 16, 1945. Motion submitted Oct. 30, 1945, by plaintiff in opposition to motion to dismiss. Decision reserved. In view of recovery on same claim in *Park & Tilford, Inc.* v. *Schulte et al, as Trustees*, this case is now moot. Petition filed June 18, 1946, by counsel for plaintiff for allowance of counsel fees and expenses. Allowance made on June 18, 1948. Pending. |
| *Kogan* v. *David A. Schulte* | do | Mar. 1945; Apr. 16, 1945 | Suit instituted Sept. 12 1944, under sec. 16 (b) of the Securities Exchange Act of 1934 to recover profits from short-term trading in securities by an insider. On Mar. 14, 1945, plaintiff moved for partial summary judgment for profit realized on sale of common stock acquired on option to convert shares of preferred stock. Commission filed briefs as amicus curiae on proper construction of sec. 16 (b). District court, although denying motion for partial summary judgment due to difficulty of determining recoverable profit on available evidence, held that exercise of conversion option was a nonexempt "purchase" and that such construction did not render statutory provision unconstitutional. Petition filed June 18, 1947, by counsel for plaintiff for allowance of counsel fees. Allowance made on June 18, 1948. Pending. |

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| *Beiman et al. v. Guttman et al (Pittsburgh Terminal Coal, In re.).* | Supreme Court of the State of New York.<br>U. S. Supreme Court | Nqv. 20, 1947<br>Dec. 8, 1948 | Action commenced in the Supreme Court of the State of New York to recover additional compensation for services performed in the reorganization of Debtor in the U. S. District Court. Defendants-appellants move the Supreme Court for dismissal of the amended complaint on the ground that exclusive jurisdiction rests in the District Court supervising the reorganization. Motion to dismiss denied. Affirmed June 24, 1947, by Appellate Division. Appeal taken to the Court of Appeals of the State of New York. Commission filed brief as amicus curiae Nov. 20, 1947, in support of appeal. Orders reversed and motion to dismiss granted Mar. 25, 1948. Petition for writ of certiorari to the U. S. Supreme Court filed June 9, 1948. Commission filed brief as amicus curiae Dec. 8, 1948. Affirmed Jan. 17, 1949. Closed. |
| *Manufacturers Trust Co. v. Becker et al. (Calton Crescent, Inc.).* | U. S. Court of Appeals Second Circuit). | Nov. 19, 1948; May 23, 1949. | Appeal from district court order of July 21, 1948, which affirmed an order of the Referee in Bankruptcy dismissing the objections of appellant to the allowance in full of claims of appellees. Objections were based upon alleged breach of fiduciary duties by appellees in acquisition of claims against insolvent corporation. Commission filed brief as amicus curiae in support of objections. Order of district court affirmed Mar. 3, 1949. Petition for writ of certiorari filed Apr. 20, 1949. Commission filed brief in support of petititon as amicus curiae May 23, 1949. Petition granted June 6, 1949. Pending. |
| *Merritt-Chapman & Scott Corp., v. Hirsch & Co.* | U. S. District Court (Southern District of New York). | April 1949 | Suit alleging violation of sec. 14 of the Securities Exchange Act of 1934 and rules of the New York Stock Exchange and seeking to enjoin defendants from voting, authorizing, instructing, or permitting others to vote stock of plaintiff pursuant to instructions received from beneficial owners of such stock registered in the name of defendant as of Feb. 28, 1948, at the annual meeting of plaintiff Apr. 4, 1949. Counsel for Commission appeared as amicus curiae. In addition to management solicitation, an opposition group had been soliciting proxies. After the taking of testimony and argument, counsel for management, for the defendant, and for the opposition group agreed to vote their stock or proxies therefor to postpone the stockholders' meeting to Apr. 25, 1949, to permit resolicitation of proxies by both factions, with not more than 2 solicitations on either side and the last solicitation to be not more than 1 week before the meeting. Closed. |
| *Miller et al. v. Hano et al.* | U. S. District, Court Eastern Division of Pennsylvania). | June 7, 1948 | Action instituted pursuant to the Securities Act of 1933. Commission filed brief as amicus curiae June 7, 1948, in support of contention in plaintiffs' brief that accountants and every other person specified in sec. 11 (a) of the act who participates in the preparation of the registration statement, "participate," in the sale of securities offered on the basis of the registration statement, within the meaning of the venue provision of sec. 22 (a). Evidence presented by plaintiffs in an affidavit indicated that the accountants did in fact participate; therefore it was unnecessary to decide the validity of this contention. Motion to require bond for costs filed Oct. 29, 1948. Order entered Nov. 31, 1948, denied motion. Pending. |
| *National Association of Securities Dealers, Inc. v. Marvin C. Harrison, Allan Hull, Cyrus S. Eaton, and Otis & Co.* | U. S. Court of Appeals (District of Columbia). | Dec. 22, 1948 (motion to intervene). | Appeals were taken from two orders of Judge Letts, one enjoining the Commission and one enjoining the N. A. S. D. from proceeding against the defendants pending the outcome of a case then before Judge Morris. When those orders were entered, the Commission filed an appeal from both orders. The N. A. S. D. appealed from the order relating to them. Motion to intervene was filed by the Commission in the appeal taken by the N. A. S. D. for the purpose of asking the court for permission to file a brief answer stating it had appealed from the same order and that the orders were similar. The Commission participated as an Intervenor. Pending. |

TABLE 30.—*Cases in which the Commission participated as intervenor or as amicus curiae, pending during the fiscal year ended June 30, 1949*—Continued

| Name of case | Court | Date of entry | Nature and status of case |
|---|---|---|---|
| *North American Utility Securities Corp.* v. *Posen et al.* | U. S. District Court (Southern District of New York); U. S. Court of Appeals (Second Circuit). | Nov. 17, 1948 (motion to intervene granted and brief filed); March 1949 (brief filed). | Action instituted Nov. 5, 1948, seeking an injunction prohibiting defendants' solicitation of the holders of common stock for authorizations to represent them in a pending proceeding, alleging that such solicitation would constitute a violation of sec. 11 (g) of the Public Utility Holding Company Act of 1935. Commission moved for leave to intervene as a defendant. Intervention granted. Plaintiff moved for summary judgment and Commission and defendants cross-moved for summary judgment dismissing complaint for failure to state cause of action. Order entered Jan. 7, 1949, denying plaintiff's motion and granting motions of Commission and defendants for summary judgment dismissing complaint. Appeal filed. Commission filed brief in opposition to the appeal. On June 23, 1949, CA-2 affirmed the district court's judgment. Pending. |
| *Park & Tilford, Inc.* v. *Arthur D. Schulte et al.* | U. S. District Court (Southern District of New York). | Oct. 5, 1945; Mar. 14, 1946; Oct. 14, 1946; Feb. 12, 1947; Aug. 5, 1947. | Suit brought Nov. 17, 1944, under sec. 16 (b) of the Securities Exchange Act of 1934 to recover profits realized from short-term trading in securities by an insider. The Commission, as amicus curiae, filed a brief taking the position that the acquisition of common stock by conversion of preferred is a "purchase within meaning of act. The United States intervened in support of constitutionality of section. On Sept. 13, 1945, Marjorie D. Kogan, a minority stockholder, sought leave to intervene as party plaintiff, supported by Commission brief as amicus curiae. Intervention was denied on Oct. 23, 1945 and Kogan appealed. The trial court entered judgment for plaintiff on Jan. 31, 1946, from which defendant appealed. Kogan then sought leave in the Circuit Court of Appeals, Second Circuit, for leave to intervene, supported by Commission as amicus curiae. Leave was granted on Mar. 23, 1946, and the appeals by Kogan and defendant were consolidated. On Jan. 8, 1947, CA-2 reversed the order denying intervention to Kogan, vacated the judgment, and remanded the action to the district court for the entry of an increased judgment. Petition of defendants for rehearing filed Jan. 22, 1947, and denied Mar. 26, 1947. Petition for writ of certiorari filed in the Supreme Court June 21, 1947. Commission filed brief as amicus curiae Aug. 5, 1947, in opposition. Certiorari denied Oct. 13, 1947. Petition filed June 18, 1947, by counsel for plaintiff for allowance of counsel fees. Allowance made on June 18, 1948. Pending. |

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|---|---|---|---|
| *Phillips* v. *The United Corp* | do | July 11, 1947 | Action to enjoin defendants from (1) taking any steps committing the United Corp. to any corporate actions requiring the approval of its board of directors pending the determination of the complaint and (2) taking any steps looking toward the transformation of the corporation into an investment company. Cross motion for dismissal filed by defendant. Commission filed brief as amicus curiae July 11, 1947, stating that rule U-65 was not violated by management and that the complaint fails to state a claim upon which relief may be granted. Plaintiff's motion for a temporary injunction denied and defendant's motion to dismiss the complaint and for a summary judgment also denied. Defendant's motion to dismiss second amended complaint denied June 4, 1948, but a stay of proceedings granted until final determination by Commission and further order of court. Appeal taken by plaintiff in August 1948. Appeal dismissed Dec. 6, 1948. Petition for rehearing denied Jan. 11, 1949. Closed. |
| *Shaw* v. *Dreyfus et al* | U. S. Supreme Court | | Petition for writ of certiorari filed and denied. Closed. |
| *Slavin et al.* v. *Germantown Fire Insurance Co. et al.* | U. S. District Court (Eastern District of Pennsylvania); U. S. Court of Appeals (Third Circuit). | Dec. 4, 1946; Apr. 3, 1948; June 23. 1948. | Shareholders' derivative action alleging fraud under rule X-10B-5 pursuant to the Securities Exchange Act of 1934. Motion to dismiss complaint denied Dec. 5, 1946. Final judgment dismissing complaint entered Nov. 12, 1947. On Apr. 1, 1949, CA-3 reversed judgment of district court and directed cause be remanded with direction to enter judgment for defendants. Pending. |
| *Speed et al.* v. *Transamerica Corp* | U. S. District Court (Delware). | Feb. 19, 1947; Oct. 14, 1948; Jan. 14, 1949. | Class suit for damages alleging fraud both at common law and under rule X-10B-5 pursuant to the Securities Exchange Act of 1934. Complaint dismissed as to the common law count, but upheld as to counts under rule X-10B-5, May 9, 1947. Defendant's petition for rehearing denied, June 25, 1947. Trial on merits completed and case taken under advisement by court. Pending. |
| *Stella* v. *Henry J. Kaiser et al* | U. S. District Court (Southern District of New York). | July 24, 1948 | Derivative suit instituted May 10, 1948, charging violations of various antifraud and antimanipulation provisions of the 1933 and 1934 acts, breach of the defendants' fiduciary obligations, and deliberate or negligent waste of corporate assets. The Commission filed brief as amicus curiae July 24, 1948, discussing the issue of stabilization and other problems of statutory construction. On Aug. 2, 1948, the district court denied all motions made by defendants to dismiss the suit. On Dec. 2, 1948, defendants' motion for an order requiring plaintiff to give security for defendants' expenses incurred in connection with the defense of this suit, was denied without prejudice to a renewal thereof. Pending. |
| *Truncale* v. *Blumberg et al* | do | Oct. 1, 1948 | Action brought by a stockholder of Universal Pictures Co., Inc., pursuant to sec. 16 (b) of the Securities Exchange Act of 1934, to recover profits allegedly realized by certain officers and directors of the company. Commission took the view that the making of a gift to a charity did not result in a profit recoverable under sec. 16 (b). Motion of defendant Cowdin for summary judgment dismissing the complaint as to him was granted and plaintiff's cross motion for summary judgment was denied Oct. 14, 1948. Pending. |

TABLE 31.—*Proceedings by the Commission, pending during the fiscal year ended June 30, 1949, to enforce subpenas under the Securities Act of 1933 and the Securities Exchange Act of 1934*

| Principal defendants | Number of defendants | United States District Court | Initiating papers filed | Section of act involved | Status of case |
|---|---|---|---|---|---|
| Artemisa Mines, Ltd | 2 | Arizona | Apr. 8, 1943 | Sec. 22 (b), 1933 act | Order May 18, 1943, required Artemisa Mines, Ltd., to appear before an officer of the Commission on June 28, 1943, and produce the records described in subpena duces tecum. Court dismissed application to enforce subpena with respect to Minas de Artemisa, S. A., a foreign corporation for lack of jurisdiction on Sept. 19, 1944. June 26, 1945, CA-9 reversed the district court. Aug. 1, 1945, order entered requiring Minas de Artemisa, S. A., to respond to the subpena. Pending. (See appendix table on civil contempt proceedings.) |
| Harrison, Marvin C., and Hull, Allan. | 2 | District of Columbia | June 25, 1948 | Sec. 21 (c), 1934 act | Complaint filed for an order by the district court directing the defendants to respond to subpena ad testificandum. Otis & Co. and Cyrus S. Eaton intervened July 6, 1948. On July 9, 1948, defendants and intervenors filed counterclaim seeking injunction against Commission's public investigation of Kaiser-Frazer stock offering. Oral argument July 19, 20, 21. On Sept. 2, 1948, Judge Keech issued temporary restraining order against proceedings by N. A. S. D. Temporary injuction to same effect granted by Judge Letts Sept. 21 1948. Also, on same date, Judge Letts granted temporary injunction restraining SEC broker-dealer proceeding pending action of District Court in subpena enforcement action. SEC appealed this temporary injunction, and its motion to vacate same as moot was pending at close of fiscal year in the court of appeals for the District of Columbia. On Oct. 28, 1948, the district court entered an order denying enforcement of subpena and dismissing counterclaim. Pending. |
| O'Connor, Edward J | 1 | Southern District of California | June 4, 1948 | Sec. 22 (b), 1933 act | Order entered June 29, 1948, requiring respondent to appear before an officer of the Commission and give testimony concerning matters referred to in subpena ad testificandum. Defendant appeared for questioning on July 9, 1948, as directed. Closed. |
| Tucker Corp | 1 | Northern District of Illinois | June 15, 1948 | Sec. 22 (b), 1933 act | Order July 2, 1948, requiring defendant to appear and produce certain documentary evidence described in subpena duces tecum. Records produced. Closed. |

TABLE 32.—*Miscellaneous actions against the Commission or employees of the Commission during the fiscal year ended June 30, 1949*

| Plaintiff | Court | Initiating papers filed | Status of case |
|---|---|---|---|
| Otis & Co. | U. S. District Court (District of Columbia). | Nov. 10, 1948 | Action to enjoin the Commission from considering certain issues in a broker-dealer revocation proceeding on ground of res judicata. Judgment of district court on Nov. 12, 1948, denied plaintiff's motion for preliminary injunction and dismissed complaint. Appeal taken by plaintiff. Judgment of Nov. 12, 1948, set aside by court of appeals for the District of Columbia on June 1, 1949. Pending. |
| Do | do | Jan. 26, 1949 | Action to enjoin the Commission and NASD from taking any action to compel disclosure of communications between plaintiffs and their attorneys, and to enjoin the holding of a disciplinary proceeding by NASD. Opinion dismissing complaint rendered by district court on June 7, 1949. Pending. |

TABLE 33.—*Actions to enforce voluntary plans under sec. 11 (e) to comply with sec. 11 (b) of the Public Utility Holding Company Act of 1935*

| Name of case | United States District Court | Initiating papers filed | Status of case |
|---|---|---|---|
| American & Foreign Power Co., Inc. | Maine | Nov. 20, 1947 | Order Oct. 11, 1948, approving plan. Notices of appeal filed by Harriet E. Weinstein et al., Samuel J. Levinson, John F. McKenna, and the Norman Johnson group of second preferred stockholders, the Johnson group also appealing from court's order of Sept. 16, 1948. Motions to vacate and remand proceeding to the Commission filed. Appeals dismissed pursuant to stipulation Jan. 4, 1949. Order Jan. 4, 1949, vacating order of Oct. 11, 1948, and remanding proceeding to Commission. Notice of appeal filed by Samuel J. Levinson from portion of order of Jan. 4, 1949, which denied motion to abandon plan. Pending. |
| Commonwealth & Southern Corp. | Delaware | Nov. 23, 1948 | Pending. |
| Community Gas & Power Co. | do | Apr. 11, 1946 | Order Apr. 10, 1947, approving plan. Appeal June 5, 1947, by Gabriel Caplan et al. Appeal June 7, 1947, by Vanneck and Moran. Appeal June 9, 1947, by Alfred MacArthur et al. Appeal June 9, 1947, by New York Trust Co., trustee. Order May 3, 1948, affirming order of district court in appeals of Vanneck and Moran, Alfred MacArthur et al., and New York Trust Co. Order June 10, 1948, affirming order of district court in appeal of Gabriel Caplan et al. Petition for writ of certiorari by Vanneck et al. and Caplan et al. denied June 14, 1948. |
| Eastern Minnesota Power Co. | Minnesota | June 10, 1947 | Order Nov. 8, 1947, approving amended plan insofar as it related to the sale of physical assets and the payment of first mortgage bonds. Supplemental application filed Nov. 7, 1947, for approval of a stock plan. Order Dec. 12, 1947, approving stock plan as fair, equitable, and appropriate. |
| Electric Bond & Share Co. | Southern District of New York. | May 27, 1946 | Order July 12, 1946, approving plan. Notice of appeal by Eli Auerbach filed Aug. 9, 1946. Supplemental application for order approving portion of plan pertaining to fees and expenses. Order Oct. 19, 1948, approving portion of plan pertaining to fees and expenses. Notice of appeal by Eli Auerbach and Israel Beckhardt filed Nov. 15, 1948. Pending. |
| Electric Power & Light Corp. | do | Mar. 7, 1949 | Order Apr. 22, 1949, approving plan. Appeals taken by Christian A. Johnson et al., Jacob Sincoff et al. and Eva Liner. Motions of Johnson et al. and Sincoff et al. for stay denied by CA-2 on May 5, 1949, and by Supreme Court on May 16, 1949. Pending. |

TABLE 33.—*Actions to enforce voluntary plans under sec. 11 (e) to comply with sec. 11 (b) of the Public Utility Holding Company Act of 1935*—Continued

| Name of case | United States District Court | Initiating papers filed | Status of case |
|---|---|---|---|
| Engineers Public Service Co., Inc. | Delaware | Jan. 9, 1947 | Order May 29, 1947, enforcing plan except insofar as it provided for the payment of more than the liquidation preferences of the preferred stock. Notice of appeal by the Commission filed June 3, 1947. Notice of appeal by Thomas W. Streeter et al. filed May 29, 1947. Notice of appeal by the Home Insurance Co., filed about June 5, 1947. Opinion Mar. 19, 1948, vacating order of district court and remanding cause with directions to enter order disapproving plan and remanding to the Commission. Petitions of all appellants for rehearing denied June 11, 1948. Petitions for writ of certiorari filed by the Commission and Thomas W. Streeter et al. on Aug. 16, 1948, by Home Insurance Co. et al. on Aug. 18, 1948, and by Central Illinois Securities Corp. et al. on Sept. 4, 1948. Supreme Court, on June 27, 1949, reversed judgment of CA-3 and remanded case to district court for further proceedings. Pending. |
| Federal Water & Gas Corp | do | July 28, 1948 | Order Aug. 19, 1948, approving plan with the exception of sec. 3. Pending. |
| Illinois Power Co | do | May 2, 1947 | Order May 28, 1947, approving portion of plan I. Supplemental application July 3, 1947. Order Nov. 6, 1947, approving amended plan I as fair, equitable, and appropriate. Appeal taken by Nellie Walters et al. Feb. 6, 1948, and dismissed Feb. 17, 1948. Appeal taken by Jane Scattergood et al. Jan. 23, 1948. Order Nov. 5, 1948, affirming order of district court. Order June 29, 1949, directing American Light & Power Co. to pay to its former public stockholders dividends which accrued on Illinois Power Co. stock, now distributed to such stockholders, since Dec. 18, 1947. Pending. |
| Interstate Power Co | do | Jan. 27, 1947 | Order Apr. 24, 1947, approving plan. Supplemental application filed Dec. 31, 1947. Order Jan. 7, 1948, approving alternate plan as fair, equitable, and appropriate. Appeal of John F. Errington et al dismissed pursuant to stipulation dated Aug. 12, 1948. Pending. |
| Kings County Lighting Co | Eastern District of New York. | Jan. 9, 1947 | Order July 16, 1947, approving plan. Appeals taken by the Public Service Commission of the State of New York and the secretary of state of New York. Order Mar. 5, 1948, affirming order of district court. Petition for writ of certiorari by Public Service Commission of the State of New York denied June 7, 1948. |
| Lehigh Valley Transit Co | Eastern District of Pennsylvania. | Aug. 26, 1948 | Order Sept. 28, 1948, approving plan. |
| Louisville Gas & Electric Co | Delaware | Oct. 29, 1947 | Order May 13, 1948, remanding proceeding to Commission. Supplemental application filed Aug. 10, 1948. Order Aug. 23, 1948, approving plan as fair, equitable, and appropriate. |
| Memphis Street Railway Co | Western District of Tennessee. | Mar. 23, 1949 | Order Apr. 22, 1949, approving plan. |
| New England Public Service Co | Maine | July 3, 1947 | Order Aug. 6, 1947, approving plan. Appeals taken by Esther Vogel et al., State Street Investment Corp., and Russell B. Stearns. Pending. |
| Northern States Power Co. (Del.) | Minnesota | Feb. 3, 1948 | Order Sept. 13, 1948, approving plan. |
| Republic Service Corp | Delaware | Reopened May 3, 1948 | Order May 28, 1948, approving amended joint plan. Supplemental application II filed Sept. 17, 1948. Order Sept. 17, 1948, approving amended joint plan as fair, equitable, and appropriate. |

| | | | |
|---|---|---|---|
| United Corp. | do. | Aug. 10, 1948. | Order Feb. 15, 1949, approving plan. Notices of appeal filed by committee of holders of $3 cumulative preference stock, Norman Johnson on behalf of Louise D. Johnson, preference stock shareholders, Randolph Phillips, and Irving Schiff. Motions for stay denied by CA-3 on Apr. 22, 1949. Order May 6, 1949, granting motion of United Corp. to make application to district court for order supplementing Feb. 15, 1949, order. Pending. |
| United Public Utilities Corp. | do. | Reopened Feb. 20, 1948. | Order Mar. 12, 1948, approving plan. Supplemental application II filed July 28, 1948. Order Aug. 20, 1948, approving pt. II of the plan. Supplemental application III filed Aug. 26, 1948. Order Sept. 14, 1948, approving supplement I to pt. III of the plan. Supplemental application IV to enforce plan A of supplement II to pt. III filed Dec. 7, 1948. Order Dec. 27, 1948, approving supplement II to pt. III. Supplemental application V to enforce plan B filed May 27, 1949. Order June 16, 1949, approving plan B as fair, equitable, and appropriate. |

TABLE 34.—*Actions under sec. 11 (d) of the Public Utility Holding Company Act of 1935 to enforce compliance with Commission's order issued under sec. 11 (b) of that act*

| Name of case | United States District Court | Initiating papers filed | Nature and history of case |
|---|---|---|---|
| International Hydro-Electric System. | Massachusetts. | Aug. 12, 1943. | Action by Commission, with consent of company, under secs. 11(d), 18(f), and 25 of the 1935 act to enforce its order of July 21, 1942, requiring dissolution of the company. The court was asked (1) to take exclusive jurisdiction of the company and its assets; (2) to enjoin interference; (3) to compel compliance with the Commission's order; and (4) to appoint a special counsel to investigate an intercompany claim against International Paper Co. Aug. 12, 1943, temporary order entered by court and on Oct. 11, 1943, an interlocutory decree and order was entered in which court took exclusive jurisdiction, granted injunction, and appointed special counsel as requested. Nov. 13, 1944, special counsel appointed trustee of estate of company and directed to institute suit on claim against International Paper Co. Nov. 13, 1945, this suit settled, as well as 2 stockholders' suits against International Paper Co. Dec. 26, 1945, district court approved settlement and termination of these suits, and notices of appeal from this approval were filed Jan. 25, 1946, in CA-1. Nov. 14, 1946, opinion rendered affirming judgment of the district court. Petition for writ of certiorari filed Dec. 28, 1946, and denied Feb. 10, 1947. Petition for rehearing denied Mar. 10, 1947. There are now pending before the Commission plans of reorganization which, if approved by Commission, will be submitted to the reorganization court. A motion to vacate the Commission's dissolution order of July 21, 1942, is also pending. |

TABLE 35.—*Reorganization cases under ch. X, pending during the fiscal year ending June 30, 1949, in which the Commission participated when appeals were taken from district court orders*

| Name of case | United States Circuit Court of Appeals | Date SEC entered case | Nature and status of case |
|---|---|---|---|
| Equitable Office Building Corp., Debtor: *Aranow, Brodsky, Einhorn & Dann, Petitioner-Appellant.* | Second | May 1949 | Appeal from Jan. 14, 1949, order which denied petitioner compensation for services rendered in connection with the reorganization of the Debtor under ch. X of the Bankruptcy Act. Commission filed a brief taking the position that the district court properly denied compensation to petitioner. On July 1, 1949, CA-2 affirmed order. Petition for rehearing denied July 11, 1949. Pending. |
| Equitable Office Building Corp., Debtor: *T. Roland Berner, Petitioner-Appellant.* | do | Apr. 10, 1949 | Appeal from Jan. 14, 1949, order which denied petitioner compensation for services rendered as attorney for 2 common stockholders in the ch. X bankruptcy reorganization of debtor. Commission filed brief Apr. 10-1949, in support of district court order. On June 9, 1949, CA-2 reversed order and remanded case for reconsideration of request for allowance in light of opinion. Petitioner applied for rehearing which was denied June 27, 1949. Pending. |
| Industrial Office Building Corp., Debtor. | Third | June 18, 1948 | Appeal by the debtor and certain noteholders of the debtor from May 19, 1948, order directing an interim distribution to first mortgage bondholders. Motion of SEC to dismiss appeals denied, and motion of debtor for stay denied. SEC brief in support of district court order filed Nov. 22, 1948. Order affirmed by CA-3, Jan. 3, 1949. Mandate issued Jan. 20, 1949. Closed. |
| International Power Securities Corp., Debtor: *Amott* v. *The National City Bank of New York.* | do | Jan. 29, 1948 | Consolidated appeals from Dec. 22, 1947, order. Commission filed brief in support of appellants. On Sept. 28, 1948, the court of appeals reversed the district court and remanded the case with directions to proceed in accordance with its opinion. Mandate issued Oct. 18, 1948. Closed. |
| National Realty Trust, Debtor: *Sullivan, Trustee et al, Appellants* v. *Mosser, Successor Trustee et al, Appellees.* | Seventh | May 6, 1949 | Appeals from Dec. 10, 1948, Dec. 17, 1948, and Feb. 15, 1949, orders alleging that the district court in nominating and appointing successor trustees committed substantial error in executing the mandate of CA-7. Commission filed a memorandum supporting motion to dismiss appeal or to affirm orders. On June 1, 1949, CA-7 affirmed orders of district court, with costs. Pending. |
| Pittsburgh Railways Co., Debtor: *Philadelphia Co. et al., appellants.* | Third | Mar. 2, 1948 | Appeal from Jan. 15, 1948, order permitting the filing of objections to claims filed by Philadelphia Co. and its affiliates and subsidiaries up to and including Jan. 20, 1948. The SEC filed objections to appellant's designation of contents of record on Appeal. On June 21, 1948, the court of appeals dismissed the appeal for want of prosecution. Closed. |
| Third Avenue Transit Corp., Debtor: and 2 answering creditors. | Second | | Appeal by debtor and 2 answering creditors from Mar. 16, 1949, order denying motion for dismissal of the amended petition for reorganization. Pending. |
| Warner Sugar Corp., Debtor: *Oscar W. Ehrhorn, Appellant.* | do | | Appeals by Isadore Glauberman, Paul E. Kern, and Oscar W. Ehrhorn from May 25, 1948, order allowing compensation to Glauberman and Kern and denying application of Ehrhorn for an allowance for services. Leave to appeal denied except as to Ehrhorn by June 11, 1948, order of court of appeals. Appeal taken by Ehrhorn. Opinion rendered Nov. 12, 1948, by CA-2 affirming district court's order. Closed. |

TABLE 36.—*A 16-year summary of criminal cases developed by the Commission—1934 through 1949, by fiscal year*

| Fiscal year | Number of cases referred to Department of Justice in each year | Number of persons as to whom prosecution was recommended in each year | Number of such cases in which indictments were obtained by United States attorneys | Number of defendants indicted in such cases [1] | Number of these defendants convicted | Number of these defendants acquitted | Number of these defendants as to whom proceedings were dismissed by United States attorneys | Number of these defendants as to whom cases are pending [2] |
|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1934 | 7 | 36 | 3 | 32 | 17 | 0 | 15 | 0 |
| 1935 | 29 | 177 | 14 | 149 | 84 | 5 | 60 | 0 |
| 1936 | 43 | 379 | 34 | 368 | 164 | 46 | 158 | 0 |
| 1937 | 42 | 128 | 30 | 144 | 78 | 32 | 33 | 1 |
| 1938 | 40 | 113 | 33 | 134 | 75 | 13 | 44 | 2 |
| 1939 | 52 | 245 | 47 | 292 | 199 | 33 | 58 | 2 |
| 1940 | 59 | 174 | 51 | 200 | 96 | 38 | 66 | 0 |
| 1941 | 54 | 150 | 47 | 145 | 94 | 15 | 36 | 0 |
| 1942 | 50 | 144 | 46 | 194 | 108 | 23 | 48 | 15 |
| 1943 | 31 | 91 | 28 | 108 | 61 | 10 | 27 | 10 |
| 1944 | 27 | 69 | 24 | 79 | 47 | 6 | 19 | 7 |
| 1945 | 19 | 47 | 18 | 61 | 36 | 10 | 13 | 2 |
| 1946 | 16 | 44 | 14 | 40 | 13 | 8 | 3 | 16 |
| 1947 | 20 | 50 | 13 | 34 | 9 | 5 | 7 | 13 |
| 1948 | 16 | 32 | 15 | 29 | 14 | 3 | 3 | 9 |
| 1949 | [3] 27 | 44 | 15 | 39 | 1 | 1 | 1 | 36 |
| Total | 532 | 1,923 | [4] 432 | 2,048 | 1,096 | 248 | [5] 591 | 113 |

[1] The number of defendants in a case is sometimes increased by the Department of Justice over the number against whom prosecution was recommended by the Commission. For the purposes of this table, an individual named as a defendant in 2 or more indictments in the same case is counted only as a single defendant.

[2] See separate chart for break-down of pending cases.

[3] 11 of these references as to 13 proposed defendants were still being processed by the Department of Justice as of the close of the fiscal year.

[4] 403 of these cases have been completed as to one or more defendants. Convictions have been obtained in 355, or 88.1 percent of such cases. Only 48, or 11.9 percent, of such cases have resulted in acquittals or dismissals as to all defendants.

[5] Includes 41 defendants who died after indictment.

TABLE 37.—*A 13-year summary of criminal cases developed by the Commission which are still pending—1937 through 1949, by fiscal year*

| | Cases | Number of defendants in such cases | Number of such defendants as to whom cases have been completed | Number of such defendants as to whom cases are still pending and reasons therefor | | |
|---|---|---|---|---|---|---|
| | | | | Not yet apprehended [1] | Awaiting trial | Awaiting appeals |
| Pending, referred to Department of Justice in: [2] | | | | | | |
| 1937 | 1 | 7 | 6 | 0 | 1 | 0 |
| 1938 | 1 | 2 | 2 | 2 | 0 | 0 |
| 1939 | 2 | 9 | 7 | 1 | 1 | 0 |
| 1940 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1941 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1942 | 2 | 18 | 3 | 14 | 1 | 0 |
| 1943 | 3 | 15 | 5 | 8 | 2 | 0 |
| 1944 | 2 | 8 | 1 | 7 | 0 | 0 |
| 1945 | 2 | 4 | 2 | 1 | 1 | 0 |
| 1946 | 4 | 16 | 0 | 16 | 0 | 0 |
| 1947 | 4 | 15 | 2 | 8 | 5 | 0 |
| 1948 | 5 | 17 | 8 | 1 | 3 | 5 |
| 1949 | 13 | 37 | 1 | 9 | 27 | 0 |
| Total | 39 | 148 | 37 | 67 | 41 | 5 |

SUMMARY

| | |
|---|---|
| Total cases pending [3] | 50 |
| Total defendants [3] | 161 |
| Total defendants as to whom cases are pending [3] | 126 |

[1] Almost without exception these defendants are residents of Canada and cannot be extradited.

[2] Fiscal year ended June 30 of the year indicated.

[3] Except for 1949, indictments have been returned in all pending cases. Indictments have not yet been returned as to 13 proposed defendants in 11 cases referred to the Department of Justice in 1949. These are reflected only in the recapitulation of totals at the bottom of the table.

TABLE 38.—*A 16-year summary classifying all defendants in criminal cases developed by the Commission—1934 to July 1, 1949*

| | Number indicted | Number convicted | Number acquitted | Number as to whom cases were dismissed by United States attorneys | Number as to whom cases are pending |
|---|---|---|---|---|---|
| Registered broker-dealers [1] (including principals of such firms) | 325 | 202 | 22 | 91 | 10 |
| Employees of such registered broker-dealers | 102 | 51 | 15 | 33 | 3 |
| Persons in general securities business but not as registered broker-dealers (includes principals and employees) | 684 | 346 | 55 | 249 | 34 |
| All others [2] | 937 | 497 | 156 | 218 | 66 |
| Total | 2,048 | 1,096 | 248 | 591 | 113 |

[1] Includes persons registered at or prior to time of indictment.
[2] The persons referred to in this column, while not engaged in a general business in securities, were almost without exception prosecuted for violations of law involving securities transactions.

TABLE 39.—*A 16-year summary of all injunction cases instituted by the Commission—1934 to July 1, 1949, by calendar year*

| Calendar year | Number of cases instituted by the Commission and the number of defendants involved | | Number of cases in which injunctions were granted and the number of defendants enjoined [1] | |
|---|---|---|---|---|
| | Cases | Defendants | Cases | Defendants |
| 1934 | 7 | 24 | 2 | 4 |
| 1935 | 36 | 242 | 17 | 56 |
| 1936 | 42 | 116 | 36 | 108 |
| 1937 | 96 | 240 | 91 | 211 |
| 1938 | 70 | 152 | 73 | 153 |
| 1939 | 57 | 154 | 61 | 165 |
| 1940 | 40 | 100 | 42 | 99 |
| 1941 | 40 | 112 | 36 | 90 |
| 1942 | 21 | 73 | 20 | 54 |
| 1943 | 19 | 81 | 18 | 72 |
| 1944 | 18 | 80 | 14 | 35 |
| 1945 | 21 | 74 | 21 | 57 |
| 1946 | 21 | 45 | 15 | [3] 34 |
| 1947 | 20 | 40 | 20 | 47 |
| 1948 | 19 | 44 | 15 | 26 |
| 1949 (to June 30) | 11 | 20 | 9 | 16 |
| Total | 538 | 1,597 | [3] 490 | 1,227 |

SUMMARY

| | Cases | Defendants |
|---|---|---|
| Actions instituted | 538 | 1,597 |
| Injunctions obtained | 483 | 1,227 |
| Actions pending | 8 | [4] 22 |
| Other dispositions [5] | 47 | 348 |
| Total | 538 | 1,597 |

[1] These columns show disposition of cases by year of disposition and do not necessarily reflect the disposition of the cases shown as having been instituted in the same years.
[2] Includes W. J. Howey Co. and Howey-in-the-Hills Service Co., Inc. (328 U. S. 293).
[3] Includes 7 cases which were counted twice in this column because injunctions against different defendants in the same cases were granted in different years.
[4] Includes 3 defendants in 3 cases in which injuctions have been obtained as to 6 codefendants.
[5] Includes (*a*) actions dismissed (as to 287 defendants); (*b*) actions discontinued, abated, vacated, abandoned, or settled (as to 51 defendants); (*c*) actions in which judgment was denied (as to 7 defendants); (*d*) actions in which prosecution was stayed on stipulation to discontinue misconduct charged (as to 3 defendants).