SECURITIES AND EXCHANGE COMMISSION

33rd ANNUAL REPORT

1967

For the Fiscal Year Ended June 30th

SECURITIES AND EXCHANGE COMMISSION

Headquarters Office
500 North Capitol Street
Washington, D.C. 20549

COMMISSIONERS

MANUEL F. COHEN, *Chairman*
HUGH F. OWENS
HAMER H. BUDGE
FRANCIS M. WHEAT
RICHARD B. SMITH

ORVAL L. DUBOIS, *Secretary*

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D C. 20402 - Price 55 cents (paper cover)

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C., January 15, 1968

SIR: On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Thirty-Third Annual Report of the Commission covering the fiscal year July 1, 1966 to June 30, 1967, in accordance with the provisions of Section 23(b) of the Securities Exchange Act of 1934, as amended; Section 23 of the Public Utility Holding Company Act of 1935; Section 46(a) of the Investment Company Act of 1940; Section 216 of the Investment Advisers Act of 1940; Section 3 of the Act of June 29, 1949, amending the Bretton Woods Agreement Act; Section 11(b) of the Inter-American Development Bank Act; and Section 11(b) of the Asian Development Bank Act.

Respectfully,

MANUEL F. COHEN,
Chairman.

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

TABLE OF CONTENTS

PART III

PART IV

PART V

PART IX

PART X

APPENDIX—STATISTICAL TABLES

COMMISSIONERS AND STAFF OFFICERS

Commissioners	*Term expires June 5*
MANUEL F. COHEN of Maryland, Chairman	1968
HUGH F. OWENS of Oklahoma	1970
HAMER H. BUDGE of Idaho	1969
FRANCIS M. WHEAT of California	1971
RICHARD B. SMITH of New York	1972

Secretary: ORVAL L. DUBOIS

Executive Assistant to the Chairman: DAVID L. RATNER

Staff Officers

EDMUND H. WORTHY, Director, Division of Corporation Finance.
ROBERT H. BAGLEY, Associate Director.
SOLOMON FREEDMAN, Director, Division of Corporate Regulation.
JOHN A. DUDLEY, Associate Director.
AARON LEVY, Associate Director.
IRVING M. POLLACK, Director, Division of Trading and Markets.
THOMAS W. RAE, Associate Director.
EUGENE H. ROTBERG, Associate Director.
PHILIP A. LOOMIS, JR., General Counsel.
DAVID FERBER, Solicitor.
WALTER P. NORTH, Associate General Counsel.
ANDREW BARR, Chief Accountant.
LINDSEY J. MILLARD, Associate Chief Accountant.
LOUGHLIN F. MCHUGH, Chief Economist, Office of Policy Research.
LEONARD HELFENSTEIN, Director, Office of Opinions and Review.
W. VICTOR RODIN, Associate Director.
ALFRED LETZLER, Associate Director.
WILLIAM E. BECKER, Chief Management Analyst.
FRANK J. DONATY, Comptroller.
ERNEST L. DESSECKER, Records and Service Officer.
HARRY POLLACK, Director of Personnel.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey.—Mahlon M. Frankhauser, 23rd Floor, 225 Broadway, New York, New York 10007

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine.—James E. Dowd, Suite 2203, John F. Kennedy Federal Building, Government Center, Boston, Mass. 02203

Region 3. Tennessee, Virgin Islands, Puerto Rico, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, that part of Louisiana lying east of the Atchafalaya River.—William Green, Suite 138, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309

Region 4. Illinois, Indiana, Iowa, Kansas City (Kansas), Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin.—Thomas B. Hart, Room 1708, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas (except Kansas City).—Gerald E. Boltz, 503 U.S. Court House, 10th & Lamar Streets, Fort Worth, Texas 76102

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah.—Donald J. Stocking, 7224 Federal Building, 1961 Stout Street, Denver, Colorado 80202

Region 7. California, Nevada, Arizona, Hawaii, Guam.—Arthur E. Pennekamp, 450 Golden Gate Avenue, Box 36042, San Francisco, California 94102

Region 8. Washington, Oregon, Idaho, Montana, Alaska.—James E. Newton, 900 Hoge Building, Seattle, Washington 98104

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia.—Alexander J. Brown, Jr., 500 North Capitol Street, Washington, D.C. 20549

Branch Offices

Cleveland, Ohio 44199.—Room 779, Federal Office Building, 1240 E. 9th Street.

Detroit, Michigan 48226.—230 Federal Building.

Houston, Texas 77002.—Room 2606, Federal Office Annex, Courts Building 515 Rusk Ave.

Los Angeles, California 90028.—Room 309, Allstate Title Building, 6331 Hollywood Blvd.

Miami, Florida 33130.—Room 1504, Federal Office Building, 51 S.W., First Ave.

St. Louis, Missouri 63102.—Room 916, Federal Building, 208 North Broadway.

Salt Lake City, Utah 84111.—Room 6004, Federal Building, 125 South State Street.

COMMISSIONERS

Manuel F. Cohen, Chairman

Chairman Cohen was born in Brooklyn, N.Y., on October 9, 1912. He holds a B.S. degree in social science from Brooklyn College of the College of the City of New York. He received an LL.B. degree, cum laude, from Brooklyn Law School of St. Lawrence University in 1936, and was elected to the Philonomic Council. He is a member of the District of Columbia and New York bars. In 1933–1934 he served as research associate in the Twentieth Century Fund studies of the securities markets. Chairman Cohen joined the Commission's staff as an attorney in 1942 after several years in private practice, serving first in the Investment Company Division and later in the Division of Corporation Finance, of which he was made Chief Counsel in 1953. He was named Adviser to the Commission in 1959 and in 1960 became Director of the Division of Corporation Finance. He was awarded a Rockefeller Public Service Award by the trustees of Princeton University in 1956 and for a period of 1 year studied the capital markets and the processes of capital formation and of government and other controls in the principal financial centers of Western Europe. In 1961, he was appointed a member of the Council of the Administrative Conference of the United States and received a Career Service Award of the National Civil Service League. From 1958 to 1962 he was lecturer in Securities Law and Regulation at the Law School of George Washington University and he is the author of a number of articles on securities regulation published in domestic and foreign professional journals. In 1962, he received an honorary LL.D. degree from Brooklyn Law School. He took office as a member of the Commission on October 11, 1961, for the term expiring June 5, 1963, and was reappointed for the term expiring June 5, 1968. He was designated Chairman of the Commission on August 20, 1964.

Hugh F. Owens

Commissioner Owens was born in Muskogee, Oklahoma, on October 15, 1909, and moved to Oklahoma City in 1918. He graduated from Georgetown Preparatory School, Washington, D.C., in 1927, and received his A.B. degree from the University of Illinois in 1931. In 1934, he received his LL.B. degree from the University of Oklahoma College of Law, and became associated with a Chicago law firm specializing in securities law. He returned to Oklahoma City

in January 1936, to become associated with the firm of Rainey, Flynn, Green and Anderson. From 1940 to 1941, he was vice-president of the United States Junior Chamber of Commerce. During World War II he attained the rank of Lieutenant Commander, U.S.N.R., and served as Executive Officer of a Pacific Fleet destroyer. In 1948, he became a partner in the firm of Hervey, May and Owens. From 1951 to 1953, he served as counsel for the Superior Oil Company in Midland, Texas, and thereafter returned to Oklahoma City, where he engaged in the general practice of law under his own name. He also served as a part-time faculty member of the School of Law of Oklahoma City University. In October 1959, he was appointed Administrator of the then newly enacted Oklahoma Securities Act and was active in the work of the North American Securities Administrators, serving as vice president and a member of the executive committee of that Association. He took office as a member of the Securities and Exchange Commission on March 23, 1964, for the term expiring June 5, 1965, and was reappointed for the term expiring June 5, 1970.

Hamer H. Budge

Commissioner Budge was born in Pocatello, Idaho, on November 21, 1910. He attended the College of Idaho, Caldwell, Idaho, received an A.B. degree from Stanford University, Palo Alto, California, majoring in political science, and an LL.B. degree from the University of Idaho in Moscow, Idaho. He is admitted to practice before the Supreme Court of Idaho and the Supreme Court of the United States and practiced law in the city of Boise, Idaho, from 1936 to 1951, except for 3½ years in the United States Navy (1942–1945), with final discharge as Lieutenant Commander. Elected to the Idaho State Legislature, he served three sessions, two as assistant Republican floor leader and one as majority floor leader. First elected to Congress in November 1950, he represented Idaho's Second Congressional District in the United States House of Representatives during the 82d, 83d, 84th, 85th, and 86th Congresses. In the House he was a member of the Rules Committee, Appropriations Committee, and Interior Committee. During the period from 1961 until his appointment to the Commission he was District Judge in Boise. He took office as a member of the Securities and Exchange Commission on July 8, 1964, for the term of office expiring June 5, 1969.

Francis M. Wheat

Commissioner Wheat was born in Los Angeles, California, on February 4, 1921. He received an A.B. degree in 1942 from Pomona College, in Claremont, California, and an LL.B. degree in 1948 from the Harvard Law School. At the time of his appointment to the

Commission, Commissioner Wheat was a member of the Los Angeles law firm of Gibson, Dunn & Crutcher, with which he became associated upon his graduation from law school. His practice was primarily in the field of corporation and business law, including the registration of securities for public offering under the Securities Act of 1933. He has been active in bar association work, including service as Chairman of the Committee on Corporations of the Los Angeles County Bar Association and Chairman of the Subcommittee on Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, American Bar Association (Banking and Business Law Section). He also has written or co-authored articles on various aspects of the securities business and its regulation, both under Federal and State law. He took office as a member of the Commission on October 2, 1964, for the term expiring June 5, 1966, and was reappointed for the term expiring June 5, 1971.

Richard B. Smith

Commissioner Smith was born in Lancaster, Pennsylvania, on July 9, 1928, and attended public schools there. He received a B.A. degree from Yale University in 1949, where he held a scholarship, and an LL.B. degree in 1953 from the University of Pennsylvania, where he was an editor of the Law Review. Upon graduation he became associated with the New York City law firm of Reavis & McGrath (then Hodges, Reavis, McGrath, Pantaleoni & Downey). He remained with that firm from 1953, except for a period with the legal department of W. R. Grace & Co. in 1956–57, until his appointment to the Commission, having become a partner of the firm in 1963. During this period he was engaged in the general practice of law, specializing in corporate finance and securities work. Commissioner Smith was active in bar association work, having served as a member, secretary and then Chairman (1963–66) of the Committee on Aeronautics of The Association of the Bar of the City of New York and during 1962–64 as a member of the Committee on State Legislation of the New York State Bar Association. He is also a member of the American Bar Association. In 1961–62 he acted as counsel to a Commission of Inquiry into labor questions in the thoroughbred racing industry, appointed by the Governor of the State of New York. He was president of the University of Pennsylvania Law Alumni Association of New York City during 1965–67 and serves as a member of the Board of Managers of the Alumni Society of the University of Pennsylvania Law School. He took office as a member of the Commission on May 1, 1967, for the term expiring June 5, 1967, and was reappointed to a 5-year term ending June 5, 1972.

INTRODUCTION

The format for this Annual Report differs in an important way from that used in previous years. It reflects the Commission's first attempt to describe its work in accordance with the Planning-Programming-Budgeting System (PPBS) which has been prescribed for agencies and departments of the Government. Whereas in the past the Annual Report discussed the Commission's work under each of the various Acts which the Commission administers, this Report describes the Commission's activities in terms of the programs that have been developed under these Acts but which may cut across them.

In its simplest terms PPBS is designed to produce for each agency a precise definition of its goals and an explanation of how it is implementing those goals. This process requires an analysis of the alternative techniques available and the reasons why the agency chose the alternatives it did. The principal objective of PPBS "is to improve the basis for major program decisions, both in the operating agencies and in the Executive Office of the President." [1]

The Report describes the four principal programs of the Commission. The first is that of full disclosure—to insure that there is adequate information available to the investing public about the issuers of publicly offered or owned securities and their managements. The second program is market regulation—to insure that the markets function in a fair and orderly fashion. The third is the anti-fraud program—to control improper practices in the securities markets. The fourth major program is the regulation of investment companies—a program which combines elements of the other three in a special context. In addition to these four principal programs, the Report discusses the Commission's other programs dealing with public utility holding companies and with corporate reorganizations and a program of general support for all of the Commission's external activities.

To a great extent the structure of this Report simply represents an articulation of how the Commission is already making decisions The increased use of PPBS, however, will help the Commission improve its effectiveness in implementing the underlying goal of all the Federal securities laws—public confidence in the securities markets.

[1] Budget Bureau Bulletin No. 68-2, p. 1.

281-577—68——2

PART I

IMPORTANT RECENT DEVELOPMENTS

MUTUAL FUND REPORT AND LEGISLATIVE PROPOSALS

On December 2, 1966, the Commission submitted to Congress its Report evaluating the policy implications of the growth of the investment company industry since 1940 and recommending legislation designed to meet the major problems it found.[1] The Report was submitted pursuant to a provision of the Investment Company Act authorizing the Commission to make a study and investigation if it deems "that any substantial further increase in the size of investment companies creates any problem involving the protection of investors or the public interest," and to report the results to Congress. The Report concluded that mutual funds and other investment companies offer a sound and useful investment medium for the public but that their dramatic growth in recent years has created problems which require attention by the Congress, the Commission, and the industry.

The Report had its genesis in 1958 when the Commission authorized the Wharton School of Finance and Commerce of the University of Pennsylvania to make a study of the mutual fund industry and to submit a report to the Commission. The Wharton Report, which was submitted to Congress in August 1962, found that the important current problems in the mutual fund industry involved potential conflicts of interest between fund management and shareholders and the impact of fund growth and stock purchases on stock prices.

The Wharton Report was supplemented by the Report of the Special Study of Securities Markets, prepared by a staff group of the Commission, which dealt with aspects of the mutual fund industry outside the scope of the Wharton Report. The Special Study's Report, which was published in 1962–1963, focused on sales of mutual fund shares, the special problems raised by the front-end load in the sale of contractual plans and allocations of mutual fund portfolio brokerage.

Neither the Special Study Report nor the Wharton Report was a report by the Commission as such. The Commission thereafter care-

[1] The report has been printed as Report No. 2337 of the House Committee on Interstate and Foreign Commerce, 89th Cong., 2d Sess. Copies may be purchased from the U.S. Govt. Printing Office.

fully evaluated the public policy questions which were raised by these Reports and following further studies by its staff submitted its recommendations to Congress in December 1966.

On May 1, 1967, the Commission submitted to Congress its legislative proposals. These proposals were introduced in the Senate as S. 1659 and in the House of Representatives as H.R. 9510 and H.R. 9511. Hearings were held in July and August 1967 by the Senate Committee on Banking and Currency and in October 1967 by the House Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce. While the legislation was under consideration by the Congress, the Commission and representatives of the mutual fund industry discussed revision of certain of the proposals in an attempt to find a satisfactory solution to some of the objections expressed by the industry.

In November 1967 Senator McIntyre introduced an amendment to S. 1659 which would specifically authorize commercial banks to operate various types of collective investment funds: (1) collective funds for managing agency accounts; (2) common trust funds for assets held by banks in a *bona fide* fiduciary capacity; (3) collective investment funds for corporate employee pension, profit-sharing or retirement plans; and (4) collective funds for so-called H.R. 10 plans for self-employed persons pursuant to the provisions of the Smathers-Keogh Act. The amendment would also modify and clarify the application of the securities laws to various types of activities in which banks engage. In response to a request by the Senate Banking and Currency Committee, Chairman Cohen testified on the amendment. The Commission took no position on the provision of the amendment which would authorize banks to operate commingled funds for managing agency accounts and for other purposes.

The principal conclusions and recommendations of the Report and the legislative proposals implementing the recommendations are as follows:

Mutual Fund Management and Its Cost

The Commission recommended that the Investment Company Act be amended to provide expressly that all compensation received by investment advisers and other persons affiliated with a registered investment company for services to such company shall be reasonable and to provide for judicial enforcement of this statutory standard. The standard of reasonableness would be applied in the light of all relevant factors.

A requirement that the compensation be reasonable would appear inherent in the fiduciary relationship between investment company shareholders and an investment advisory organization which is in

effective control of the fund. The existing provisions of the Investment Company Act, however, provide no adequate means by which such a requirement may be enforced.

Sales Charges Generally

In 1940 Congress determined to leave the question of sales loads "for the present at least" to competition among principal underwriters of the different funds. However, owing to the manner in which mutual fund shares are sold, the underwriters have found it to their advantage to keep sales loads high in order to compete for dealer interest. This form of competition is facilitated by the provision of the Act which prohibits a dealer from selling fund shares below the price specified by the principal underwriter in the prospectus and thus prevents price competition among dealers in the sale of shares of any particular fund. Some disparity between mutual fund sales loads and the cost of investing in listed or unlisted securities may be warranted; however, the Commission believes the existing disparity, which is very great by any standard, is unwarranted.

The proposed legislation would place a 5 percent ceiling on charges for mutual fund sales, subject to a power in the Commission to grant exceptions where appropriate. This proposed maximum charge would still be substantially greater than the sales charges generally prevailing in the securities markets.

The Front-End Load

The distinctive feature of so-called contractual plans is that as much as 50 percent of the payments made by the investor during the first year may be deducted for sales charges. This feature, known as the "front-end load," is permitted under a specific provision of the Act. While the Act limits the aggregate sales charge on a completed plan to 9 percent of the amount invested, the front-end load feature works to the disadvantage of all planholders, including those who complete their plans on schedule. It is particularly to the disadvantage of those who fail to complete their plans since they may pay sales charges ranging from 25 percent to 100 percent of the net amount invested in plan shares.

The proposed legislation would eliminate the front-end load feature and require that sales charges be spread equally over all payments, thus reducing the undue loss suffered by those investors who do not complete their plans, as well as making sure that a greater proportion of the money paid by an investor is invested for his benefit.

Capital Gains Distributions

The Report concluded that normally there is no justification for distribution of capital gains more than once a year. More frequent

distributions facilitate certain improper selling practices for mutual fund shares and place undesirable pressures on managers of investment company portfolios to realize and distribute capital gains irrespective of investment considerations.

Under the Commission's proposals, the Act would be amended generally to prohibit investment companies from distributing realized capital gains to shareholders more than once a year. This proposal would require all investment companies to conform to the practice now followed by the majority.

Disqualification of Individuals From Association With an Investment Company

The Report contained recommendations designed to improve the administration and enforcement of the Act. One of the most important of these would strengthen the provisions of the Act which bar persons who have willfully violated the securities laws from being affiliated in official capacities with investment companies.

The Act, which presently disqualifies from association with an investment company persons convicted or enjoined on the basis of specified acts of misconduct, would be amended to conform to the corresponding provisions of the Securities Exchange Act and the Investment Advisers Act by authorizing administrative proceedings before the Commission to determine whether or not any person connected with an investment company has willfully violated the Federal securities laws and, if so, what sanctions, if any, should be imposed in the public interest.

Breach of Fiduciary Duty

Another recommendation of the Report which was designed to improve administration and enforcement of the Act concerns Section 36 of the Act, which presently permits the Commission to seek an injunction against investment company managers alleged to be guilty of gross misconduct or gross abuse of trust. Under the legislative proposals, this Section would be amended to authorize action against such persons for breach of fiduciary duty to the investment company and to give the court greater flexibility in choosing remedies.

Insider Trading in Portfolio Securities

A new Section would be added to the Act to empower the Commission specifically to adopt rules and regulations with respect to trading in securities held or being acquired by investment companies by persons affiliated with such companies. This proposal would fill the need indicated in the Report for better definitions of standards and codes of ethics with respect to insider trading in investment company portfolio securities.

Fund Holding Companies

The Report found that one of the most striking recent developments in the investment company industry has been the emergence of the "fund holding company," a mutual fund which invests primarily in the shares of other mutual funds. Fund holding companies are in a position to exercise undue influence over the activities of their portfolio companies because of the ever-present possibility that they will redeem their relatively large holdings in those companies. Moreover, the fund holding company is a particularly expensive investment medium, of doubtful utility to investors.

Under the Commission's proposals, the Act would be amended to prohibit the creation of new fund holding companies or the acquisition of additional securities of registered investment companies by existing fund holding companies.

Disinterested Directors

The Commission proposed that the Act be amended to require that persons acting as so-called independent directors of investment companies be entirely independent of and disinterested in the management. This would exclude persons having close family, business or professional relationships with management from being classified as independent directors.

Transfer of Investment Advisory Contracts

A new Section would be added to the Act to prohibit the transfer of investment advisory or management contracts with investment companies on terms which are burdensome or inequitable to the investment company. This proposal results from the Report's concern that the present safeguards in the Act are inadequate to protect fund shareholders in this area.

Other Matters

Other proposed amendments to the Investment Company Act are designed to up-date its provisions by eliminating inconsistencies and deleting certain exemptions. It is also proposed that the Investment Advisers Act be amended to conform its provisions for disciplinary action to the 1964 amendments to the Securities Exchange Act of 1934 and to eliminate the exemptions from the Act for investment advisers serving investment companies.

Other matters were discussed in the Report which did not result in recommendations for additional legislation. The Report observed that mutual funds incurred brokerage costs of more than $100 million in effecting portfolio transactions during 1965 and that the use of brokerage to provide additional compensation to dealers selling fund

shares has potentially adverse effects on mutual fund shareholders and upon the structure of the securities business and the manner in which its markets operate. For instance, it encourages fund managers to direct their portfolio transactions in such a way as to produce the greatest sales of fund shares, regardless of whether they produce the best or most economical execution of portfolio transactions. It encourages dealers to recommend to their customers shares of the funds which offer them the largest amount of income from portfolio business, regardless of whether the shares of these funds are the most appropriate for the particular customer. The Report concluded that these problems are rooted in the rules of the stock exchanges. The Commission has advised the exchanges that re-examination and changes in their commission rate structures and rules are necessary to deal with these problems.[2]

The Report also concluded that policy implications of investment company growth, though not requiring legislative action at this time, merit the attention of the Congress. The Report examined the market impact of mutual fund growth and the increasing participation of other types of institutional investors in the nation's stock markets. While the markets on the whole have thus far responded to the changes wrought by increasing strains on the ability of the auction market to handle the relatively large transactions that are characteristic of institutional investors, these changes require a reappraisal of existing practices and procedures by the Commission, the securities industry, and institutional investors themselves. Such a reappraisal requires more data than is now available on the securities holdings and trading patterns of all institutional investors, including the noninsured private pension funds.

OTHER DEVELOPMENTS

Take-Over Bid Bill

On August 30, 1967, S. 510, the so-called "Take-over Bid" legislation, was passed by the Senate and is now pending before the House Committee on Interstate and Foreign Commerce. This legislation is designed to afford full disclosure and other protections to investors in connection with purchases of substantial blocks of stock of publicly-held corporations either through cash tender offers or private or open market purchases and in connection with repurchases by corporations of their own stock. On March 21, and again on May 4, 1967, Chairman Cohen had testified concerning S. 510 before the Subcommittee on Securities of the Committee on Banking and Currency, United States Senate. The bill which was passed included certain amendments suggested in the statement submitted by the Commission. The Commission believes that on the whole the bill provides a workable means of dealing with the problems which have arisen in these areas.

[2] See p. 8, *infra*.

The bill would amend Section 13 of the Securities Exchange Act of 1934 to require any person who acquires beneficial ownership of more than 10 percent of any class of registered equity securities to file with the appropriate exchange, the issuer, and the Commission promptly after such acquisition a statement containing pertinent information about his background and identity. It would further make it unlawful for an issuer to purchase its own securities in contravention of Commission rules. The bill also would amend Section 14 of the Securities Exchange Act to require any person making a tender offer for any class of registered equity security which, if consummated, would result in his owning more than 10 percent of such class, to file with the Commission, send to the issuer and provide to security holders pertinent information about his background and identity. The bill would provide certain additional protections to shareholders in tender offers. It would permit persons to withdraw tendered shares within a specified period, provide that tendered shares be taken up on a pro-rata basis under certain circumstances, provide that subsequent price increases in the tender offer be paid to persons who have already tendered their shares at lower prices, and prohibit persons soliciting tender offers from making false, misleading or deceptive statements or engaging in fraudulent or manipulative practices.

Broker-Dealer Financial Reports

For the past several years, the Commission has continued its research into broker-dealer operations in an attempt to understand fully the economic forces at work in the industry. In this connection, the Commission has met with various representatives of the exchanges and the National Association of Securities Dealers to develop a system whereby more adequate financial information would become available on a periodic basis.

As reported in the annual report for 1966, the New York Stock Exchange, at the Commission's urging, improved its income and expense reports and made them mandatory for all members doing a public commission business. The Commission is now engaged in an effort to obtain reports from all segments of the industry with respect to all aspects of the securities business. Its staff is working with the various self-regulatory bodies to formulate a uniform reporting standard for all brokers and dealers. The information contained in these reports is, of course, vital to the Commission's ability to make informed decisions in many areas of its responsibilities including the structure of commissions and other charges paid among the various segments of the business and by the public. It is also essential to enable the Commission to keep abreast of the economic trends in all sectors of the industry. Finally, this information could make more effective the work of the several self-regulatory institutions.

Commission Level and Structure

The Commission staff has continued to review and study the level and structure of commission rates on exchanges. In recent years the growing influence of institutional investors, who typically buy and sell in large blocks, has greatly complicated the question of the reasonableness of commission rates. It is apparent that a commission rate structure which requires the same commission per share for large blocks as for 100-share blocks is unrelated to the cost of handling transactions, a fact reflected in the willingness of exchange members to forego a large proportion of their regular commissions derived from mutual fund business, through "give-ups," "give-aways," and reciprocal arrangements. These practices are not desirable. Among other things, they create substantial conflicts of interest for the managers of investment companies, since generally the give-ups and similar practices are used to serve the interests of the managers rather than the stockholders of the funds. Accordingly, the Commission has given notice to all exchanges that it believes that exchange rules must be changed so as to preclude customer-directed give-ups. The Commission has also urged the exchanges to consider the adoption of a volume discount. Pursuant to its responsibilities in this area, the Commission has advised the various self-regulatory organizations that, if customer-directed give-ups are not abolished, the Commission itself may find it essential to exercise its rulemaking powers under the Exchange Act.

Automation of Market Facilities

In fiscal year 1966 the Commission appointed an Electronic Data Processing Committee composed of computer technologists, staff attorneys and certain administrative personnel to keep abreast of the increasing implementation of automation techniques and equipment in the securities markets. During the past fiscal year this Committee and its individual members met with various exchanges, the National Association of Securities Dealers, suppliers of stock market data and other interested parties to discuss such matters as the establishment of central bookkeeping systems and central depositories for securities, the improvement of quotations, the automation of surveillance procedures and the clearing operation, and the automation of the execution of odd-lot transactions. These continuing conferences have accomplished two ends. First, they have served to keep the Commission informed of the many developments in this field and secondly, they have enabled the Commission to make judgments on the direction in which these developments have been moving and to suggest changes, where necessary, for the protection of the public investor.

Extensive meetings and discussions have been held between the Commission staff and representatives of the New York Stock Exchange on the Exchange's development of a central back office accounting system and a centralized system for the handling and delivery of securities through the use of automated procedures.

Review of Exchange Rules Regarding Off-Board Trading

In fiscal year 1966 the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934, requested the New York Stock Exchange to amend its rules to allow its members to effect transactions in listed securities off the Exchange. Prior to this request, Exchange Rule 394 prohibited all off-board transactions in listed securities, whether effected on a principal or agency basis, unless exempted by the Exchange. The net effect of the rule was to restrict the public's ready access to all markets and to limit competition between the exchange market and the over-the-counter market.

On October 20, 1966, the Board of Governors of the New York Stock Exchange, in compliance with the Commission's request, amended Rule 394 to permit member broker-dealers to execute transactions with certain nonmember broker-dealers who maintain markets in listed securities. In the past fiscal year the Commission has conducted studies to determine whether the rule change has had the desired effect of promoting competition between the exchange specialist and the nonmember market-maker and of providing the public customer with the benefits of the best available market. The initial studies indicated that a relatively small number of exchange members were making use of the amended rule. Accordingly the Commission has been working with the Exchange to clarify the rule and certain Exchange interpretations thereof and to fully educate member firms to the availability and use of this new mechanism. These efforts are continuing.

PART II

OPERATION OF THE SECURITIES ACTS AMENDMENTS OF 1964

Extension of Disclosure Requirements to Over-the-Counter Securities

The 1964 amendments to the Securities Exchange Act of 1934 extended to investors in many publicly held companies whose securities are traded in the over-the-counter market the same fundamental disclosure protections which that Act formerly afforded only to investors in companies with securities listed on a national securities exchange. Generally speaking, Section 12(g), added to the Act in 1964, requires a company with total assets exceeding 1 million dollars and a class of equity securities held of record by 500 or more persons to register those securities with the Commission. Upon registration, the periodic reporting, proxy solicitation and insider reporting and trading provisions of the Act become applicable.

During the fiscal year, 562 registration statements were filed under Section 12(g), making a total, together with those previously filed, of 2,746. Eight of these statements were withdrawn before they had become effective upon determination that they were not required to be filed under the Act. In addition, 45 registrations have been terminated pursuant to Section 12(g)(4) because the number of shareholders fell below 300.

Of the 2,746 registration statements filed, 1,568 were those of issuers already subject to the periodic reporting requirements of the Act under Section 13 or 15(d). This figure includes 135 registration statements (78 in fiscal year 1965, 28 in 1966, and 29 in 1967) filed by issuers with another security registered on a national securities exchange and 1,433 (851 in fiscal year 1965, 353 in 1966, and 229 in 1967) by issuers subject to the reporting requirements of Section 15(d) as a result of having registered securities under the Securities Act. These 15(d) companies had, however, not been subject to the proxy solicitation and insider reporting and trading provisions of the Exchange Act. The remaining 1,170 issuers which filed registration statements (not including those withdrawn) had not been subject to any of the disclosure or insider trading provisions and became subject to them through registration.

Issuers with securities registered under Section 12(g) filed 1,984 definitive proxy statements pursuant to Regulation 14A during the fiscal year. In addition, 18 of the 37 proxy contests during the year

which were subject to Regulation 14A involved securities registered under Section 12(g). A total of 92 information statements in definitive form was filed pursuant to Section 14(c), also added to the Act in 1964, and Regulation 14C adopted by the Commission thereunder. Section 14(c) requires issuers of securities registered under Section 12 (both listed and unlisted), in accordance with rules and regulations prescribed by the Commission, to transmit to security holders from whom proxies are not solicited prior to a security holders' meeting and to file with the Commission an information statement containing information substantially equivalent to that which would be required in a proxy statement.[1]

Exemptions From Registration

Section 12(h) of the Act authorizes the Commission, either by rules and regulations or by order upon application of an interested person, to grant a complete or partial exemption from the provisions of Sections 12(g), 13, 14, 15(d), or 16 if the Commission finds that because of the number of public investors, the amount of trading interest in the securities, the nature and extent of the activities of the issuer, the income or assets of the issuer, or otherwise, the exemption is not inconsistent with the public interest or the protection of investors.

During the fiscal year, 13 applications for complete or partial exemptions were filed and 12 applications filed during prior years were still pending. Of these 25 applications, 4 were granted,[2] 3 were denied, 6 were withdrawn, and 12 were pending at the end of the year. Exemptions were granted for a variety of reasons. In one instance, a temporary exemption from the Section 12(g) registration requirements was granted pending a determination whether the company would be liquidated by the court-appointed receiver or its management returned to the stockholders. One issuer which became subject to the registration requirements as of the end of its last fiscal year was exempted because, as a result of a tender offer, the number of its shareholders had subsequently been reduced below 300, and the company would have been entitled to termination of registration. In another case, an exemption was granted to a broker-dealer and member of the New York Stock Exchange, whose stock is not publicly traded, but is held mainly by key employees who may resell only to the firm. Another issuer was exempted from Section 14(c) with respect to any stockholders meeting solely for the election of directors.

---

[1] Complete statistics with regard to proxy solicitations may be found at p. 39, *infra*.

[2] As required by the Act, exemptions were granted only after notice and opportunity for hearing. No hearings were requested as to any applications which were granted.

The company's sole operations consisted of receiving the return from a perpetual lease of its property and the company's only major shareholder had always elected the directors.

In one instance, a requested exemption was denied after a hearing. The applicant in the case, *Orchard Supply Building Co.*, operates three retail hardware stores. Its total assets substantially exceed the minimum figure specified in Section 12(g) and, as of the time of the hearing, it had more than double the minimum number of shareholders.

The company urged that small shareholders should be disregarded in applying the 500-shareholder test. It also alleged that there was limited trading interest in its common stock, that it was basically a local concern, and that to require compliance with the registration and other provisions of the Exchange Act would impose a heavy financial burden on it without commensurate benefit to its shareholders or the investing public.

In his initial decision the hearing examiner noted the strong public policy favoring registration, as reflected in the legislative history of the 1964 amendments, and pointed out that the standards incorporated in the legislation were the result of very careful administrative and legislative study and should not be lightly disregarded. He concluded that the company had not sustained the burden of justifying the requested exemption and that such exemption would not be consistent with the public interest and the protection of investors. The examiner rejected the contention that a "de minimis" rule should be applied to exclude small shareholders from the calculation of the number of shareholders. He further found that the company's shareholders were not receiving important financial information which they would receive upon registration; that there had been substantial trading in the company's stock; and that the extent of its sales indicated that its operations had a significant impact on interstate commerce. The company did not seek review of the initial decision, and the Commission did not order review on its own initiative. The initial decision therefore became the final decision of the Commission.[3]

Securities of Insurance Companies.—Securities of insurance companies which meet specified conditions are exempted from the provisions of Section 12(g) of the Act. As described in the last annual report,[4] these conditions are that (1) the company is required to and does file an annual statement conforming to that prescribed by the National Association of Insurance Commissioners ("NAIC") with the insurance regulatory authority of its domiciliary State; (2) the company is regulated in the solicitation of proxies as prescribed by

[3] Securities Exchange Act Release No. 8104 (June 20, 1967).

[4] See 32nd Annual Report, pp. 12–13.

the NAIC; and (3) the purchase and sale of securities issued by the company by beneficial owners, directors or officers of the company are subject to reporting and trading regulations substantially in the manner provided by Section 16 of the Act. Last year's report also discussed the steps that had been taken by the various States and their insurance regulatory authorities to meet these conditions.

Securities of Foreign Issuers.—Section 12(g)(3) authorizes the Commission to grant complete or partial exemptions for foreign securities if it concludes that such exemptions are in the public interest and consistent with the protection of investors. To determine how best to apply the Exchange Act to foreign issuers so as to assure that American investors would have available adequate information about such issuers, the Commission made an extensive study of the disclosure and reporting requirements and practices in many of the countries whose issuers have securities traded in the United States, and of the requirements of many leading foreign stock exchanges. The Commission also consulted with representatives of American brokers, dealers, financial analysts, the principal banks issuing American Depositary Receipts (ADR's) and other persons who are interested in foreign securities, and received recommendations from interested domestic and foreign groups. During this study, the Commission exempted until November 30, 1965, all securities of foreign companies and certificates of deposit therefor.[5]

After completing this initial study, the Commission, in November 1965, published for comment proposals including rules and forms to be applicable to foreign companies subject to Section 12(g).[6] The Commission received many comments on these proposals. After careful consideration of these comments, and after further discussion with interested persons and groups, the Commission decided not to adopt the proposals at that time, but rather to extend the temporary exemption until November 30, 1966.[7] Because registration of securities under Section 12(g) is not required until 120 days after the end of the issuer's fiscal year, this extension meant that companies whose fiscal year ended December 31 would not have to register their securities until April 30, 1967.

As a basis for further study, the Commission also asked those foreign issuers which it had reason to believe would have been subject to the Act, had the proposed rules been adopted, to furnish to the Commission certain information which they made public abroad. Most of these companies complied with the request. After careful exami-

---

[5] Securities Exchange Act Release No. 7427 (September 15, 1964).

[6] Securities Exchange Act Release Nos. 7746, 7747, 7748 and 7749.

[7] Securities Exchange Act Release No. 7867 (April 21, 1966).

nation of the material furnished, the Commission decided to revise its original proposals. It determined that the continuing improvement in the quality of the information being made public by foreign issuers warranted exempting from Section 12(g) the securities of those foreign companies which have not sought a public market for their securities in the United States through a public offering or through stock exchange listing, and which furnish the Commission with certain information published pursuant to foreign law or stock exchange requirement or sent to their security holders.

On April 28, 1967, the Commission adopted Rules 3b–4, 12g3–2, 13a–16 and 15d–16 and amended Rules 13a–11 and 15d–11.[8] In connection with the adoption of these new rules, the registration and annual report forms for use by foreign issuers were also revised and a new Form 6–K for periodic reports was adopted.[9] Under the new rules, securities of a foreign company are exempt from registration under Section 12(g) if the class of securities has fewer than 300 holders resident in the United States. Foreign companies which have not previously been subject to the reporting requirements of the Act may obtain an exemption from Section 12(g) by furnishing to the Commission copies of certain information which they have made public abroad or have sent to their security holders together with a notification that such information is being furnished in order to obtain the exemption.

Foreign companies which have reporting obligations arising from the listing of securities on a United States securities exchange or from a public offering of their securities in the United States are exempted from Section 12(g) for the duration of such prior obligation. Registration of a class of securities under Section 12(g) would not affect the reporting requirements of these companies or subject them to any further provision of the Act, and the exemption thus serves only to eliminate unnecessary filings. This exemption is not available, however, to companies which are essentially United States companies or to North American or Cuban companies with securities listed on a United States securities exchange. Such companies are subject to the provisions of sections 14 and 16 of the Act governing proxy solicitations and insider reporting and short-term trading with respect to their registered securities.

The Commission decided not to adopt at the present time special rules applicable to brokers and dealers who deal in foreign securities. It did, however, call to the attention of brokers, dealers and investors the fact that information concerning certain foreign issuers may not be available in the United States. The Commission intends to issue

---

[8] Securities Exchange Act Release No. 8066.

[9] Securities Exchange Act Release Nos. 8067, 8068 and 8069 (April 28, 1967).

lists from time to time showing which foreign issuers have registered securities under Section 12(g), which have obtained exemptions by furnishing information in the manner noted, and which have done neither. One such list was issued on August 10, 1966, showing 80 issuers which had furnished information voluntarily to the Commission and 32 issuers which had not done so.[10] The Commission maintains a continuing review of activity in the markets for foreign securities to see whether the new rules are achieving their purpose and whether further rules are necessary.

Regulation of Broker-Dealers Who Are Not Members of Registered Securities Association

Prior to the 1964 amendments, brokers and dealers registered with the Commission who were not members of the National Association of Securities Dealers, Inc. ("NASD"), or of one of the principal exchanges, were not subject to any comprehensive regulation concerning their qualifications or business practices. A major objective of the amendments was "to insure that the Commission has the necessary authority to provide regulation of nonmember brokers and dealers comparable to that imposed by (self-regulatory) associations on their membership, including the requirement that these nonmember brokers and dealers pay fees which will compensate the Commission for this additional regulation." [11]

Subsections (8), (9) and (10) of Section 15(b) of the Exchange Act authorize the Commission to adopt rules and regulations prescribing standards of training and experience and establishing other prerequisites for entry into the securities business by nonmember brokers and dealers and their associated persons, and rules and regulations for such brokers and dealers designed to promote just and equitable principles of trade, prevent unreasonable profits or unreasonable rates of commissions or other charges, and in general to protect investors and the public interest and remove impediments to and perfect the mechanism of a free and open market. The Commission is also authorized to adopt rules and regulations imposing fees to defray the cost of regulating nonmember broker-dealers.

The last two annual reports of the Commission described the initial steps taken to implement these statutory provisions,[12] including the adoption in September 1965 of Rule 15b8–1 which among other things requires associated persons of nonmember broker-dealers to pass a qualification examination. During the 1967 fiscal year, 2,368 associated persons took the Commission's general securities examination, which is

[10] Securities Exchange Act Release Act No. 7934.

[11] House Report No. 1418, 88th Cong., 2d Sess., p. 12.

[12] 31st Annual Report, pp. 11–13; 32nd Annual Report, pp. 16–18.

administered by the NASD. As of the end of the fiscal year, there were 462 registered nonmember broker-dealers with a total of about 22,000 associated persons.

During the past fiscal year and within the month following its close, the Commission took important further steps to implement the statutory provisions. In October 1966, it published a proposal to adopt Rules 15b10–1 through 15b10–6 under Section 15(b)(10).[13] On July 17, 1967, the proposed rules with certain modifications, as well as a Rule 15b10–7, were adopted, effective October 2, 1967.[14] The new rules establish standards of general business conduct, suitability of recommendations and supervision of associated persons, regulate discretionary accounts, and impose recordkeeping requirements.

Rule 15b10–1 defines certain terms used in the other rules. Rule 15b10–2 requires nonmember brokers and dealers and their associated persons to adhere to high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The rule is designed to impose a general ethical standard of fair dealing.

Rule 15b10–3, the suitability rule, provides that no recommendation to purchase, sell, or exchange a security shall be made unless the broker or dealer or associated person making the recommendation has reasonable grounds to believe that the recommendation is "not unsuitable" in view of the customer's investment objectives, financial situation and needs as disclosed by the customer after reasonable inquiry or as otherwise known by the broker or dealer or associated person.

The nature and extent of the inquiry to be made will depend on all the facts and circumstances. Thus, depending on the length of the interval between recommendations, it might be sufficient simply to ask the customer whether there has been any material change in his circumstances since the previous inquiry. The broker-dealer is not precluded from making a recommendation because the customer, after reasonable inquiry, declines to furnish information concerning his investment objectives, financial situation and needs.

This rule is not an attempt to second-guess the exercise of the reasonable business judgment of a broker-dealer or to make him an insurer of favorable investment performance. The recommendation must be judged in the light of the information available to the broker-dealer after reasonable inquiry as to the customer's situation at the time of the recommendation and not by reference to subsequent events.

The discretionary account rule, Rule 15b10–5, provides that discretionary authority to effect transactions in a customer's account must

[13] Securities Exchange Act Release No. 7984 (October 25, 1966).

[14] Securities Exchange Act Release No. 8135 (July 27, 1967).

be given in writing and the customer must indicate his reasons for granting such authorization.

The supervision and recordkeeping rules are designed to give effect to the suitability and discretionary account rules. The supervision rule, Rule 15b10–4, imposes a general duty on nonmember brokers and dealers to supervise diligently the securities activities of their associated persons. It requires the maintenance and enforcement of written procedures setting forth the measures adopted to comply with the duties imposed by the rule. The written procedures must include the review and written approval of the opening of new customer accounts; frequent examination of customer accounts; and the prompt review and written approval of all securities transactions. The rule also requires that the written procedures include special supervisory treatment for discretionary accounts. Further, a supervisor is required to review promptly and approve in writing the handling of all customer complaints which are handled by or pertain to the associated persons subject to his supervision.

The recordkeeping rule, Rule 15b10–6, requires that a record with specified identifying information be kept for each person who becomes a customer after the effective date of the rule. This record must also contain the signatures of the customer, the associated person regularly handling the account and a supervisor designated pursuant to the supervision rule. Where the broker-dealer, or any associated person, has made any recommendation to the customer to purchase, sell or exchange any security, the record must also state the customer's occupation, marital status, investment objectives, and other information concerning the customer's financial situation and needs which the broker-dealer or associated person considered in making the recommendation, and the signature of the broker or dealer or associated person who made the recommendation. If a recommendation is made to a person who was a customer prior to the effective date of the rule, a record containing the above information must be made and kept current.

Where a customer has delegated discretionary authority to the broker-dealer or any associated person, the broker-dealer's records must contain the customer's written delegation of discretionary authority, a statement of the customer's reasons for granting such authority, and the written approval of the supervisor. The rule also requires maintenance of a separate complaint file, which must include copies of all material relating to complaints, and a record of action, if any, taken by the broker-dealer. All records to be maintained under the recordkeeping rule are required to be preserved for not less than 6 years.

The last of this group of rules, Rule 15b10–7, exempts from the other rules members of national securities exchanges who do not carry customers' accounts and whose annual gross income from the over-the-counter business does not exceed $1,000.

The Commission's staff is presently engaged in drafting additional rules under Section 15(b)(10) pertaining to advertising and sales literature of nonmember broker-dealers.

In May 1967, the Commission adopted Rule 15b9–1, which establishes assessment fees for the 1967 fiscal year.[15] The rule requires the filing of an assessment form and payment of a base fee for each nonmember broker or dealer and payment of additional fees for each associated person and each office of the broker-dealer.

Pursuant to the inspection program for nonmember broker-dealers, a number of inspections were carried out during the year. These were designed to determine compliance with existing rules and to obtain information with respect to the type of securities activities engaged in by nonmember broker-dealers.

Proceedings To Obtain Compliance With Securities Exchange Act Registration or Reporting Requirements

Section 15(c)(4) which was added to the Securities Exchange Act by the 1964 amendments assists the Commission in obtaining compliance with the registration and reporting provisions of Sections 12, 13 and 15(d) of that Act, in terms both of filing the required documents and of accuracy and completeness of documents filed. Under the Section if the Commission finds after notice and opportunity for hearing that any person has failed to comply with these provisions, the Commission may publish its findings and issue an order requiring compliance upon such terms and conditions and within such time as it may specify. The first hearings to be held under Section 15(c)(4) took place during the 1967 fiscal year. Two of the cases involved allegedly deficient registration statements under Section 12(g) of the Act filed by Hadson Ohio Oil Company and Ventura Oil Company, respectively. In the third proceeding, Crescent Corporation and Pakco Companies, Inc. were charged with the filing of allegedly deficient periodic reports and failure to file required reports.

The Crescent-Pakco proceeding afforded a striking demonstration of the use of proceedings under Section 15(c)(4) to obtain adequate and accurate disclosure of material facts. It was alleged that Crescent, whose securities are listed on the New York Stock Exchange, and Pakco, an over-the-counter company, had failed to file certain reports and had filed materially misleading reports in order to conceal certain material insider transactions. After 2 months of hearings, the com-

[15] Securities Exchange Act Release No. 8086 (May 29, 1967).

panies, pursuant to offers of settlement, filed amended and additional reports disclosing that the control person of the two companies had made use of their assets in connection with the purchase of a control block of Crescent's stock.[16]

The other two cases were also disposed of pursuant to offers of settlement. These settlements provided, among other things, for the filing by Hadson and Ventura of correcting amendments to their registration statements and the mailing of a copy of the amended registration statements to their shareholders.[17]

Disciplinary Action Against Broker-Dealers and Their Associated Persons

The provisions enacted in 1964 giving the Commission authority to proceed directly against and impose sanctions on individuals associated with broker-dealer firms and expanding the range of sanctions which it may impose on broker-dealers have by now become well-established elements in the regulatory scheme. Four proceedings solely against individuals associated with broker-dealers were pending at the beginning of the 1967 fiscal year, and another such proceeding was instituted during the year. Three of these proceedings resulted in orders barring the individuals from further association with a broker-dealer, and two were still pending at the end of the year. In proceedings in which broker-dealers as well as certain of their associated persons were named as respondents, 102 individuals were barred from further association with a broker-dealer, and 25 others were suspended from such association for varying periods of time. In addition, the Commission, in orders entered during the year, suspended the registrations of two broker-dealers.

Summary Suspension of Over-the-Counter Trading

Section 15(c)(5) of the 1964 amendments authorizes the Commission to suspend over-the-counter trading in any security (except an exempted security) summarily for 10 days if the Commission believes the public interest and protection of investors so require. Broker-dealers are prohibited from trading in any such security during the period of suspension. This provision is a counterpart to Section 19(a)(4) which provides for summary suspension of trading in securities listed on a national securities exchange.

During the 1967 fiscal year, the Commission temporarily suspended trading in 14 over-the-counter securities, compared to 5 in fiscal 1966 and 2 suspensions in fiscal 1965. In all but one of these cases, the Commission suspended trading when it learned of information not generally known to the securities community and investors which indicated that there were substantial questions concerning the finan-

[16] See Securities Exchange Act Release No. 8144 (August 14, 1967).

[17] Securities Act Release Nos. 4872 (July 18, 1967) and 4874 (July 19, 1967).

cial condition or business operations of the companies involved. The suspensions were ordered pending clarification and adequate public dissemination of information concerning these matters.[18]

In some instances, the Commission instituted enforcement action shortly following the suspension where related violations of law were uncovered. For example, in a case involving First Standard Corporation of New York City, the Commission suspended over-the-counter trading in the company's common stock as a result of information obtained in a staff investigation indicating that incomplete and misleading information and false rumors concerning the business operations of the company and its development of new product lines were publicly disseminated. Subsequently, the Commission filed a complaint in the U.S. District Court for the Southern District of New York seeking to enjoin the company and others from violating the antifraud provisions of the Securities Exchange Act of 1934 and to compel the defendants to issue a clarifying statement about the company and its products. An order enjoining further violations was entered against the defendants and the issuer thereafter issued a clarifying statement. The Commission thereupon terminated the trading suspension, cautioning investors to consider carefully the information made available in connection with the injunctive action before effecting transactions in the company's stock.

In the remaining case, which involved S & P National Corporation, the suspension followed a request for such action by the trustee-receiver of S & P who had been appointed by the court in an injunctive action by the Commission against the corporation, its subsidiaries and two individuals. The trustee's request was based on the fact that settlement negotiations were pending which could result in values to public holders of S & P stock substantially above the market prices in recent years. Trading was suspended pending clarification of these matters.[19] The suspension was later terminated following submission to the court of a Plan of Settlement and Reorganization under which, among other things, an offer would be made by S & P to its public stockholders to purchase their shares at prices above recent market prices, following which S & P would be liquidated and dissolved.[20] A notice of a hearing on the Plan which had been mailed to stockholders and published contained an explanation of the Plan and stated that the Plan was available for inspection.

---

[18] Securities Exchange Act Release Nos. 7956 (September 15, 1966), 7958 (September 19, 1966), 8010 (December 20, 1966), 8026 (January 19, 1967), 8048 (March 21, 1967), 8061 (April 21, 1967), 8065 (April 27, 1967), 8077 (May 12, 1967), 8080 (May 18, 1967), 8088 (May 26, 1967), 8095 (June 1, 1967), 8097 (June 5, 1967), and 8108 (June 22, 1967).

[19] Securities Exchange Act Release No. 8077 (May 12, 1967). For the earlier history of this case, see 32nd Annual Report, pp. 117–118.

[20] Securities Exchange Act Release No. 8153 (August 30, 1967).

PART III

FULL DISCLOSURE OF INFORMATION ABOUT THE ISSUERS OF SECURITIES

One important thrust of the Federal securities laws administered by the Commission, as well as the rules, regulations, registration and reporting forms adopted by the Commission to implement those laws, is to provide public disclosure of financial and other information about publicly-held companies and those companies seeking to raise capital through the public offering of their securities. The objective of such disclosure is to enable public investors to evaluate the securities of these companies on an informed and realistic basis. Thus, the Securities Act of 1933 requires the filing of registration statements with the Commission by companies proposing the public offering of securities, and the use of a prospectus containing prescribed financial and other information in the offering and sale of their securities. Certain types of offerings and securities are exempt from the registration and prospectus requirements of the Securities Act. The Securities Exchange Act of 1934 requires the registration of securities and the filing of annual and other periodic reports containing similar data by companies whose securities are listed on a national securities exchange and by other companies in whose securities, traded over-the-counter, there is a substantial public interest. The Exchange Act further extends the disclosure principle by requiring disclosure of material information to holders of registered securities whose proxies are solicited for the election of directors or the approval of other corporate action, and by requiring "insiders" of companies whose equity securities are registered to report their holdings of and transactions in all equity securities of the issuer with whom they are affiliated.

DISCLOSURE IN CONNECTION WITH PUBLIC OFFERINGS

Disclosure under the Securities Act with respect to securities to be offered for public sale, either by an issuing company or a person in a control relationship to such company, is obtained through a two-step process: (1) by requiring the issuer to file with the Commission a registration statement containing certain required financial and other information; and (2) by requiring that a prospectus which is a part of the registration statement and contains the more significant data set

forth in that statement, be furnished to investors so as to enable them to evaluate the securities and make an informed investment decision.

The registration statement is available for public inspection as soon as it is filed. Although the securities may be offered for sale upon filing of the statement under prescribed limitations, actual sales may not be made until the statement has become effective. The Commission has no authority to pass on the merits of the securities to be offered or the fairness of the terms of distribution. In fact, the Act makes it unlawful to represent to investors that the Commission has approved or otherwise passed on the merits of registered securities.

Type of Information Included in Registration Statement

Generally speaking, a registration statement relating to securities issued by a corporation or other private issuer must contain the information specified in Schedule A of the Act, while a statement relating to securities issued by a foreign government must include the information specified in Schedule B. The Act empowers the Commission to classify issues, issuers and prospectuses, to prescribe appropriate forms, and to increase, or in certain instances vary or diminish, the particular items of information required to be disclosed as the Commission deems appropriate in the public interest or for the protection of investors. To facilitate the registration of securities by different types of issuing companies, the Commission has prepared special registration forms which vary in their disclosure requirements so as to provide maximum disclosure of the essential facts pertinent in a given type of case while at the same time reducing the burden and expense of compliance with the law.

In general, the registration statement of an issuer other than a foreign government must disclose such matters as the names of persons who participate in the management or control of the issuer's business; the security holdings and remuneration of such persons; the general character of the business, its capital structure, past history and earnings; underwriters' commissions; payments to promoters made within 2 years or intended to be made; the interest of directors, officers and principal stockholders in material transactions with the issuer; pending legal proceedings; and the purposes to which the proceeds of the offering are to be applied, and must include financial statements certified by an independent accountant. The registration statement of a foreign government must contain information concerning the purposes for which the proceeds of the offering are to be used, the natural and industrial resources of the issuer, its revenues, obligations and expenses, the underwriting and distribution of the securities being registered, and other material matters, but need not contain certified financial statements.

Proposed Short Form for Registration of Securities of Certain Issuers

The Commission announced during the fiscal year that it had under consideration a proposed short form (Form S–7) for registration under the Securities Act of equity securities (including convertible debt) and subordinated debt securities of certain issuers which are to be offered to the public for cash.[1] The form's use would be limited to domestic and Canadian companies which have a class of equity securities listed on a national securities exchange and registered under Section 12(b) of the Securities Exchange Act of 1934, have filed reports under Section 13 or 15(d) of that Act for a period of at least 5 years, and meet certain tests as to sales volume, earnings and stability of management and business.

The proposed form is based on the assumption that issuers meeting these conditions have disclosed in their periodic reports or proxy or stockholder information statements adequate information regarding such matters as the composition and remuneration of management, transactions of management with the registrant, the issuance of options, and the identity of controlling persons. A prospectus for securities registered on the form would therefore require no disclosure with respect to these items. Generally speaking, it would require only the following information: the price and underwriting data; the intended use of the proceeds; a description of the registrant's business; earning statements; a description of the securities to be registered; and balance sheets of the registrant and its subsidiaries.

The Commission anticipates that prospectuses and registration statements on the proposed form would be considerably shorter than those filed on existing forms. They would be substantially easier to prepare and, if properly prepared, could be processed more rapidly.

The Commission also proposed to amend paragraph (*a*) of Rule 174 under the Securities Act so that securities registered on the proposed form would be exempt from the prospectus delivery requirements of Section 4(3) of the Act. Under this amendment a dealer would not be required to deliver a prospectus to his customer if he is no longer acting as an underwriter of the offering or is not engaged in a transaction involving participation in the offering.

The proposed form would represent a closer integration of the requirements of the Securities Act and the Securities Exchange Act within the present statutory framework. In this connection, the Commission and its staff are engaged in a careful review of the existing reporting and disclosure requirements under the Securities Exchange Act to improve the information contained in and the timeliness of the reports filed under that Act.

---

[1] Securities Act Release No. 4849 (November 16, 1966).

On November 27, 1967, the Commission adopted Form S–7 with certain revisions resulting from consideration of the public comments received (Securities Act Release No. 4886).

Simplification of Prospectuses

During the fiscal year the Commission requested the cooperation of issuers in improving the clarity of prospectuses for securities registered on Form S–8, a simplified form for the registration of securities under various employee stock purchase, savings, stock option and similar plans.[2] These prospectuses are sometimes unduly complex and technical, particularly the parts describing the plan. Some prospectuses give the full text of the plan. Others summarize the plan's provisions, but use its legal phraseology. The result is that it is difficult for employees to understand readily the nature of the plan and their rights and duties under it.

Some issuers, recognizing the need for a clear presentation, include in the prospectus, or transmit with the prospectus in booklet form, a description of the plan in plain language. Sometimes these descriptions are in question-and-answer form. The Commission commended this practice and suggested that it might well be extended to the prospectus proper. For example, a booklet containing a description of the plan in simple, nontechnical terms may be substituted for that portion of the prospectus dealing with the plan, or the booklet may be expanded and serve as the full prospectus.

Staff Examination of Registration Statements

Registration statements are examined by the Commission's staff for compliance with the standards of adequate and accurate disclosure. This examination is primarily the responsibility of the Division of Corporation Finance. Statements filed by investment companies registered under the Investment Company Act of 1940 are examined by the Division of Corporate Regulation. If it appears that a statement does not conform in material respects with the applicable requirements, the issuing company is usually notified by a letter of comment and is afforded an opportunity to file correcting or clarifying amendments. The Commission also has the power, after notice and opportunity for hearing, to issue a "stop-order" suspending the effectiveness of a registration statement if it finds that material representations are misleading, inaccurate or incomplete. In certain instances, such as where the deficiencies in a registration statement appear to stem from careless disregard of applicable requirements or from a deliberate attempt to conceal or mislead, a letter of comment is not sent and the Commission either conducts an investigation to determine

---

[2] Securities Act Release No. 4844 (August 5, 1966).

whether "stop-order" proceedings should be instituted or immediately institutes such proceedings. A discussion of the exercise of the "stop-order" power during fiscal year 1967 begins on page 30.

Time Required To Complete Registration

The Commission's staff endeavors to complete its examination of registration statements in as short a time as possible. The Act provides that a registration statement shall become effective on the 20th day after it is filed (or on the 20th day after the filing of any amendment thereto). Since most registration statements require one or more amendments, they usually do not become effective until some time after the original 20-day period. The period between filing and effective date is intended to afford investors an opportunity to become familiar with the proposed offering through the dissemination of the preliminary form of prospectus. The Commission can accelerate the effective date so as to shorten the 20-day waiting period, taking into account the adequacy of the information respecting the issuer theretofore available to the public, the facility with which the facts about the offering can be understood, the public interest and the protection of investors. The note to Rule 460 under the Act lists some of the more common situations in which the Commission considers that the statute generally requires it to deny acceleration.

The median number of calendar days which elapsed from the date of the original filing to the effective date with respect to the 1,460 registration statements that became effective during the 1967 fiscal year [3] was 36, compared with 38 days for 1,280 registration statements in fiscal year 1966 and 36 days for 1,097 registration statements in fiscal year 1965. The number of registration statements filed during fiscal year 1967 was 1,637, as compared with 1,450 and 1,209, respectively, in the two preceding years.[4]

The following table shows by months during the 1967 fiscal year the number of registration statements which became effective, and the number of calendar days elapsed during the registration process for the median registration statement.

Statistics Regarding Registration Statements Filed

During the 1967 fiscal year, 1,836 registration statements were filed for offerings of securities aggregating $36.2 billion, as compared with 1,697 registration statements filed during the 1966 fiscal year for offer-

---

[3] This figure excludes 192 amendments filed by investment companies pursuant to Section 24(e) of the Investment Company Act of 1940, which provides for the registration of additional securities through amendment to an effective registration statement rather than the filing of a new registration statement.

[4] These figures exclude 199, 247 and 167 amendments filed by investment companies pursuant to Section 24(e) of the Investment Company Act for fiscal years 1967, 1966 and 1965, respectively.

Time in registration under the Securities Act of 1933 by months during the fiscal year ended June 30, 1967

NUMBER OF CALENDAR DAYS

Months	Number of registration statements effective *	Total number of days in registration	Months	Number of registration statements effective *	Total number of days in registration
July 1966	98	40	Mar	124	34
Aug	127	45	Apr	175	30
Sept	88	39	May	197	33
Oct	83	42	June	201	36
Nov	102	38			
Dec	96	37	Fiscal 1967 for median effective registration statement	1,460	36
Jan. 1967	84	39			
Feb	85	40			

* See n. 3 to text, *supra*.

ings amounting to $31.1 billion. This represents an increase of 8.1 percent in the number of statements filed and 16.3 percent in the dollar amount involved.

Of the 1,836 registration statements filed in the 1967 fiscal year, 440, or 24 percent, were filed by companies that had not previously filed registration statements under the Securities Act of 1933. Comparable figures for the 1966 and 1965 fiscal years were 422, or 24.8 percent, and 458, or 33 percent, respectively.

From the effective date of the Securities Act of 1933 to June 30, 1967, a cumulative total of 28,955 registration statements has been filed under the Act by 12,505 different issuers covering proposed offerings of securities aggregating over $345 billion.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1967, are summarized in the following table:

Number and disposition of registration statements filed

	Prior to July 1, 1966	July 1, 1966 to June 30, 1967	Total June 30, 1967
Registration statements:			
Filed	27,119	(a) 1,836	28,955
Disposition:			
Effective (net)	23,541	(b) 1,642	(c) 25,155
Under stop or refusal order	228	3	(d) 229
Withdrawn	2,968	152	3,120
Pending at June 30, 1966	382		
Pending at June 30, 1967			451
Total	27,119		28,955
Aggregate dollar amount:			
As filed (in billions)	$308.9	$36.2	$345.1
As effective (in billions)	$297.1	$34.2	$331.3

(a) Includes 199 registration statements covering proposed offerings totaling $7,795,411,449 filed by investment companies under Section 24(e)(1) of the Investment Company Act of 1940 which permits registration by amendment to a previously effective registration statement.

(b) Excludes 10 registration statements that became effective during the year but were subsequently withdrawn; these 10 statements are counted in the 152 statements withdrawn during the year.

(c) Excludes 28 registration statements effective prior to July 1, 1966, which were withdrawn during the year; these 28 statements are reflected under withdrawn.

(d) Excludes one registration statement effective during the year and one registration statement effective prior to July 1, 1966 on which stop orders were placed and lifted during the fiscal year; these two statements are reflected under effective.

The reasons given by registrants for requesting withdrawal of the 152 registration statements that were withdrawn during the 1967 fiscal year are shown in the following table:

Reason for registrant's withdrawal request	Number of statements withdrawn	Percent of total withdrawn
1. Withdrawal requested after receipt of the staff's letter of comment	5	3.3
2. Registrant was advised that statement should be withdrawn or stop order proceedings would be necessary	3	1.9
3. Change in financing plans	87	57.2
4. Change in market conditions	44	28.9
5. Registrant was unable to negotiate acceptable agreement with underwriter	2	1.4
6. Will file on proper form	1	.7
7. Will file new registration statement	10	6.6
Total	152	100.0

Statistics Regarding Securities Registered

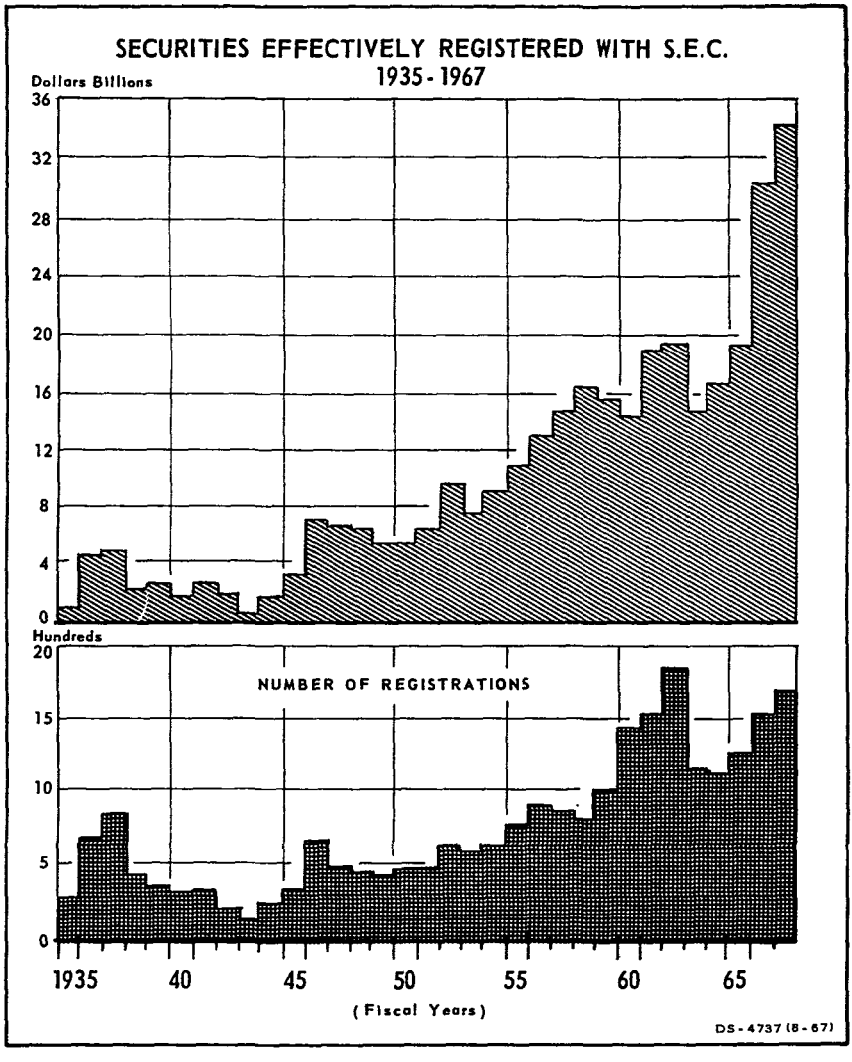
During the fiscal year 1967, a total of 1,649 registrations of securities in the amount of $34.2 billion became effective under the Securities Act of 1935.[5] The number of statements was the highest since fiscal year 1962, and the dollar amount of registrations was the largest on record. The large volume of issues reflected the general expansion in the economy during the period and the increased needs for funds by business. The chart on page 28 shows the number and dollar amounts of registrations from 1935 to 1967.

The figures for 1967 include all registrations which became effective including secondary distributions and securities registered for other than cash sale, such as issues exchanged for other securities and securities reserved for conversion. Of the dollar amount of securities registered in 1967, 82 percent was for the account of the issuer for cash sale, 13 percent for the account of the issuer for other than cash sale, and 5 percent for the account of others.

The following table compares the volume of securities registered for the account of the issuer and for the account of others for the past 3 fiscal years:

	(*Millions of dollars*)		
	1967	1966	1965
For account of issuer for cash sale	27,960	25,723	14,656
For account of issuer, other than cash sale	4,576	2,422	1,990
For account of other than issuer	1,692	1,964	2,791
Total	34,218	30,109	19,437

[5] The figure of 1,649 excludes 5 registration statements which became effective during the year but before competitive bids were received, and as to which amendments disclosing the accepted terms, including the offering price, were not filed during the year. It includes two statements effective in fiscal year 1966, as to which such amendments were not filed until fiscal year 1967.



The amount of securities offered for cash for the account of the issuer, approximately $28 billion, represented an increase of $2 billion, or 9 percent, over the previous year, and compares with the record increase of $11 billion in 1966 over 1965. Registration of new common stock issues aggregated $15.1 billion, $3.1 billion less than in the 1966 fiscal period and reflected a decrease of registrations of investment company issues which aggregated $9.4 billion during fiscal 1967. Registration of new bonds, notes and debentures increased 75 percent over the previous year and accounted for $12.5 billion of the 1967 volume. Preferred stock issues amounted to $558 million. Appendix Table 1 shows

the number of statements which became effective and total amounts registered for each of the fiscal years 1935 through 1967, and contains a classification by type of security of issues to be offered for cash sale on behalf of the issuer during those years. More detailed information for 1967 is given in Appendix Table 2.

Corporate issues intended for immediate cash sale totaled $13.4 billion, an increase of $4.7 billion over the previous year. Manufacturing companies registered the highest volume of new issues of the corporate group, $5.5 billion, almost double the amount registered in the previous year. Issues of electric, gas and water companies were next highest in volume, totaling $3.4 billion. Issues of communication companies amounted to $2.1 billion. Among the other industry groups, financial and real estate issues totaled $530 million, while trade, service, mining and other miscellaneous issues amounted to $1.9 billion. Registration of foreign government issues scheduled for immediate sale totaled $680 million as compared to $480 million in the preceding year.

The following table shows the distribution by industry of issues registered during the last 3 fiscal years for the account of issuers to be offered for cash sale:

	1967 in millions	Percent of total	1966 in millions	Percent of total	1965 in millions	Percent of total
Issues offered for immediate sale:						
Corporate:						
Manufacturing	5,490	19.6	2,787	10.8	1,451	9.9
Extractive	203	.7	130	.5	141	1.0
Electric, gas and water	3,421	12.2	3,028	11.8	1,719	11.7
Transportation, other than railroad	1,252	4.5	174	.7	145	1.0
Communication	2,143	7.7	1,301	5.1	719	4.9
Financial and real estate	530	1.9	1,009	3.9	922	6.3
Trade	180	.6	253	1.0	162	1.1
Service	218	.8	72	.3	66	0.4
Construction and misc	5	.2	25	.1	22	0.2
Total	13,441	48.1	8,779	34.1	5,347	36.5
Foreign government	684	2.4	482	1.9	303	2.1
Total for immediate sale	14,124	50.5	9,262	36.0	5,650	38.6
Issues offered over an extended period:	13,826	49.5	16,462	64.0	9,006	61.4
Total for cash sale for account of issuer	27,950	100.0	25,723	100.0	14,656	100.0

Of the $13.4 billion expected from the immediate cash sale of corporate securities for the account of issuers in 1967, over 76 percent ($10.2 billion) was designated for plant and equipment expenditures and approximately 15 percent ($2.1 billion) for working capital. The balance was to be used for retirement of securities and for other purposes including purchase of securities and repayment of bank loans. Appendix Table 2, Part 4, contains a classification of uses of proceeds by principal industry groups.

Registration of issues to be offered over an extended period amounted to $13.8 billion, approximately $2.6 billion below the record figure of $16.5 billion for 1966. These issues are classified below:

	(In millions)		
	1967	1966	1965
Investment company issues:			
Management open-end	$7,014	$9,254	$4,958
Management closed-end	498	105	16
Unit investment trust	1,768	2,835	1,131
Face-amount certificates	158	241	250
Total investment companies	9,438	12,434	6,355
Employee saving plan certificates	1,357	1,015	797
Securities for employees stock option plans	2,609	2,326	1,684
Other, including stock for warrants and options	422	686	270
Total	13,826	16,462	9,006

Stop Order Proceedings

Section 8(d) of the Securities Act of 1933 gives the Commission the power, after notice and opportunity for hearing, to issue a stop order "suspending" the effectiveness of a registration statement which includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The effect of a stop order, which may be issued even after the sale of securities has begun, is to bar distribution of the securities so long as the order remains in effect. Although losses which may have been suffered by investors before issuance of the order are not restored to them by a stop order, the Commission's decision and the evidence on which it is based may serve to put them on notice of their rights and aid in their own recovery suits. As provided by the Act, a stop order is lifted when the registration statement has been amended to correct the deficiencies.

As of the beginning of the fiscal year, three stop order proceedings were pending. During the year, three additional proceedings were instituted, and three were terminated through the issuance of stop orders. In one case,[6] no review of the hearing examiner's initial decision was sought by the registrant, or ordered by the Commission, and the initial decision accordingly became the final decision of the Commission. The other two stop orders which were issued during the year were issued in a consolidated proceeding pursuant to offers of settlement by the two investment companies involved, *Delaware Fund, Inc.* and *Decatur Income Fund, Inc.* The Commission's orders [7] and subse-

[6] *Dixie Land and Timber Corporation*, Securities Act Release No. 4841 (July 27, 1966).

[7] See Securities Act Release No. 4863 (May 1, 1967).

quent opinion [8] in this proceeding are discussed at pages 78–79 of this Report. The stop orders as to these two registration statements were later lifted upon the filing of amended registration statements. As of the end of the fiscal year, three stop order proceedings were pending.

Examinations and Investigations

The Commission is authorized by Section 8(e) of the Act to make an examination in order to determine whether a stop order proceeding should be instituted under Section 8(d), and in connection therewith is empowered to examine witnesses and require the production of pertinent documents. The Commission is also authorized by Section 20(a) of the Act to make an investigation to determine whether any provision of the Act or any rule or regulation prescribed thereunder has been or is about to be violated. In appropriate cases, investigations are instituted under this Section as an expeditious means of determining whether a registration statement is false or misleading or omits to state any material fact. The following tabulation shows the number of such examinations and investigations which were in progress during the year:

Pending at beginning of fiscal year	29	
Initiated during fiscal year	13	
	—	42
Closed during fiscal year		9
Pending at close of fiscal year		33

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

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

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

Rule 234: Exemption of first lien notes.
Rule 235: Exemption of securities of cooperative housing corporations.
Rule 236: Exemption of shares offered in connection with certain transactions.
Regulation A: General exemption for U.S. and Canadian issues up to $300,000.

[8] Securities Act Release No. 4875 (July 19, 1967).

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

Regulation F: Exemption for assessments on assessable stock and for assessable stock offered or sold to realize the amount of assessment thereon.

Under Section 3(c) of the Securities Act, which was added by Section 307(a) of the Small Business Investment Act of 1958, the Commission is authorized to adopt rules and regulations exempting securities issued by a small business investment company under the Small Business Investment Act. Acting pursuant to this authority, the Commission has adopted Regulation E, which is described below.

Exemption from registration under Section 3(b) or 3(c) of the Act does not carry any exemption from the provisions of the Act prohibiting fraudulent conduct in the offer or sale of securities and imposing civil liability or criminal responsibility for such conduct.

Exempt Offerings Under Regulation A

Regulation A permits a company to obtain needed capital not in excess of $300,000 (including underwriting commissions) in any one year from a public offering of its securities without registration, provided specified conditions are met. These include the filing of a notification supplying basic information about the company with the Regional Office of the Commission in the region in which the company has its principal place of business, and the filing and use in the offering of an offering circular. However, an offering circular need not be filed or used in connection with an offering not in excess of $50,000 by a company with earnings in one of the last 2 years.

During the 1967 fiscal year, 383 notifications were filed under Regulation A, covering proposed offerings of $74,761,963, compared with 410 notifications covering proposed offerings of $75,218,434 in the 1966 fiscal year.

The following table sets forth various features of the Regulation A offerings during the past 3 fiscal years:

Offerings under Regulation A

	Fiscal year		
	1967	1966	1965
Size:			
$100,000 or less	101	128	98
Over $100,000 but not over $200,000	92	94	101
Over $200,000 but not over $300,000	190	188	198
	383	410	397
Underwriters:			
Used	57	58	68
Not used	326	352	329
Offerors:			
Issuing companies	360	386	371
Stockholders	17	13	19
Issuers and stockholders jointly	6	11	7

Reports of Sales.—Regulation A provides that within 30 days after the end of each 6-month period following the date of the original offering circular required by Rule 256, or the statement required by Rule 257, the issuer or other person for whose account the securities are offered must file a report of sales containing specified information. A final report must be filed upon completion or termination of the offering.

During the fiscal year 1967, 820 reports of sales were filed reporting aggregate sales of $45,288,600.

Suspension of Exemption.—The Commission may suspend an exemption under Regulation A where, in general, the exemption is sought for securities for which the regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the regulation or with prescribed disclosure standards. Following the issuance of a temporary suspension order by the Commission, the respondents may request a hearing to determine whether the temporary suspension should be vacated or made permanent. If no hearing is requested within 30 days after the entry of the temporary suspension order and none is ordered by the Commission on its own motion, the temporary suspension order becomes permanent.

During the 1967 fiscal year, temporary suspension orders were issued in 13 cases, which, added to the 2 cases pending at the beginning of the fiscal year, resulted in a total of 15 cases for disposition. Of these, the temporary suspension order was vacated in 1 case and became permanent in 10 cases: in 7 by lapse of time, in 2 by withdrawal of the request for hearing, and in 1 after hearing. Four cases were pending at the end of the fiscal year.

The case in which the suspension was made permanent following a hearing was *Fibercraft Products Corporation.*[9] Fibercraft had been organized for the purpose of manufacturing and selling laminated fiberglass products, primarily boats. In 1964, the company and two selling stockholders, Thomas C. Bennett, President, and Jacqueline W. Bennett, Treasurer, filed a notification with the Commission with respect to a proposed public offering under Regulation A of an unspecified number of shares of common stock at the market, with a maximum aggregate offering price of $50,000.

The Commission found that Fibercraft and the selling stockholders had distributed sales material in the form of a letter to stockholders which was misleading in that it reported a very substantial increase in both sales and net worth without disclosing that the figures included the sales and net worth of another company being acquired by Fibercraft and without disclosing that 125,000 shares of Fibercraft stock

[9] Securities Act Release No. 4847 (September 16, 1966).

were to be issued in the undisclosed acquisition which would substantially reduce the proportionate interest of the stockholders.

The Commission also found that the statement filed pursuant to Rule 257 failed to name Michael A. Light as one of the persons in control and therefore an affiliate of Fibercraft and to disclose required information regarding Light and his holdings of, and transactions in, the company's securities. Light was a major stockholder of the company, and while he was vice president and a director had been instrumental in helping it improve its financial condition and also supervised the accounting procedures and the preparation of periodic reports and helped supervise the plant. Although Light resigned as an officer and director in August 1964, he continued to be active in the company's affairs, attended directors' meetings, participated in merger negotiations, and suggested the filing under Regulation A.

The Commission also found that no exemption was available because the aggregate offering price, when computed, as required by Rule 254, to include the price at which Light sold about 40,000 shares of Fibercraft's stock in violation of the registration requirements of the Act within 1 year prior to the commencement of the proposed offering, exceeded the $50,000 limitation imposed on offerings under Rule 257.

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1967, 353 offering sheets and 329 amendments thereto were filed pursuant to Regulation B and were examined by the Oil and Gas Section of the Commission's Division of Corporation Finance. During the 1966 and 1965 fiscal years, 235 and 173 offering sheets, respectively, were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during the fiscal years 1965–67. The balance of the offering sheets filed became effective without order.

Action taken on offering sheets filed under Regulation B

	Fiscal years		
	1967	1966	1965
Temporary suspension orders (under Rule 340(a))	16	14	13
Orders terminating proceeding after amendment	10	10	7
Orders terminating effectiveness of offering sheet	1	0	0
Orders fixing effective date of amendment (no proceeding pending)	257	203	128
Orders consenting to withdrawal of offering sheet and terminating proceeding	0	0	2
Orders consenting to withdrawal of offering sheet (no proceeding pending)	14	12	5
Total number of orders	298	239	155

Reports of Sales.—The Commission requires persons who make offerings under Regulation B to file reports of the actual sales made pursuant to that regulation. The purpose of these reports is to aid the Commission in determining whether violations of law have oc-

curred in the marketing of such securities. The following table shows the number of sales reports filed under Regulation B during the past 3 fiscal years and the aggregate dollar amount of sales during each of such fiscal years.

Reports of Sales Under Regulation B

	1967	1966	1965
Number of sales reports filed	3,978	3,301	2,015
Aggregate dollar amount of sales reported	$3,986,187	$2,998,583	$1,603,144

Exempt Offerings Under Regulation E

Regulation E provides a conditional exemption from registration under the Securities Act for securities of small business investment companies registered under the Investment Company Act of 1940 which are licensed under the Small Business Investment Act of 1958 or which have received the preliminary approval of the Small Business Administration and have been notified by the Administration that they may submit an application for such a license.

The regulation, which is substantially similar to the general exemption provided by Regulation A, requires the filing of a notification with the Commission and, except in the case of offerings not in excess of $50,000, the filing and use of an offering circular containing certain specified information.

No notifications were filed under Regulation E during the 1967 fiscal year.

Exempt Offerings Under Regulation F

Regulation F provides an exemption for assessments levied upon assessable stock and for delinquent assessment sales in amounts not exceeding $300,000 in any one year. It requires the filing of a simple notification giving brief information with respect to the issuer, its management, principal security holders, recent and proposed assessments and other security issues. The regulation requires a company to send to its stockholders, or otherwise publish, a statement of the purposes for which the proceeds of the assessment are proposed to be used. Copies of any other sales literature used in connection with the assessment must be filed. Like Regulation A, Regulation F provides for the suspension of an exemption thereunder where the regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the regulation or in accordance with prescribed disclosure standards.

During the 1967 fiscal year, 19 notifications were filed under Regulation F, covering assessments of $494,404. These notifications were filed in three of the nine regional offices of the Commission: Denver, San Francisco and Seattle. Underwriters were not employed in any

of the Regulation F assessments. No Regulation F exemptions were suspended during the fiscal year.

CONTINUING DISCLOSURE REQUIREMENTS

Registration of Securities on Exchanges

Unless a security is registered on a national securities exchange under the Securities Exchange Act of 1934 or is exempt from registration, it is unlawful for a member of such exchange or any broker or dealer to effect any transaction in the security on the exchange. In general, the Act exempts from registration obligations issued or guaranteed by a state or the Federal Government or by certain subdivisions or agencies thereof and authorizes the Commission to adopt rules and regulations exempting such other securities as the Commission may find necessary or appropriate to exempt in the public interest or for the protection of investors. Under this authority the Commission has exempted securities of certain banks, certain securities secured by property or leasehold interests, certain warrants and, on a temporary basis, certain securities issued in substitution for or in addition to listed securities.

Pursuant to Section 12 of the Exchange Act, an issuer may register a class of securities on an exchange by filing with the Commission and the exchange an application which discloses pertinent information concerning the issuer and its affairs. Information must be furnished regarding the issuer's business, its capital structure, the terms of its securities, the persons who manage or control its affairs, the remuneration paid to its officers and directors, and the allotment of options, bonuses and profit-sharing plans. Financial statements certified by an independent accountant must be filed as part of the application.

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

Statistics regarding securities traded on exchanges may be found in Part IV of this report, as well as in certain of the appendix tables.

Registration of Over-the-Counter Securities

As previously noted, Section 12(g) of the Exchange Act requires the registration of securities traded over the counter, when certain standards as to assets of the issuer and number of shareholders are met. The same forms used for the registration of securities on an exchange are used for the registration of over-the-counter securities. Part II of this report includes statistics regarding the number of registration statements filed during the fiscal year pursuant to Section 12(g) and related information.

Periodic Reports

Section 13 of the Exchange Act requires issuers of securities registered pursuant to Section 12 to file periodic reports keeping current the information contained in the application for registration or registration statement. These periodic reports include annual, semi-annual, and current reports. The principal annual report form is Form 10–K, which is designed to give current information regarding the matters covered in the original filing. Semi-annual reports required to be filed on Form 9–K are devoted chiefly to furnishing mid-year financial data. Current reports on Form 8–K are required to be filed for each month in which any of certain specified events of immediate interest to investors have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings and important changes in the issuer's securities. Section 15(d) of the Exchange Act, generally speaking, requires issuers which have registered securities under the Securities Act of 1933 and which have no securities registered under Section 12 to file the reports described above.

The following table shows the number of reports filed during the fiscal year pursuant to Sections 13 and 15(d) of the Exchange Act. As of June 30, 1967, there were 2,606 issuers having securities listed on a national securities exchange and registered under Section 12(b) of the Act, 2,738 issuers having securities registered under Section 12(g), and 1,153 additional issuers which were subject to the reporting requirements of Section 15(d) of the Act.

Number of annual and other periodic reports filed by issuers under the Securities Exchange Act of 1934

Type of reports	Number of reports filed by			Total reports filed
	Listed issuers filing reports under Section 13	Over-the-counter issuers filing reports under		
		Section 15(d)	Section 13	
Annual reports	2,583	1,097	1,965	5,645
Semi-annual reports	2,090	576	1,755	4,421
Current reports	4,915	1,130	2,715	8,760
Quarterly reports	25	86	128	239
Total reports filed	9,613	2,889	6,563	19,065

Proxy Solicitations

Scope and Nature of Proxy Regulation.—Regulation 14A under the Exchange Act, implementing Section 14(a) of that Act, governs the manner in which proxies or other authorizations may be solicited from the holders of securities registered under Section 12 of that Act, whether for the election of directors, approval of other corporate

action, or some other purpose.[10] It requires that in any such solicitation, whether by the management or minority groups, disclosure must be made of all material facts concerning the matters on which such holders are asked to vote, and they must be afforded an opportunity to vote "yes" or "no" on each matter. The regulation also provides, among other things, that where the management is soliciting proxies, any security holder desiring to communicate with other security holders for a proper purpose may require the management to furnish him with a list of all security holders or to mail his communication to security holders for him. A security holder may also, subject to certain limitations, require the management to include in its proxy material any appropriate proposal which he wants to submit to a vote of security holders. Any security holder or group of security holders may at any time make an independent proxy solicitation upon compliance with the proxy rules, whether or not the management is making a solicitation. Certain additional provisions of the regulation apply where a contest for control of the management of an issuer or representation on the board is involved.

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

Under Section 14(c) of the Act, issuers of securities registered under Section 12 must, in accordance with rules and regulations prescribed by the Commission, transmit information comparable to proxy material to security holders from whom proxies are not solicited with respect to a stockholders' meeting. Regulation 14C implements this provision by setting forth the requirements for "information statements."

Proposed Amendments to Proxy Rules and Information Rules.—During the fiscal year, the Commission invited public comments on proposed amendments to its proxy rules under Section 14(a) and its information statement rules under Section 14(c).[11] At the request of certain persons who desired further time to study the proposed amendments and submit comments thereon, the Commission extended the period within which comments could be submitted and most of the proposed amendments were still pending at the close of the fiscal year. The Commission did, however, adopt amendments to Rules 14a–3, 14a–6, 14c–3 and 14c–5.[12]

[10] This regulation also applies to security holders of registered public-utility holding companies, their subsidiaries, and registered investment companies.

[11] Securities Exchange Act Release No. 8000 (December 5, 1966).

[12] Securities Exchange Act Release No. 8029 (January 24, 1967).

Paragraph (*b*) of Rule 14a–3 formerly provided that if a solicitation is made on behalf of management and relates to an annual meeting at which directors are to be elected, the proxy statement must be accompanied or preceded by an annual report to security holders containing certified financial statements for the last fiscal year. This paragraph was amended to require an issuer, other than an investment company, to include in such annual report financial statements for the last 2 fiscal years, although only the last year's statement must be certified. Provision was made, however, for the omission of statements for the earlier of the 2 years upon a showing of good cause. Because there are special problems with respect to investment companies and because most of their reports had already been published by the effective date of the amendment, it was determined not to make the change applicable to the reports of such companies at this time.

Paragraph (*b*) of the rule was further amended by the addition of a note stating that it is unnecessary to send a copy of the annual report to each of several security holders of record having the same address if such security holders consent to the sending of a lesser number of copies. However, where a security holder of record has an obligation to obtain or send the annual report to other persons, such as the beneficial owners of the securities held in his name, the new provision does not relieve him of such obligation.

An amendment to paragraph (*c*) of Rule 14a–3 increased from four to seven the number of copies of each annual report sent to security holders which must be furnished to the Commission for its information. This will enable the Commission to send copies to certain of its regional offices, including the regional office for the region in which the issuer has its principal office.

In order to maintain consistency between the proxy rules and the rules relating to information statements, Rule 14c–3 was amended to conform to the amended Rule 14a–3.

Rules 14a–6 and 14c–5 were amended to require the filing with the Commission of five copies of all preliminary material, rather than three copies as previously required. The additional copies are needed to expedite examination of the material and for recording in connection with the Commission's data processing program.

Statistics Relating to Proxy and Information Statements.—During the 1967 fiscal year, 4,633 proxy statements in definitive form were filed, 4,611 by management and 22 by nonmanagement groups or individual stockholders. In addition, 92 information statements were filed. The proxy and information statements related to a total of 4,370 companies, some 355 of which had a second solicitation during the year, generally for a special meeting not involving the election of directors.

The votes of security holders were solicited with respect to the following types of matters, other than the election of directors;

Mergers, consolidations, acquisitions of businesses, purchases and sales of property, and dissolution of companies	427
Authorizations of new or additional securities, modifications of existing securities, and recapitalization plans (other than mergers, consolidations, etc.)	819
Employee pension and retirement plans (including amendments to existing plans)	81
Bonus or profit-sharing plans and deferred compensation arrangements (including amendments to existing plans and arrangements)	166
Stock option plans (including amendments to existing plans)	523
Stockholder approval of the selection by management of independent auditors	1,608
Miscellaneous amendments to charters and by-laws, and miscellaneous other matters (excluding those listed above)	1,424

Stockholders' Proposals.—During the 1967 fiscal year, 192 proposals submitted by 45 stockholders were included in the proxy statements of 127 companies under Rule 14a–8 of Regulation 14A.

Typical of such stockholder proposals submitted to a vote of security holders were resolutions relating to amendments to charters or by-laws to provide for cumulative voting for the election of directors, preemptive rights, limitations on the grant of stock options to and their exercise by key employees and management groups, the sending of a post-meeting report to all stockholders, and limitations on charitable contributions.

A total of 93 additional proposals submitted by 42 stockholders was omitted from the proxy statements of 39 companies in accordance with Rule 14a–8. The principal reasons for such omissions and the number of times each such reason was involved (counting only one reason for omission for each proposal even though it may have been omitted under more than one provision of Rule 14a–8) were as follows:

Reason for Omission of Proposals

	Number
Withdrawn by proponent	22
Concerned a personal grievance against the company	19
Not a proper subject matter under State law	15
Reason for proposal deemed misleading	14
Related to the ordinary conduct of the company's business	13
Not timely submitted	9
Involved substantially the same matter as one previously proposed	1

Ratio of Soliciting to Nonsoliciting Companies.—Of the 2,606 issuers that had securities listed and registered on national securities exchanges as of June 30, 1967, 2,382 had voting securities so listed and registered. Of these 2,382 issuers, 2,144, or 90 percent, solicited proxies

under the Commission's proxy rules during the 1967 fiscal year for the election of directors.

Proxy Contests.—During the 1967 fiscal year, 37 companies had proxy contests involving the election of directors. In 18 contests control of the board was at stake while the other 19 involved representation on the board. Pursuant to the requirements of Rule 14a–11, 556 persons, both management and nonmanagement, filed detailed statements as participants.

Management retained control in 12 of the 18 contests for control of the board of directors, 1 was settled by negotiation, nonmanagement persons won 4 and 1 was pending as of June 30, 1967. Of the 19 cases where representation on the board of directors was involved, management retained all places on the board in 9 contests, opposition candidates won places on the board in 5 cases, 2 were settled by negotiation, and 3 were pending as of the end of the fiscal year.

Insiders' Security Holdings and Transactions

Section 16 of the Securities Exchange Act and corresponding provisions in Section 17 of the Public Utility Holding Company Act of 1935 and Section 30(f) of the Investment Company Act of 1940 are designed to provide other stockholders and investors generally with information as to insiders' securities transactions and holdings, and to prevent the unfair use of confidential information by insiders to profit from short-term trading in a company's securities.

Ownership Reports.—Section 16(a) of the Exchange Act requires every person who beneficially owns, directly or indirectly, more than 10 percent of any class of equity security which is registered under Section 12(b) for exchange listing or under Section 12(g) for over-the-counter trading, or who is a director or an officer of the issuer of any such security, to file statements with the Commission disclosing the amount of all equity securities of the issuer of which he is the beneficial owner and changes in such ownership. Copies of such statements must also be filed with exchanges on which securities are listed. Similar provisions applicable to insiders of registered public-utility holding companies and registered closed-end investment companies are contained in Section 17(a) of the Public Utility Holding Company Act and Section 30(f) of the Investment Company Act.

During the fiscal year, 85,283 ownership reports (13,494 initial statements of ownership on Form 3 and 71,789 statements of changes in ownership on Form 4) were filed with the Commission. This is a decrease of 10,949 reports from the record high of 96,232 reports filed during the 1966 fiscal year which included a large number of initial statements by insiders of issuers of over-the-counter securities registered under Section 12(g).

All ownership reports are made available for public inspection as soon as they are filed at the Commission's office in Washington and at the exchanges where copies are filed. In addition, the information contained in reports filed with the Commission is summarized and published in the monthly "Official Summary of Security Transactions and Holdings," which is distributed by the Government Printing Office on a subscription basis to more than 25,000 persons.

Recovery of Short-Swing Trading Profits.—In order to prevent insiders from making unfair use of information which they may have obtained by reason of their relationship with a company, Section 16(b) of the Exchange Act, Section 17(b) of the Holding Company Act, and Section 30(f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders (in the categories listed above) from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than 6 months. The Commission at times participates as *amicus curiae* in actions to recover such profits when it deems it important to present its views regarding the interpretation of the statutory provisions or of the exemptive rules adopted by the Commission thereunder. Two such cases are discussed in Part V of this report.

Investigations With Respect to Reporting and Proxy Provisions

Section 21(a) of the Exchange Act authorizes the Commission to make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or regulation thereunder. The Commission is authorized, for this purpose, to administer oaths, subpoena witnesses, compel their attendance, take evidence and require the production of records. The following investigations were undertaken pursuant to Section 21(a) in connection with the enforcement of the reporting provisions of Sections 12, 13, 14 and 15(d) of the Act and the rules thereunder, particularly those provisions relating to the filing of annual and other periodic reports and proxy material:

Investigations pending at beginning of fiscal year	38
Investigations initiated during fiscal year	10
	48
Investigations closed during fiscal year	15
Investigations pending at close of fiscal year	33

ACCOUNTING AND AUDITING MATTERS

The several Acts administered by the Commission reflect a recognition by Congress that dependable financial statements of a company are indispensable to an informed investment decision regarding its

securities. The value of such statements is directly dependent on the soundness of the judgment exercised in applying accounting principles and practices in their preparation, and on the adequacy and reliability of the work done by public accountants who certify the statements. A major objective of the Commission has been to improve accounting and auditing standards and to assist in the establishment and maintenance of high standards of professional conduct by certifying accountants. The primary responsibility for this program rests with the Chief Accountant of the Commission.

Pursuant to the Commission's broad rulemaking power regarding the preparation and presentation of financial information, it has adopted a basic accounting regulation (Regulation S–X) which, together with opinions on accounting principles published as "Accounting Series Releases," governs the form and content of financial statements filed under the statutes administered by the Commission. The Commission has also formulated rules with respect to accounting for and auditing of brokers and dealers, and has prescribed uniform systems of accounts for companies subject to the Public Utility Holding Company Act of 1935. The accounting rules and the opinions of the Commission and its decisions in particular cases have contributed to clarification and wider acceptance of the accounting principles and practices and auditing standards developed by the profession and generally followed in the preparation of financial statements.

In the large area of financial reporting not covered by its rules, the Commission's principal means of protecting investors from inadequate or improper financial reporting is by requiring a certificate of an independent public accountant, based on an audit performed in accordance with generally accepted auditing standards, which expresses an opinion as to whether the financial statements are presented fairly in conformity with accounting principles and practices which are recognized as sound and which have attained general acceptance. The requirement of the opinion of an independent accountant is designed to secure for the benefit of public investors the detached objectivity of a knowledgeable person not connected with the management.

In order to keep abreast of changes and new developments in financial and economic conditions and in recognition of the need for a continuous exchange of views and information between the Commission's staff and outside accountants regarding appropriate accounting and auditing policies, procedures and practices for the protection of investors, the staff maintains continuing contact with individual accountants, other government agencies, and various professional organizations. These include the American Accounting Association, the American Institute of Certified Public Accountants, the American

Petroleum Institute, the Financial Analysts Federation, the Financial Executives Institute, and the National Association of Railroad and Utilities Commissioners.

Opinions of Accounting Principles Board

The Accounting Principles Board of the American Institute of Certified Public Accountants performs a vital function in the improvement of accounting standards and practices. The work of the Board is reflected in accounting research studies and opinions for the guidance of the profession. Drafts of these studies and opinions are referred to the Commission's accounting staff for review and comment prior to publication. During the fiscal year significant opinions were issued by the Board which pertained to accounting for the cost of pension plans and to reporting the results of operations. The Board's opinion on accounting for pension costs provides that pension costs within specified minimum and maximum limits shall be accrued on a consistent basis from year to year. Previously, alternative practices were permitted that resulted in substantial differences in accounting among companies and variations within a company in accounting for costs between years.

The opinion on reporting the results of operations provides improved standards in two major problem areas. One part of the opinion specifies that net income shall reflect all items of profit and loss recognized during a period except for prior period adjustments, and that extraordinary items of income and expense shall be segregated from the results of ordinary operations and be shown separately in the income statement. These provisions accord closely with SEC requirements as published in Regulation S–X.

In the second part of the opinion, additional guidelines were promulgated for the computation and reporting of earnings per share of common stock, which have resolved a number of difficult problems in this area. One aspect of the opinion which relates to the determination of the effect of convertible securities on earnings per share is particularly timely, since convertibles have become increasingly popular in recent years.

An omnibus opinion was also issued which provides guidelines for the profession in a number of areas of lesser significance. The Board has indicated that it expects to issue several additional opinions by early 1968.

Reporting by Foreign Issuers

In connection with the adoption by the Commission during the fiscal year of rules applicable to foreign issuers and the revision of related reporting forms, as described at pages 13–15 above, the accounting

requirements applicable to financial data to be provided under such rules were also revised. Under the revised requirements, foreign issuers that are registered or are required to register and file periodic reports under the Securities Exchange Act must file the financial statements, schedules and accountants' certificates which would be required of domestic issuers. Any material variation in accounting principles or practices from the form and content of financial statements prescribed in Regulation S–X must be disclosed and, if practicable, the effect of each such variation must be given. As noted previously, foreign issuers which have not sought a public market for their securities in the United States through a public offering or a stock exhange listing and who have more than 300 American security holders, may obtain exemption from the registration and reporting requirements if they file with the Commission certain specified information which they publish abroad. Foreign issuers which have fewer than 300 American security holders are exempt from the requirements.

Reporting by Diversified Companies

The increasing number of business acquisitions and mergers in recent years, particularly the diversified type, has caused the Commission to explore the need for more detailed reporting on the disparate operations of registrants who are broadly diversified. During the year the staff has been considering the problems involved in any extension of requirements in this area of financial reporting, particularly with respect to the feasibility of eliciting by rule, from all companies affected, additional information meaningful to investors.

In this connection the staff has consulted with business and professional groups. The Commission has authorized the Chief Accountant to serve on an advisory board, representing various sectors of the accounting, financial and industrial communities, in connection with a comprehensive study and survey of all aspects of the problem being conducted under the sponsorship of the Financial Executives Institute. The staff is also considering many comments made by individuals, corporations and organizations and the growing volume of current literature being published on the subject.

Staff surveys have indicated that there has been an increase in voluntary disclosures by diversified companies in recent annual reports to stockholders. More companies have provided breakdowns of sales by divisions or product lines, and there has been some increase in the reporting of profits on comparable bases. This trend will be taken into account in the development of practical reporting standards.

Other Current Developments

The Chief Accountant and his staff cooperated with the Commission's Division of Corporate Regulation in the preparation of a

proposal to revise its Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies. The purpose of the proposal was to eliminate a requirement that service companies retain their records permanently, unless otherwise authorized by the Commission, and to substitute appropriate procedures for the orderly destruction of records, the retention of which is no longer necessary in the public interest or for the protection of investors or consumers. The revision was adopted by the Commission on August 12, 1966.[13]

During the year the Chief Accountant's staff cooperated with the Division of Trading and Markets in the preparation of a release[14] interpreting Rule 15c3–1, the "net capital" rule, under the Securities Exchange Act. The release is more fully described at page 71 of this report.

A revision of Form X–17A–5, the form for the annual report of financial condition required to be filed by brokers and dealers pursuant to Section 17 of the Securities Exchange Act, was prepared by the Division of Trading and Markets and the Chief Accountant's Office, after consideration of comments received on a proposed revision[15] of the form. The revision was adopted by the Commission on October 3, 1967.[16]

Resignation of Accountant From Practice Before Commission

On the basis of information furnished to the Commission in a nonpublic investigative proceeding conducted during the fiscal year, the Commission had reason to believe that a certified public accountant may have failed to adhere in a number of respects to generally accepted auditing standards and the Commission's minimum audit requirements, in connection with the preparation and submission to the Commission of certain financial statements in accordance with the requirements of Rule 17a–5 under the Securities Exchange Act for reports by brokers and dealers.

The accountant, without admitting or denying any such lack of adherence, tendered his resignation in which he agreed not to appear or practice before the Commission in the future. The Commission determined that in view of the resignation no further proceedings were necessary and entered an order accepting the resignation.[17]

---

[13] Holding Company Act Release No. 15540 and Accounting Series Release No. 106.

[14] Securities Exchange Act Release No. 8024 and Accounting Series Release No. 107 (January 18, 1967).

[15] Securities Exchange Act Release No. 7683 (August 23, 1965). See 31st Annual Report, p. 145, and 32nd Annual Report, p. 135.

[16] Securities Exchange Act Release No. 8172.

[17] Accounting Series Release No. 108 (February 9, 1967).

CIVIL LITIGATION INVOLVING DISCLOSURE MATTERS

Summarized below are some of the more significant civil court cases relating to disclosure matters in which the Commission participated either as a party or as *amicus curiae* during the fiscal year. Civil proceedings related to other phases of the Commission's work are discussed in Parts V–VIII of this report.

S.E.C. v. *North American Beaver Association*,[18] involves the construction of the term "investment contract," which is included in the definitions of "security" in both the Securities Act and the Exchange Act. The court, in granting the Commission's motion for a preliminary injunction, held that the combined activities of the seven corporate and three individual defendants in selling live beaver and contracts for their care, management, replacement and breeding to members of the public constituted an investment contract.

One of the defendants appealed to the Court of Appeals for the Tenth Circuit,[19] contending that the activities of each of the defendants should be measured separately because none owns stock of the other. The Commission contends that the absence of stock holdings among the defendants is unimportant, since they all acted together and would have to act together in order to continue their business. Previously the defendants had carried out all aspects of their business through one business entity.

In *S.E.C.* v. *Great American Industries, Inc.*,[20] the corporate defendant had purchased certain mining properties through issuance of its securities. A substantial portion of the securities went to persons whose only role in the transactions was claimed to have been as finders. The facts regarding the transfer of the shares to these finders were not disclosed in reports filed with the Commission and releases issued to the press which described the purchase transactions. The district court held that this information was not material, and that in order to obtain injunctive relief the Commission was required to prove that the facts were actually known to those preparing the reports and press releases. The Commission appealed to the Court of Appeals for the Second Circuit with respect to these and other points.

In *Fischer* v. *Kletz*,[21] the district court, agreeing with the Commission that "as a statutory 'independent public accountant' " a firm of accountants engaged to audit and certify financial statements to be included in reports to be filed with the Commission had assumed responsibilities not only to its corporate client but to the stockholders

[18] D. Utah, C–172–66.

[19] Case No. 9199.

[20] 259 F. Supp. 99 (S.D. N.Y., 1966).

[21] 266 F. Supp. 180 (S.D. N.Y., 1967).

of the corporation and the public as well, held that the accounting firm was under a duty to disclose material information allegedly received by it after its certification which indicated that the financial statements were inaccurate. The court further held that the accountants could be liable for damages at common law for violation of that duty but did not reach any decision on the position urged by the Commission that such violation could also give rise to a private right of action under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

In *Barnes* v. *Osofsky*,[22] the Court of Appeals for the Second Circuit held that a civil action to impose liability for untrue or misleading statements or omissions in a registration statement under Section 11 of the Securities Act may be maintained only by persons who purchase securities that are the direct subject of the prospectus and registration statement. The court adopted the view urged by the Commission, *amicus curiae*, that as to open market purchasers liability extends only to purchasers of the registered shares and not to purchasers of previously outstanding shares. The court observed that it is for this reason that a private action under Section 10(b) of the Exchange Act does not simply duplicate the remedy already afforded by Section 11 of the Securities Act.

CRIMINAL PROSECUTIONS INVOLVING DISCLOSURE VIOLATIONS

During the year convictions were obtained or indictments returned in several cases referred by the Commission to the Department of Justice involving the filing of registration statements or periodic reports which the Commission had considered were so seriously false or misleading as to warrant criminal prosecution.

Robert M. Swaffield and Stanley W. Stanick were convicted in August 1966 of filing a false registration statement and of conspiracy to violate the anti-fraud and false statement provisions of the Securities Act.[23] Through the alteration and manipulation of the financial records of a subsidiary of Shinn Industries, Inc., the defendants understated the net losses and overstated the assets of Shinn and caused such figures to appear in a registration statement and in prospectuses circulated to the investing public in connection with the sale of $900,000 worth of common stock of Shinn. The defendants were each fined $5,000, but their sentences were suspended and they were placed on probation for 3 years.

In May 1967, Alfred Dallago, a former officer and director of Lancer Industries, Inc., was convicted of conspiracy to violate the anti-fraud and false statement provisions of the Securities Act and of violating

[22] 373 F. 2d 269 (1967).
[23] S. D. Cal., Cr. No. 35688–IH.

the false statement provision of the Exchange Act in connection with the filing by Lancer of amendments to a registration statement and of an annual report.[24] Dallago caused fictitious sales and purchases to be recorded on Lancer's books, creating the impression that sales volume was increasing and that assets providing a basis for further growth were being acquired, and caused figures reflecting these fictitious transactions to appear in financial information filed with the Commission.

Louis Wolfson and Elkin Gerbert, along with three other persons, were indicted for conspiring to violate, and violations of, the antifraud and reporting provisions of the Exchange Act.[25] Among other things, the defendants are charged with filing with the Commission and the New York Stock Exchange a false and misleading balance sheet as a part of the annual report filed by Merritt-Chapman & Scott Corp. Wolfson and Gerbert are also charged with perjury, allegedly committed when testifying in a Commission investigation of transactions in Merritt-Chapman stock. In a separate case, Wolfson and Gerbert were indicted for distributing a large block of stock of Continental Enterprises, Inc., a corporation which they allegedly controlled, without complying with the registration requirements of Section 5 of the Securities Act.[26] Subsequent to the end of the fiscal year, they were found guilty on all counts of the indictment in the latter case. Wolfson was sentenced to 1 year in prison and a $100,000 fine, Gerbert to 6 months and a $50,000 fine.

In another case, Gerald W. Eskow, former president of Yale Express System, Inc. and Fred H. Mackensen, Yale's former administrative vice president, were indicted in February 1967 for violations of the Mail Fraud Statute in connection with the mailing of false Yale financial statements for the purpose of inducing major lending institutions to purchase over $2 million of Yale's notes.[27] Mackensen and Norman Goldwasser, Yale's former director of accounting, are also charged with causing Yale to file reports containing false information regarding Yale's financial condition with the Commission, the New York Stock Exchange and the Interstate Commerce Commission. The case is awaiting trial.

Harold Roth, president and chairman of the Board of Continental Vending Machine Corporation, and three certified public accountants were indicted in October 1966 for conspiring to file a false annual report for Continental Vending with the Commission and the American Stock Exchange.[28] In July 1966, Roth and two other persons had been

[24] D.D.C., Cr. No. 341-66.
[25] S.D.N.Y., 66 Cr. 832.
[26] S.D.N.Y., 66 Cr. 720.
[27] S.D.N.Y., 67 Cr. 145.
[28] S.D.N.Y. 66 Cr. 831.

indicted for violations of the anti-fraud provisions of the securities laws, the ownership reporting provisions of the Exchange Act and the registration provisions of the Securities Act, in connection with an alleged scheme to defraud Continental Vending by causing it to lend over $16½ million to the defendants, their nominees and associates, who used the funds to finance their personal stock transactions.[29] Both cases are awaiting trial.

In a criminal case involving an important application of principles regarding the availability of the so-called private offering exemption from the registration requirements of the Securities Act, the Court of Appeals for the Fourth Circuit, in *U.S.* v. *Custer Channel Wing Corporation*,[30] affirmed the conviction of the defendant corporation and Willard T. Custer, its president, for criminal contempt for selling unregistered securities in violation of an injunction obtained by the Commission.

The court ruled that the question whether the claimed exemption was available was controlled by the Supreme Court's decision in *S.E.C.* v. *Ralston Purina Company*,[31] where it was held that the exemption is available only where the persons to whom the securities are offered have "access to the same kind of information that the Act would make available in the form of a registration statement." Here that test was not met, and the court held that the claimed "sophistication" of the purchasers was not a substitute. The court further held that it is not necessarily a basis for exemption that the issuer requires purchasers to agree to hold the securities for investment and causes a legend restricting transfer to be imprinted on the stock certificates. Finally, the court held that for a criminal contempt conviction it was not necessary to prove specific intent to violate the injunction; it was enough to show that the defendants intentionally committed the acts constituting the violation with full knowledge of the relevant circumstances.

EXEMPTION FOR SECURITIES OF INTERNATIONAL BANKS

International Bank for Reconstruction and Development

Section 15 of the Bretton Woods Agreements Act, as amended, exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued, or guaranteed as to both principal and interest, by the International Bank for Reconstruction and Development. The Bank is required to file with the Commission such annual and other reports with respect to such securities as the Commission determines to be appropriate in view of the special

[29] S.D.N.Y. 66 Cr. 539.
[30] 376 F. 2d 675 (1967).
[31] 346 U.S. 119 (1953).

character of the Bank and its operations, and necessary in the public interest or for the protection of investors. Pursuant to this authority, the Commission has adopted rules requiring the Bank to file quarterly reports and also to file copies of each annual report of the Bank to its board of governors. The Bank is also required to file reports with the Commission in advance of any distribution in the United States of its primary obligations. The Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the exemption at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The following summary of the Bank's activities reflects information submitted by the Bank to the Commission.

The Bank reported a net income of $170 million for the fiscal year ending June 30, 1967. This compared with net earnings of $144 million in the fiscal year 1966.

The Executive Directors have allocated $160 million from the year's net income to the Supplemental Reserve against losses on loans and guarantees, increasing it to $892 million. This raised the Bank's total reserves, including the Special Reserve, to $1,183 million. The Executive Directors reported that they have decided to recommend to the Board of Governors that $10 million, the balance of the year's net income, be transferred to the Bank's affiliate, the International Development Association.

Gross income for the fiscal year 1967 was $331 million, compared with $292 million in the preceding year. Expenses, which included $131 million for interest on Bank borrowing, bond issuance and other financial expenses, totaled $162 million, compared with $148 million last year.

During the year, the Bank made 47 loans totaling $877 million, including a loan of $100 million to the Bank's affiliate, the International Finance Corporation, compared with a total of $839 million last year. The loans were made in Brazil (five loans), Cameroon, Chile, Republic of China, Colombia (two loans), Congo (Brazzaville), Cyprus, Ecuador, Guatemala, Honduras (two loans), Iceland, India, Iran, Iraq, Jamaica (two loans), Japan, Kenya, Tanzania and Uganda, Malaysia (two loans), Nicaragua, Pakistan (two loans), Peru, Philippines (two loans), Senegal, Singapore (two loans), South Africa, Swaziland, Thailand (two loans), Trinidad and Tobago (two loans), Tunisia, Turkey, Venezuela, Yugoslavia and Zambia. This brought the total number of loans to 508 (including IFC) in 82 countries and territories and raised the gross total of commitments to $10,671 million. By June 30, as a result of cancellations, exchange adjustments, repayments and

sales of loans, the portion of loans signed still retained by the Bank had been reduced to $7,122 million.

During the year the Bank sold or agreed to sell $69 million principal amounts of loans, compared with sales of $82 million last year. On June 30, the total of such sales was $2,035 million, of which all except $69 million had been made without the Bank's guarantee.

On June 30, the outstanding funded debt of the Bank was $3,075.2 million, reflecting a net increase of $269.4 million in the past year. During the year the funded debt was increased through the public sale of Can$20 million (US$18.5 million) of Canadian dollar bonds, $425 million of U.S. dollar bonds of which $273.1 million were sold under delayed delivery arrangements, and SwF60 million (US$14 million) of Swiss franc bonds, the private placement of bonds and notes of $232 million, DM128 million (US$32 million) and SwF33.3 million (US$7.7 million), and the issuance of $39.1 million of bonds under delayed delivery arrangements. The debt was decreased through the retirement of bonds and notes of $144 million, DM80 million (US$20 million) and SwF33,333,333 (US$7.8 million), and by purchase and sinking fund transactions amounting to $54.1 million.

During the year Singapore, Guyana and Indonesia became members of the Bank, and the following eight countries increased their subscription to the Bank's capital: Syrian Arab Republic, Morocco, Venezuela, Iraq, Canada, Nicaragua, Greece and Liberia. Thus on June 30, 1967 there were 106 member countries and the subscribed capital of the Bank amounted to $22,849.8 million.

Inter-American Development Bank

The Inter-American Development Bank Act, which authorizes the United States to participate in the Inter-American Development Bank, provides an exemption for certain securities which may be issued or guaranteed by the Bank similar to that provided for securities of the International Bank for Reconstruction and Development. Acting pursuant to this authority, the Commission adopted Regulation IA, which requires the Bank to file with the Commission substantially the same information, documents and reports as are required from the International Bank for Reconstruction and Development. The Bank is also required to file a report with the Commission prior to the sale of any of its primary obligations to the public in the United States. The following summary of the Bank's activities reflects information submitted by the Bank to the Commission.

During the year ended June 30, 1967, the Bank made 15 loans totaling the equivalent of $158,740,000 from its ordinary capital resources, bringing the gross total of loan commitments outstanding to 144, aggregating $831,089,000. During the year, the Bank sold or agreed

to sell $5,158,500 in participations in the aforesaid loans, all of such participations being without the guarantee of the Bank. The loans from the Bank's ordinary capital resources were made in Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, Nicaragua, Peru and Venezuela.

During the year the Bank also made 47 loans totaling the equivalent of $295,905,000 from its Fund for Special Operations, bringing the gross total of loan commitments outstanding to 144, aggregating $756,148,000. The Bank made no loans during the year from the Social Progress Trust Fund, which it administers under an Agreement with the United States, leaving the gross total of loan commitments outstanding from that Fund at 117, aggregating $501,226,000.

On June 30, 1967, the outstanding funded debt of the ordinary capital resources of the Bank was the equivalent of $442,894,000, reflecting a net increase in the past year of the equivalent of $68,994,000. During the year the funded debt was increased through a public bond issue in Switzerland in the amount of SwF 50,000,000 (US $11,434,000), a public offering in the United States of $50,000,000 of bonds, the private placement in Latin America of an issue of $30,000,000 of short-term dollar bonds, and the drawing under a loan agreement with the Export-Import Bank of Japan of the equivalent of $2,560,000 in Japanese yen. The funded debt was decreased through the retirement of $25 million of short-term dollar bonds.

The subscribed ordinary capital of the Bank on June 30, 1967, was the equivalent of $1,769,820,000 of which $1,388,240,000 represented callable capital.

Asian Development Bank

The Asian Development Bank Act, approved March 16, 1966, authorizes United States participation in the Asian Development Bank and provides an exemption for certain securities which may be issued or guaranteed by the Bank similar to the exemptions accorded the International Bank for Reconstruction and Development and the Inter-American Development Bank. The Agreement establishing this organization became effective August 22, 1966, and the Bank formally opened for business in Manila, the Philippines, on December 19, 1966.

By the end of the 1967 fiscal year, the Bank had received 20 percent of its authorized paid-in capital of $550 million. Another $550 million is callable. No bond issues had been placed, and no loans extended by June 30, 1967. The Bank has received a $250,000 technical assistance grant from the United States.

TRUST INDENTURE ACT OF 1939

This Act requires that bonds, debentures, notes, and similar debt securities offered for public sale, except as specifically exempted, be

issued under an indenture which meets the requirements of the Act and has been duly qualified with the Commission.

The provisions of the Act are closely integrated with the requirements of the Securities Act. Registration pursuant to the Securities Act of securities to be issued under a trust indenture subject to the Trust Indenture Act is not permitted to become effective unless the indenture conforms to the requirements of the latter Act designed to safeguard the rights and interests of the purchasers. Moreover, specified information about the trustee and the indenture must be included in the registration statement.

The Act was passed after studies by the Commission had revealed the frequency with which trust indentures failed to provide minimum protections for security holders and absolved so-called trustees from minimum obligations in the discharge of their trusts. It requires that the indenture trustee be free of conflicting interests which might interfere with the faithful exercise of its duties in behalf of the purchasers of the securities. It requires also that the trustee be a corporation with minimum combined capital and surplus; imposes high standards of conduct and responsibility on the trustee; precludes preferential collection of certain claims owing to the trustee by the issuer in the event of default; provides for the issuer's supplying evidence to the trustee of compliance with indenture terms and conditions such as those relating to the release of substitution of mortgaged property, issuance of new securities or satisfaction of the indenture; and provides for reports and notices by the trustee to security holders. Other provisions of the Act prohibit impairment of the security holders' right to sue individually for principal and interest except under certain circumstances, and require the maintenance of a list of security holders which may be used by them to communicate with each other regarding their rights as security holders.

Number of Indentures filed under the Trust Indenture Act of 1939

	Number filed	Aggregate amount
Indentures pending June 30, 1966	33	$690, 658, 703
Indentures filed during fiscal year	423	13, 930, 206, 917
Total for disposal	456	14, 620, 865, 620
Disposition during fiscal year:		
Indentures qualified	363	11, 940, 700, 929
Indentures deleted by amendment or withdrawn	20	317, 193, 861
Indentures pending June 30, 1967	73	2, 362, 970, 830
Total	456	14, 620, 865, 620

PART IV
REGULATION OF SECURITIES MARKETS

REGULATION OF EXCHANGES

Registration and Exemption of Exchanges

As of June 30, 1967, 14 stock exchanges were registered under Section 6 of the Securities Exchange Act of 1934 as national securities exchanges:

American Stock Exchange
Boston Stock Exchange
Chicago Board of Trade
Cincinnati Stock Exchange
Detroit Stock Exchange
Midwest Stock Exchange
National Stock Exchange
New York Stock Exchange
Pacific Coast Stock Exchange
Philadelphia-Baltimore-Washington Stock Exchange
Pittsburgh Stock Exchange
Salt Lake Stock Exchange
San Francisco Mining Exchange[1]
Spokane Stock Exchange

Pursuant to Section 5 of the Exchange Act, the Commission has exempted three exchanges from registration because of the limited volume of transactions effected on them:

Colorado Springs Stock Exchange
Honolulu Stock Exchange
Richmond Stock Exchange

Review of Exchange Rules and Procedures

Rule 17a–8 promulgated under Section 17(a) of the Exchange Act provides that each national securities exchange must file with the Commission a report of any proposed amendment to or other change in its rules and practices not less than 3 weeks (or such shorter period as the Commission may authorize) before taking any action to effectuate the change. These proposals are submitted for review and comment to the Commission's Division of Trading and Markets. The Division also reviews, on a continuing basis, the existing rules, regulations, procedures, forms and practices of all national securities exchanges in order to ascertain the effectiveness of the application and enforcement by the exchanges of their own rules; to determine the adequacy of the rules of the exchanges, and of related statutory provisions and rules administered by the Commission, in light of changing market conditions; and to anticipate and define problem areas

[1] Subsequent to the end of the fiscal year, an order of the Commission terminating the registration of the San Francisco Mining Exchange became effective. See p. 91, *infra.*

so that members of the Commission staff can meet with representatives of the exchanges to work out salutary procedures within the framework of cooperative regulation.

NYSE Commission Rate Schedule—Kaplan v. Lehman Bros.

In *Kaplan* v. *Lehman Bros., et al.*,[2] a shareholder suing on behalf of certain mutual funds alleged that the New York Stock Exchange, in establishing and enforcing its minimum commission rate schedule, was guilty of a *per se* violation of the anti-trust laws. The district court granted summary judgment for the defendants, holding that the Exchange's action was within the authority conferred on it by the Exchange Act and therefore was not illegal *per se*. The court added that if the complaint were to be construed as an attack on the reasonableness of the commission rate structure or level, such matters were clearly within the jurisdiction of the Commission under the Exchange Act and should therefore be brought to the Commission for its initial adjudication.

The Commission participated as *amicus curiae* in the Court of Appeals for the Seventh Circuit, urging affirmance. That court affirmed, holding that the fixing of minimum commission rates by the Exchange was not a violation of the anti-trust laws, since such action by the Exchange was contemplated by the Exchange Act and is subject to Commission review and oversight under Section 19(b) of that Act.

On November 13, 1967, a petition for a writ of *certiorari* was denied by the Supreme Court.

Inspections of Exchanges

Pursuant to the regulatory scheme of the Exchange Act the Commission actively oversees the discharge by the national securities exchanges of their self-regulatory responsibilities. As part of this program, the Office of Regulation in the Division of Trading and Markets conducts regular inspections of various phases of exchange activity. During the past fiscal year, the Office of Regulation conducted two inspections of the New York Stock Exchange and one of the American Stock Exchange, covering such areas as registered trader surveillance and exchange regulation of the floor and off-floor activities of their members. In addition, the Office carried out extensive general inspections of the Pacific Coast Stock Exchange and Philadelphia-Baltimore-Washington Stock Exchange. The inspection program provides a means of ensuring exchange compliance with regulatory responsibilities and enables the Commission to recommend

---

[2] 250 F. Supp. 562 (N.D. Ill., 1966), *aff'd* 371 F. 2d 409 (C.A. 7, 1967), *cert. den.* 36 L. W. 3204 (November 13, 1967).

improvements and refinements designed to increase the effectiveness of self-regulation.

In cases where it appeared that revisions in internal policies were desirable in order to improve an exchange's performance, the Commission staff communicated its views to the particular exchange and discussed the matters with exchange personnel to arrive at appropriate solutions.

STATISTICS RELATING TO SECURITIES TRADED ON EXCHANGES

Number of Issuers and Securities

As of June 30, 1967, 4,573 stock and bond issues, representing 2,748 issuers, were admitted to trading on securities exchanges in the United States. Of these, 4,370 securities issues (3,008 stock issues and 1,362 bond issues), representing 2,606 issuers, were listed and registered on national securities exchanges, the balance consisting primarily of securities admitted to unlisted trading privileges and securities listed on exempted exchanges. The listed and registered issues included 1,686 stock issues and 1,250 bond issues, representing 1,478 issuers, listed and registered on the New York Stock Exchange. Thus, with reference to listed and registered securities, 56.7 percent of the issuers, 56.1 percent of the stock issues and 91.8 percent of the bond issues were on the New York Stock Exchange. Table 4 in the Appendix to this report contains comprehensive statistics as to the number of securities issues admitted to exchange trading and the number of issuers involved.

During the 1967 fiscal year, 158 issuers listed and registered securities on a national securities exchange for the first time, while the registration of all securities of 130 issuers was terminated. A total of 395 applications for registration of securities on exchanges was filed.

Market Value of Securities Available for Trading

As of December 31, 1966, the market value of stocks and bonds admitted to trading on U.S. stock exchanges was approximately $644 billion. The tables below show various components of this figure.

With reference to the tables, it should be noted that issues traded on either the New York or American Stock Exchange are not traded on the other of those exchanges. Many of these issues are also traded on the so-called regional exchanges. The figures below for "other exchanges," however, show only the number of issues traded solely on the regional exchanges. The figures in the tables exclude issues suspended from trading and a few inactively traded issues for which quotations were not available.

	Number of issues	Market value Dec. 31, 1966 (millions)
Stocks:		
New York Stock Exchange	1,665	$482,541
American Stock Exchange [a]	1,038	27,859
Exclusively on other exchanges	403	3,977
Total stocks	3,106	514,377
Bonds:		
New York Stock Exchange	1,272	128,142
American Stock Exchange	98	1,304
Exclusively on other exchanges	17	144
Total bonds	1,387	129,590
Total stocks and bonds	4,493	643,967

[a] Includes warrants.

The number and market value as of December 31, 1966, of preferred and common stocks separately were as follows:

	Preferred stocks		Common stocks	
	Number	Market value (millions)	Number	Market value (millions)
New York Stock Exchange	398	$9,671	1,267	$472,870
American Stock Exchange	91	1,156	947	26,703
Exclusively on other exchanges	108	792	295	3,185
Total	597	11,619	2,509	502,758

The 3,106 stock issues represented over 13.2 billion shares.

The New York Stock Exchange has reported aggregate market values of all stocks listed thereon monthly since December 31, 1924, when the figure was $27.1 billion. The American Stock Exchange has reported totals as of December 31 annually since 1936. Aggregates for stocks exclusively on the remaining exchanges have been compiled as of December 31 annually by the Commission since 1948. The available data since 1936 appear in Table 5 in the Appendix of this Annual Report. It should be noted that changes in aggregate market values over the years reflect not only changes in prices of stocks but also such factors as new listings, mergers into listed companies, removals from listing and issuance of additional shares of a listed security.

Volume of Securities Traded

The total volume of securities traded on all exchanges in calendar 1966 was 3.3 billion shares, including stocks, warrants and rights, and $3.7 billion principal amount of bonds. The 1966 total dollar volume of all issues traded was $127.9 billion. Trading in stocks increased 24 percent in share volume and 38 percent in dollar volume over 1965. Volume continued to increase substantially in the first 6 months of 1967.

The figures below show the volume and value of securities traded on all stock exchanges during the calendar year 1966, and the first 6 months of 1967. Tables 6 and 7 in the appendix of this Annual Report contain more comprehensive statistics on volume, by exchanges.

Volume and value of trading on all exchanges

(Amounts in thousands)

	Calendar year 1966	First 6 mos. 1967
Volume:		
Stocks (shares)	3,189,608	2,149,720
Rights and warrants (units)	122,776	49,245
Bonds (principal amount in dollars) *	3,740,490	2,412,281
Market value (dollars):		
Stocks	123,047,635	77,440,086
Rights and warrants	618,508	240,549
Bonds *	4,261,145	2,789,197
Total *	127,927,588	80,469,832

*Does not include U.S. Government Bonds.

Foreign Stocks on Exchanges

The estimated market value on December 31, 1966, of all shares and certificates representing foreign stocks on U.S. stock exchanges was $16.9 billion, of which $14.1 billion represented Canadian and $2.8 billion represented other foreign stocks.

Foreign stocks on exchanges

Dec. 31, 1966	Canadian		Other foreign		Total	
	Issues	Value	Issues	Value	Issues	Value
Exchange:						
New York	15	$6,630,513,000	11	$1,696,702,000	26	$8,327,215,000
American	62	7,436,417,000	37	1,047,950,000	99	8,484,367,000
Others only	2	25,455,000	3	17,125,000	5	42,580,000
Total	79	14,092,385,000	51	2,761,777,000	130	16,854,162,000

The total number of foreign stocks on the exchanges as of the end of 1966 was unchanged from the previous year. Prior to that, the number had declined from 173 as of the end of 1960 to 130 in 1965. The declining trend of recent years in the percentage of total reported share volume on the American and New York Stock Exchanges represented by trading in foreign stocks was reversed in calendar year 1966. On the American Stock Exchange, the percentage was 17.1, up from 15.1 in 1965; on the New York Stock Exchange, it was 3.6, up from 2.0.

Comparative Exchange Statistics

During fiscal year 1967, there was a moderate increase in the total number of stocks listed on exchanges. The slight advance in the number of listed stocks on the New York and American Stock Exchanges is

consistent with the trend of recent years. In contrast, the number of stocks available for trading exclusively on other exchanges has declined steadily over the years, and the current figure is less than one-third the total in 1940.

Net number of stocks on exchanges

June 30	New York Stock Exchange	American Stock Exchange	Exclusively on other exchanges	Total stocks on exchanges
1940	1,242	1,079	1,289	3,610
1945	1,293	895	951	3,139
1950	1,484	779	775	3,038
1955	1,543	815	686	3,044
1960	1,532	931	555	3,018
1961	1,546	977	519	3,042
1962	1,565	1,033	493	3,091
1963	1,579	1,025	476	3,080
1964	1,613	1,023	463	3,099
1965	1,627	1,044	440	3,111
1966	1,656	1,054	429	3,139
1967	1,693	1,072	415	3,180

In calendar 1966, the aggregate value of shares listed on the New York Stock Exchange represented an increasing proportion of total share value on all exchanges as it has in most years since the late 1940's. The percentage of the total share value accounted for by American Stock Exchange stocks remained unchanged from the previous year while the percentage for stocks traded exclusively on other exchanges continued to decline.

Share values on exchanges, in percentages

December 31	New York Stock Exchange	American Stock Exchange	Exclusively on other exchanges
1950	84.50	12.52	2.98
1955	86.98	11.35	1.67
1960	91.56	7.22	1.22
1961	91.02	7.74	1.24
1962	92.41	6.52	1.07
1963	93.12	5.91	0.97
1964	93.59	5.56	0.85
1965	93.77	5.41	0.82
1966	93.81	5.41	0.77

The figures below show the annual volume of shares traded, including rights and warrants, on all exchanges during selected years since 1940. In 1966, both share and dollar volume continued their steady climb of the past 3 years and reached new peaks. Trading was particularly active on the American Stock Exchange with dollar volume on that Exchange increasing 65 percent over the previous year. Volume on all exchanges continued at record levels during the first 6 months of 1967.

Share and dollar volume on exchanges

Calendar year	New York Stock Exchange	American Stock Exchange	All other exchanges	Total
	Share volume (thousands):			
1940	285,059	49,382	42,957	377,398
1945	506,564	163,860	98,595	769,019
1950	681,806	120,908	90,606	893,320
1955	909,785	253,531	158,084	1,321,401
1960	986,878	320,906	133,263	1,441,048
1961	1,392,573	548,161	201,790	2,142,523
1962	1,220,854	344,347	146,744	1,711,945
1963	1,371,808	354,805	154,686	1,880,798
1964	1,542,373	411,450	172,551	2,126,374
1965	1,867,223	601,844	201,944	2,671,012
1966	2,297,884	756,942	257,558	3,312,383
1967 (first 6 mos.)	1,447,621	503,532	157,812	2,108,965
	Dollar volume (thousands):			
1940	7,170,572	646,146	603,065	8,419,783
1945	13,474,271	1,759,899	1,020,382	16,254,552
1950	18,734,723	1,493,706	1,579,855	21,808,284
1955	32,830,338	2,657,016	2,551,253	38,039,107
1960	37,972,433	4,235,686	3,098,484	45,306,603
1961	52,820,306	6,363,110	4,388,207	64,071,623
1962	47,353,334	3,736,619	3,765,941	54,855,894
1963	54,897,096	4,844,912	4,696,065	64,438,073
1964	60,501,229	6,127,236	5,833,285	72,461,750
1965	73,234,383	8,874,375	7,439,825	89,549,093
1966	98,653,005	14,647,186	10,366,272	123,666,443
1967 (first 6 mos.)	60,963,027	10,280,736	6,436,872	77,680,635

In 1966 the ratio of share volume on the regional exchanges to the total on all exchanges rose slightly to halt its steady decline over the years. The regional exchange percentage of dollar volume increased slightly for the second consecutive year. The American Stock Exchange percentages of share and dollar volume have increased steadily since 1963 while the percentages of the New York Stock Exchange have decreased. In the first 6 months of 1967 the New York Stock Exchange share ratio showed a sharp drop, as the American Stock Exchange ratio rose to 27 percent from 23 percent in 1966. In the following presentation stocks, warrants and rights are included. Annual data in more detail are shown in Appendix Table 7 in this Annual Report.

Annual sales of stock on exchanges, in percentages

Calendar year	Percent of share volume			Percent of dollar volume		
	New York	American	All other	New York	American	All other
1940	75.44	13.20	11.36	85.17	7.68	7.15
1945	65.87	21.31	12.82	82.75	10.81	6.44
1950	76.32	13.54	10.14	85.91	6.85	7.24
1955	68.85	19.19	11.96	86.31	6.98	6.71
1960	68.48	22.27	9.25	83.81	9.35	6.84
1961	64.99	25.58	9.43	82.44	10.71	6.85
1962	71.32	20.12	8.56	86.32	6.81	6.87
1963	72.94	18.84	8.22	85.19	7.52	7.29
1964	72.54	19.35	8.11	83.49	8.46	8.05
1965	69.91	22.53	7.56	81.78	9.91	8.31
1966	69.37	22.85	7.78	79.78	11.84	8.38
1967 (first 6 mos.)	65.84	26.99	7.17	78.48	13.24	8.28

Block Distributions Reported by Exchanges

The usual method of distributing blocks of listed securities considered too large for the auction market on the floor of an exchange is to resort to "secondary distributions" over the counter after the close of exchange trading. Secondary distributions declined both in number and value during the calendar year 1966. The 1966 secondary distributions aggregating $1,523,373,000 were slightly lower than the record high of $1,603,107,000 reached in 1965. During the first 6 months of 1967, there were 73 secondary distributions with a total value of $666,066,000.

Special Offering Plans were adopted by many of the exchanges in 1942, and Exchange Distribution Plans in 1953, in an effort to keep as much trading as possible on their floors. Since 1962 there have been no special offerings. Exchange distributions continued to decline from the record of 72 in 1963 to 52 in 1966. However, the value of the 1966 exchange distributions was $118,349,000 compared to $107,498,000 in 1963.

Block distributions of stocks reported by exchanges [4]

	Number	Shares in offer	Shares sold	Value (dollars)
	12 months ended December 31, 1966			
Special offerings	0	0	0	0
Exchange distributions	52	3,381,522	3,042,599	118,348,856
Secondary distributions	126	28,151,194	29,045,238	1,523,372,589
	6 months ended June 30, 1967			
Special offerings	0	0	0	0
Exchange distributions	24	1,393,085	1,517,579	50,211,110
Secondary distributions	73	15,206,253	15,905,336	666,066,102

[4] Details of these distributions appear in the Commission's monthly Statistical Bulletins. Data for prior years are shown in Appendix Table 8 in this Annual Report. Secondary distributions include only those which were approved by exchanges for participation by their members.

Unlisted Trading Privileges on Exchanges

The number of stocks with unlisted trading privileges which are not also listed and registered on other exchanges continued to decline during the fiscal year.[3] As of June 30, 1967, there remained 103 such issues, compared with 116 as of June 30, 1966. Ten issues were removed from the American Stock Exchange, and one each from the Pacific Coast, Philadelphia-Baltimore-Washington, and Spokane Stock Exchanges. During the calendar year 1966, the reported volume of trad-

[3] As a result of the 1964 amendments to Section 12(f) of the Securities Exchange Act, unlisted trading privileges can be extended only for securities listed and registered on another securities exchange. However, unlisted trading privileges in effect prior to the amendments were permitted to be continued.

ing on the exchanges in stocks with only unlisted trading privileges increased to about 23,985,000 shares, or about 0.75 percent of the total share volume on all exchanges, from about 23,775,000 shares, or about 0.92 percent of share volume, during calendar year 1965.

About 96 percent of the 1966 volume was on the American Stock Exchange while three other exchanges, Spokane, Honolulu and Salt Lake, accounted for the remaining 4 percent. The share volume in these stocks on the American Stock Exchange represented 3.2 percent of the total share volume on that exchange.

As of June 30, 1967, there were 1,824 unlisted trading privileges on exchanges in stocks listed and registered on other exchanges. The volume of trading in these stocks for the calendar year 1966 was reported at about 113,613,000 shares. About 13 percent of this volume was on the American Stock Exchange in stocks listed on regional exchanges and 87 percent was on regional exchanges in stocks listed on the New York or American Stock Exchanges. While the 113,613,000 shares amounted to only 3.6 percent of the total share volume on all exchanges, they constituted substantial portions of the share volume of most regional exchanges, as reflected in the following approximate percentages: Boston 86 percent; Cincinnati 82 percent; Philadelphia-Baltimore-Washington 79 percent; Detroit 74 percent; Pittsburgh 60 percent; Pacific Coast 32 percent; and Midwest 29 percent.[4]

Applications by exchanges for unlisted trading privileges in stocks listed on other exchanges, filed pursuant to Rule 12f–1 under Section 12(f)(1)(B) of the Securities Exchange Act, were granted by the Commission during the fiscal year ended June 30, 1967, as follows:

Stock exchanges:	*Number of stocks*
Boston	45
Cincinnati	7
Detroit	3
Midwest	13
Pacific Coast	6
Philadelphia-Baltimore-Washington	55
Pittsburgh	4
Total	133

DELISTING OF SECURITIES FROM EXCHANGES

Under Section 12(d) of the Securities Exchange Act, upon application by an issuer or an exchange securities may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and upon such terms as the Commission may impose for the protection of investors.

[4] The distribution of unlisted stocks among the exchanges and share volume therein are shown in Appendix Table 9.

During the fiscal year ended June 30, 1967, the Commission granted applications by exchanges and issuers to delist 56 stock issues, representing 53 issuers, and 5 bond issues. Since two stocks were each delisted by two exchanges, the total of stock removals was 58 as follows:

Application filed by:	*Stocks*	*Bonds*
American Stock Exchange	19	5
Detroit Stock Exchange	1	
Midwest Stock Exchange	7	
National Stock Exchange	1	
New York Stock Exchange	14	
Pacific Coast Stock Exchange	4	
San Francisco Mining Exchange	3	
Salt Lake Stock Exchange	2	
Issuer	7	
Total	58	5

The seven applications by issuers which were granted during the year removed one security each from the Boston, Detroit, National and Pacific Coast Stock Exchanges, and three securities from the Philadelphia-Baltimore-Washington Stock Exchange.

Delisting applications by exchanges are generally based on one or more of the following grounds: the number of shares of the issue in public hands or the number of share holders is insufficient; the market value of outstanding shares or trading volume on the exchange is too low; the issuer has failed to meet the exchange's requirements as to earnings or financial condition; the issuer has failed to file reports with the exchange as required; or the issuer has ceased operations or is in the process of liquidation.

During the fiscal year, the Commission in two instances granted exchange delisting applications which were opposed by the issuers involved. In *Fifth Avenue Industries Corporation*,[5] the company's principal operating properties had been taken by New York City through condemnation. The New York Stock Exchange, after withholding action for some time at Fifth Avenue's request because of the pendency of litigation regarding the condemnation award, sought to delist the company's stock. In granting the application, the Commission held that in view of the drastic reduction of the scope of the company's operating activities and their minor significance compared to the condemnation claim, the Exchange's position that the company had ceased to be an operating company was not unreasonable. In any event, the Commission noted, it was clear that in terms of the Exchange's delisting rules the company's operating assets had been substantially reduced and it had discontinued a substantial portion of its operations. The

[5] Securities Exchange Act Release No. 7977 (October 18, 1966).

Commission further held that the Exchange's action was an appropriate exercise of its function of maintaining high standards with respect to securities admitted to trading, and that there was no basis for requiring the Exchange to await further developments including additional steps in the condemnation procceedings and utilization of the funds to be received.

Fotochrome, Inc.[6] involved a provision of the American Stock Exchange's delisting policies that securities will be considered for delisting where the issuer has not operated at a net profit in any of its last 3 fiscal years. Fotochrome had sustained losses for its last 4 fiscal years. It contended, however, that the Exchange had not in the past applied this provision to companies in sound financial condition such as Fotochrome and that delisting should at least be deferred pending results of the current year which it expected would show a profit. The Commission rejected these arguments. It held that even if prior delistings involved issuers in a poorer financial condition, the Exchange, in advancing the objective of limiting the market afforded by it to securities having suitable characteristics, should not be "straitjacketed by limited prior applications." The Commission further ruled that there was no basis for requiring the Exchange to await the results of current operations.

OVER-THE-COUNTER TRADING IN STOCKS LISTED ON EXCHANGES

In order to correct a dearth of information concerning over-the-counter trading in common stocks traded on national securities exchanges (the so-called "third market"), the Commission, in December 1964, adopted Rule 17a–9 under the Exchange Act which, together with related reporting forms, provides a system for the identification of broker-dealers making over-the-counter markets in such stocks and for the reporting of summaries of third market transactions. Originally, the specified reports were required to be filed with respect to over-the-counter transactions in common stocks traded on all national securities exchanges whose annual sales volume exceeded $20 million. During the 1967 fiscal year the Commission amended Rule 17a–9 and the reporting forms [7] so as to limit the reporting requirements to stocks listed on the New York Stock Exchange, which account for about 98 percent of third market volume.

Under the reporting requirements, market makers must report their over-the-counter and exchange trading in the stocks in which they make a market, as well as certain over-the-counter trading in other listed common stocks. Broker-dealers who are not market makers are

[6] Securities Exchange Act Release No. 7985 (October 24, 1966).
[7] Securities Exchange Act Release No. 8047 (March 22, 1967).

required to report certain large third market transactions. Coincident with the amendment referred to above, Rule 17a–9 and the related forms were further amended to provide for separate reporting of over-the-counter transactions in common stocks listed on the New York Stock Exchange effected with Exchange members by "nonmember market makers" pursuant to Rule 394(b) of the New York Stock Exchange and amended Rule 19b–1 under the Securities Exchange Act. These rules permit Exchange members to solicit qualified nonmember market makers to participate in the execution of orders for listed securities off the floor of the Exchange under designated conditions.[8] The various reports are designed to reflect all sales to persons other than broker-dealers, i.e., to individuals and institutions.

During the calendar year 1966, total over-the-counter sales of common stocks listed on the New York Stock Exchange amounted to 58.2 million shares valued at $2,873 million. This latter figure was the equivalent of 2.9 percent of the value of shares of common and preferred stocks traded on the New York Stock Exchange. Although third market volume was greater than in the previous year, it did not keep pace with the increased volume on the Exchange.

In the first half of 1967, third market volume was larger than in the corresponding period of 1966 both in actual amounts and in relation to volume on the New York Stock Exchange.

Over-the-counter volume in common stocks listed on the New York Stock Exchange

	Over-the-counter sales of common stocks	New York Stock Exchange volume *	Over-the-counter sales as percent of New York Stock Exchange volume
	Share volume (thousands)		
1965	48,361	1,809,351	2.7
1966	58,198	2,204,761	2.6
1967 (1st 6 mos.)	40,240	1,414,345	2.8
	Dollar volume (thousands)		
1965	2,500,416	73,199,997	3.4
1966	2,872,660	98,565,294	2.9
1967 (1st 6 mos.)	1,952,626	60,945,465	3.2

* Includes volume in both common and preferred stocks.

STATISTICAL STUDIES

The regular statistical activities of the Commission and its participation in the overall Government statistical program under the direction of the Office of Statistical Standards, Bureau of the Budget,

[8] See 32nd Annual Report, p. 3.

have been continued in the Commission's Office of Policy Research. The statistical series described below are published in the Commission's monthly Statistical Bulletin. In addition, current figures and analyses of the data are published quarterly on new securities offerings, individuals' savings, stock trading of financial institutions, financial position of corporations, and plant and equipment expenditures.

Issues Registered Under the Securities Act of 1933

Monthly statistics are compiled on the number and volume of registered securities, classified by industry of issuer, type of security, and use of proceeds. Summary statistics for the years 1935–67 are given in Appendix Table 1 and detailed statistics for the fiscal year 1967 appear in Appendix Table 2.

New Securities Offerings

Monthly and quarterly data are compiled covering all new corporate and noncorporate issues offered for cash sale in the United States. The series includes not only issues publicly offered but also issues privately placed, as well as other issues exempt from registration under the Securities Act, such as intrastate offerings and offerings of railroad securities. The offerings series includes only securities actually offered for cash sale, and only issues offered for the account of issuers.

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

Individuals' Savings

The Commission compiles quarterly estimates of the volume and composition of individuals' savings in the United States. The series represents net increases in individuals' financial assets less net increases in debt. The study shows the aggregate amount of savings and the form in which they occurred, such as investment in securities, expansion of bank deposits, increases in insurance and pension reserves, etc. A reconciliation of the Commission's estimates with the personal saving estimates of the Department of Commerce, derived in connection with its national income series, is published annually by the Department of Commerce as well as in the Securities and Exchange Commission Statistical Bulletin.

Private Pension Funds

An annual survey is published of private pension plans other than those administered by insurance companies, showing the flow of money into these funds, the types of assets in which the funds are invested

and the principal items of income and expenditures. Quarterly data on assets of these funds are published in the Statistical Bulletin.

Stock Trading of Financial Institutions

A new statistical series containing data on stock trading of four principal types of financial institutions was begun with the publication of a report in June 1966. Information on purchases and sales of common stock by private noninsured pension funds and nonlife insurance companies has been collected on a quarterly basis by the Commission since 1964; these data are combined with similar statistics prepared for mutual funds by the Investment Company Institute and for life insurance companies by the Institute of Life Insurance. A quarterly release is being published.

Financial Position of Corporations

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

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

Plant and Equipment Expenditures

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

Directory of Registered Companies

The Commission annually publishes a list of companies required to file annual reports under the Securities Exchange Act of 1934. In addition to an alphabetical listing, there is a listing of companies by industry group classified according to The Standard Industrial Classification Manual.

Stock Market Data

The Commission regularly compiles statistics on the market value and volume of sales on registered and exempted securities exchanges, round-lot stock transactions on the New York and American Stock Exchanges for account of members and non-members, odd-lot stock transactions on the New York and American Stock Exchanges, odd-lot

transactions in 100 selected stocks on the New York Stock Exchange and block distributions of exchange stocks. Since January 1965, the Commission has been compiling statistics on volume of over-the-counter trading in common stocks listed on national securities exchanges (the so-called "third market") based on reports filed under Rule 17a–9 of the Securities Exchange Act.

Data on round-lot and odd-lot trading on the New York and American Stock Exchanges are released weekly. The other stock market data mentioned above, as well as these weekly series, are published regularly in the Commission's Statistical Bulletin.

PART V

CONTROL OF IMPROPER PRACTICES IN SECURITIES MARKETS

REGULATION OF BROKER-DEALER AND INVESTMENT ADVISER PRACTICES

Registration, Financial Responsibility, Record Maintenance and Financial Reporting Requirements

Registration.—Subject to limited exemptions, the Securities Exchange Act of 1934 requires all brokers and dealers who use the mails or instrumentalities of interstate commerce in the conduct of an over-the-counter securities business to register with the Commission. Similarly, the Investment Advisers Act of 1940, which establishes a pattern of regulation comparable to that established by the Exchange Act with respect to brokers and dealers, requires with certain exceptions the registration of investment advisers.

As of June 30, 1967, 4,175 broker-dealers and 1,732 investment advisers were registered.

The following tabulation reflects various data with respect to registrations of brokers and dealers and investment advisers during the 1967 fiscal year:

Broker-Dealers

Effective registrations at close of preceding year	4,363
Applications pending at close of preceding year	30
Applications filed during year	334
Total	4,727
Applications denied	5
Applications withdrawn	7
Registrations withdrawn	441
Registrations cancelled	34
Registrations revoked	32
Registrations effective at end of year	4,175
Applications pending at end of year	33
Total	4,727

Investment Advisers

Effective registrations at close of preceding year	1,633
Applications pending at close of preceding year	26
Applications filed during year	327
Total	1,986
Registrations cancelled or withdrawn	214
Registrations denied or revoked	4
Applications withdrawn	9
Registrations effective at end of year	1,732
Applications pending at end of year	27
Total	1,986

Capital Requirements with Respect to Broker-Dealers.—Rule 15c3–1 under the Exchange Act, commonly known as the net capital rule, imposes minimum net capital requirements on brokers and dealers. In addition, it limits the amount of indebtedness which may be incurred by a broker-dealer in relation to its capital, by providing that the "aggregate indebtedness" of a broker-dealer may not exceed 20 times the amount of its "net capital" as computed under the rule.

During the fiscal year, the Commission issued a two-part staff interpretation of, and guide to computations under, the net capital rule, to assist brokers and dealers in complying with the rule.[1] Part I explains the operation of the rule, including the exemptions therefrom, and discusses questions concerning the application of the rule frequently presented to the Division of Trading and Markets for interpretation. Part II, prepared by the Office of Chief Accountant, consists of an example of the computation of "net capital" made by a hypothetical broker-dealer, and includes a detailed trial balance work sheet with explanatory notes.

The Commission also amended Rule 17a–3, its recordkeeping rule, to require brokers and dealers to prepare a record of the computation of "aggregate indebtedness" and "net capital" at least once a month.[2] These computations will help to keep broker-dealers currently informed of their capital positions. At the same time, the Commission amended Rule 17a–4 to require preservation of these net capital computations and related working papers for a 3-year period.

Financial Reports of Broker–Dealers.—Rule 17a–5 under the Exchange Act requires registered broker-dealers to file annual reports of financial condition with the Commission. These reports must be certified by a certified public accountant or public accountant who is in fact independent, with certain limited exemptions applicable to

[1] Securities Exchange Act Release No. 8024 (January 18, 1967).

[2] Securities Exchange Act Release No. 8023 (January 18, 1967).

situations where certification does not appear necessary for customer protection. During the fiscal year 3,987 reports were filed with the Commission.

These reports enable the Commission and the public to determine the financial position of broker-dealers. They provide one means by which the staff of the Commission can determine whether a broker-dealer is in compliance with the net capital rule. Failure to file required reports may result in the institution of administrative proceedings to determine whether the public interest requires remedial action against the registrant.

Detection of Improper Practices

Public Complaints.—The Commission has various sources of information concerning possible violations of the Federal securities laws. A primary source is complaints by members of the general public concerning the activities of certain persons in securities transactions. During fiscal 1967 the Commission received some 4,000 complaints from investors and others relating to broker-dealers and investment advisers. The Commission's staff gives careful consideration to such complaints and, if violations are indicated, an investigation may be commenced. Other outside sources of information include the stock exchanges, the National Association of Securities Dealers, Inc., brokerage firms, State and Canadian securities authorities, better business bureaus, and various law enforcement agencies.

Inspections.—The program of surprise inspections of broker-dealers and investment advisers by the Commission's staff is another important device for the detection of improper practices. During fiscal 1967, 1,019 broker-dealer inspections and 273 investment adviser inspections were carried out. These inspections produced indications of various types of infractions, as shown below:

Broker-Dealers

Financial difficulties	118
Improper hypothecation	16
Unreasonable prices in securities purchases and sales	34
Noncompliance with Regulation T	77
"Secret profits"	5
Noncompliance with confirmation and bookkeeping rules	545
Others	407
Total indicated violations	1,202

Investment Advisers

Books and records deficient	42
Registration application inaccurate	53
False, misleading, or otherwise prohibited advertising	20
Improper "hedge clause" *	17
Failure to provide for nonassignability in investment advisory contract	14
Others	7
Total indicated violations	153

*"Hedge clauses" used in literature distributed by investment advisers generally state, in substance, that the information furnished is obtained from sources believed to be reliable, but that no assurance can be given as to its accuracy. A clause of this nature may be improper where the recipient may be led to believe that he has waived any right of action against the investment adviser.

Section of Securities Violations.—A Section of Securities Violations is maintained by the Commission as a part of its enforcement program to provide a further means of detecting and preventing fraud in securities transactions. This Section maintains files which contain information concerning persons who have been charged with, or found in violation of, various Federal and State securities statutes, as well as considerable information concerning Canadian violators. These files play a valuable role in the Commission's enforcement program and provide a clearinghouse for other enforcement agencies. The information in the files is kept current through the cooperation of various governmental and nongovernmental agencies.

During the fiscal year, the Section received 3,869 "securities violations" letters either providing or requesting information and dispatched 1,765 communications to cooperating agencies. Among other matters, information was received from several States and Canada respecting 104 criminal actions, 25 injunctive actions, 267 actions in the nature of cease and desist orders and 170 other administrative orders, such as denials, suspensions and revocations of registrations of issuers, broker-dealers and salesmen. Information with respect to 5,636 persons or firms was added to the files, including information regarding 2,202 persons and firms not previously identified. As of the end of the 1967 fiscal year, the files contained information concerning 75,614 persons and firms.

Use of Computer for Name Searches.—The use of the Commission's computer for "name searches" in the enforcement program has resulted in a substantial increase in the amount of information available and the speed with which it can be obtained. The names of suspected securities law violators are checked against the more than 1 million entries presently stored in the computer. Upon request, the Commission also performs "name searches" on prospective securities salesmen and

others whose names are submitted by the exchanges, the NASD and the State securities commissions. If the subject checked has been named in formal filings with the Commission, has been a party to a proceeding, or has been involved in an investigation, such information, together with pertinent dates, relationships and cross references, is available immediately on a printout. Formerly a time-consuming manual search of indices and files was required.

Investigations

Each of the Acts administered by the Commission specifically authorizes it to conduct investigations to determine whether violations of the Federal securities laws have occurred.

The nine regional offices of the Commission, with the assistance of their respective branch offices, are chiefly responsible for the conduct of investigations. In addition, the Office of Enforcement of the Division of Trading and Markets at the Commission's headquarters office conducts investigations dealing with matters of particular interest or urgency, either independently or with the assistance of the regional offices. The Office of Enforcement also exercises general supervision over and coordinates the investigative activities of the regional offices and recommends appropriate action to the Commission.

It is the Commission's general policy to conduct its investigations on a confidential basis. Such a policy is necessary to effective law enforcement and to protect persons against whom unfounded or unconfirmed charges might be made. The Commission investigates many complaints where no violation is ultimately found to have occurred. To conduct such investigations publicly would ordinarily result in hardship or embarrassment to many interested persons and might affect the market for the securities involved, resulting in injury to investors with no countervailing public benefits. Moreover, members of the public would tend to be reluctant to furnish information concerning violations if they thought their personal affairs would be made public. Another advantage of confidential investigations is that persons suspected of violations are not made aware that their activities are under surveillance, since such awareness might result in frustration or obstruction of the investigation. Accordingly, the Commission does not generally divulge the results of a nonpublic investigation unless it is made a matter of public record in proceedings brought before the Commission or in the courts.

When it appears that a serious violation of the Federal securities laws has occurred or is occurring, a full investigation is conducted. Under certain circumstances is becomes necessary for the Commission to issue a formal order of investigation which designates members of its staff as officers to issue subpoenas, take testimony under oath and

require the production of documents. Usually this procedure is resorted to only when the subjects of the investigation and others involved are uncooperative and it becomes necessary to invoke the subpoena power to complete the investigation. During the fiscal year ended June 30, 1967, the Commission issued 170 such formal orders.

The following table reflects in summarized form the investigative activities of the Commission during fiscal 1967:

Investigations of possible violations of the Acts administered by the Commission

Pending June 30, 1966	772
New cases	390
Total	1,162
Closed	373
Pending June 30, 1967	789

Imposition of Sanctions

Where enforcement action appears appropriate, the Commission may proceed in one of several ways, although the use of one procedure may not necessarily preclude the use of another with respect to the same conduct. The Commission may: (1) institute administrative proceedings, (2) institute civil proceedings in the appropriate U.S. district court to enjoin further violations of law, or (3) refer the case to the Department of Justice or appropriate local enforcement authorities for criminal prosecution.

Administrative Proceedings.—Under the Securities Exchange Act, as amended in 1964, the Commission has available to it a wide range of administrative sanctions which it may impose against brokers and dealers and persons associated with them. The Commission may deny a broker-dealer's application for registration. With respect to a broker-dealer already registered, it may impose sanctions ranging from censure through suspension of registration to revocation of registration. It may also suspend or terminate a broker-dealer's membership in a stock exchange or registered securities association. Associated persons of broker-dealers may be censured, or suspended or barred from association with any broker-dealer. Under the Investment Advisers Act, the Commission may impose comparable sanctions against investment advisers, but has no authority to proceed against persons associated with investment advisers.

The Commission may impose a sanction only if, after notice and opportunity for hearing, it finds that (1) the respondents committed willful violations of the securities acts or are subject to certain disqualifications, such as convictions or injunctions relating to specified types of misconduct, and (2) a particular sanction is in the public interest.

Set forth below are statistics regarding administrative proceedings pending during fiscal year 1967 with respect to brokers and dealers and investment advisers.

Broker-Dealers

Proceedings pending at beginning of fiscal year:	
Against broker-dealer registrants	[a] 70
Against broker-dealer applicants	6
Against individuals only	4
Total	80
Proceedings instituted during fiscal year:	
Against broker-dealer registrants	28
Against broker-dealer applicants	3
Against nonregistered broker-dealer	1
Against individuals only	1
Total	33
Total proceedings current during fiscal year	113
Disposition of proceedings:	
Registration revoked	[b] 22
Registration revoked and firm expelled from National Association of Securities Dealers, Inc. (NASD)	[c] 10
Registration suspended for period of time	2
Suspended for period of time from NASD	2
Suspended for period of time from NASD and stock exchanges	1
Registration denied	5
Withdrawal of registration permitted	2
Withdrawal of application permitted	1
Registration cancelled	2
Individual respondent barred from association with brokers or dealers	3
Total	[a] 50
Proceedings pending at end of fiscal year:	
Against broker-dealer registrants	57
Against broker-dealer applicants	3
Against nonregistered broker-dealer	1
Against individuals only	2
Total proceedings pending at end of year	63
Total proceedings accounted for	113

[a] Does not include six proceedings in which registrations of broker-dealer firms had been revoked prior to the 1967 fiscal year, but which were not concluded as to the remaining respondents until fiscal 1967.

[b] Three of these proceedings were still pending as to some respondents at close of fiscal year.

[c] One of these proceedings was still pending as to some respondents at close of fiscal year.

In addition, action was taken against 149 individuals associated with the firms included above or with firms previously sanctioned which disqualified such individuals from engaging in the securities business without the subsequent approval of the Commission or for a specified period of time.

Investment Advisers

Proceedings pending at beginning of fiscal year:	
Against investment adviser registrants	8
Proceedings instituted during fiscal year:	
Against investment adviser registrants	3
Total proceedings current during fiscal year	11
Disposition of proceedings:	
Registration revoked	4
Dismissed on withdrawal of registration	1
Total	5
Proceedings pending at end of fiscal year:	
Against investment adviser registrants	6
Total proceedings accounted for	11

Formal administrative proceedings under the statutes administered by the Commission generally culminate in the issuance of an opinion and order. Where hearings are held, the hearing officer who presides normally makes an initial decision following the hearings, unless such decision is waived by the parties. Under an amended procedure which went into effect in April 1966, the initial decision includes an appropriate order. If Commission review is not sought, and if the case is not called up for review on the Commission's own initiative, the initial decision becomes the final decision of the Commission.

In those instances where it prepares its own decision, upon review or waiver of an initial decision, the Commission, or the individual Commissioner to whom a case may be assigned for the preparation of an opinion, is generally assisted by the Office of Opinions and Review. This Office is directly responsible to the Commission and is completely independent of the operating divisions of the Commission, consistent with the principle of separation of functions embodied in the Administrative Procedure Act. Where the parties to a proceeding waive their right to such separation, the operating division which participated in the proceeding may assist in the drafting of the Commission's decision.

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

A few of the more significant decisions of the Commission in administrative proceedings with respect to broker-dealers and investment advisers and involving what may be characterized as improper brokerage or investment adviser practices are summarized in the following paragraphs:[3]

The Commission addressed itself in three instances during the year to the practice of "interpositioning," i.e., interposing, in the execution of transactions, a second broker-dealer between the customer's broker-dealer and the best available market.

In *Delaware Management Company, Inc.*,[4] the principal issue involved interpositioning in the execution of portfolio transactions for mutual funds. Delaware Management Co., a registered broker-dealer, was the investment adviser of and principal underwriter for two mutual funds and its officers were the officers of the funds. It interposed a second broker-dealer, which did not maintain markets in listed or unlisted securities, between the funds and the best market in order to compensate the second firm for selling the funds' shares and to stimulate further sales. It was established that the funds were in a position to deal directly with the same broker-dealers used by the interposed broker on as favorable a basis. As a result, the funds were caused to incur unnecessary brokerage costs and charges. The Commission concluded that this practice constituted a fraud on the funds and their shareholders by both broker-dealers and their principals.

The Commission found additional fraudulent conduct by the management company and its officers in that they caused one of the funds to sell portfolio securities at a price below that offered by another broker-dealer the same day, through a broker-dealer selected because it supplied research services to the management company. The Commission further held that the funds' prospectuses were misleading in stating that the funds would seek the most favorable prices and execution of orders.

The Commission's findings were based on a stipulated record and on offers of settlement submitted by the respondents under which, solely for the purpose of the proceedings, they consented to certain findings. Pursuant to the offers, the Commission temporarily suspended the broker-dealer registrations of the two firms, suspended their principals from association with any broker or dealer and issued stop orders as to the funds' registration statements. In determining to accept the offers, the Commission gave consideration among other things to the agreement of the management company to reimburse the funds for

[3] Additional broker-dealer decisions are summarized below under "Manipulation" and "Improper Use of Inside Information."

[4] Securities Exchange Act Release Nos. 8071 (May 1, 1967) and 8128 (July 19, 1967).

their excess costs and losses, totaling over $300,000, and the fact that the interpositioning had been discontinued some months before the proceedings were instituted.

Two other decisions of the Commission which involved interpositioning were rendered on review of disciplinary action by the National Association of Securities Dealers, Inc. (NASD) and are discussed in the section dealing with NASD matters at pages 87–89.

As in the past, a number of Commission decisions issued during the year dealt with campaigns by broker-dealers to sell highly speculative securities by means of a concerted high pressure sales effort including the use of false and misleading representations and predictions. Among these cases were *Seaboard Securities Corporation*,[5] *Alfred Miller*,[6] *J. P. Howell & Co., Inc.*[7] and *James De Mammos*.[8] In each instance, the sales effort was characterized by predictions of specific and substantial increases in the price of the securities within relatively short periods of time. The Commission reiterated the principle that such predictions are inherently fraudulent and cannot be justified. It revoked the registrations of the broker-dealers involved and barred various individuals who, as principals or salesmen, participated in the fraudulent schemes, from being associated with a broker or dealer.

In the *Miller* case, the Commission rejected the argument of two individuals, one of whom had been president of the broker-dealer and the other a salesman, that they were naive and were "dupes" of the controlling person of the broker-dealer. It stated that "the protection from fraud to which investors are entitled cannot be dissipated by claims of naivete or gullibility on the part of those who hold themselves out as professionals with specialized knowledge and skill and undertake to furnish guidance but nevertheless participate in a high-pressure campaign to sell speculative securities." In the *de Mammos* case, the Commission held that whether or not a broker-dealer operation could be characterized as a "boiler-room," the legal principles applicable to "boiler-rooms" were applicable to any concerted fraudulent high-pressure sales campaign.

In a decision under the Investment Advisers Act of 1940, *Marketlines, Inc.*,[9] the Commission revoked the registration of an investment adviser for publishing and distributing materially false and misleading advertisements of its market letters and for failing to make required disclosures in amendments to its registration application. The respondent published newspaper advertisements soliciting subscrip-

[5] Securities Exchange Act Release No. 7967 (September 30, 1966).
[6] Securities Exchange Act Release No. 8012 (December 28, 1966).
[7] Securities Exchange Act Release No. 8078 (June 1, 1967).
[8] Securities Exchange Act Release No. 8090 (June 2, 1967).
[9] Investment Advisers Act Release No. 206 (January 20, 1967).

tions to its market letter which stated that "interest in LOW PRICED STOCKS is opening profit possibilities that will undoubtedly pave the way for many family fortunes in the years just ahead;" that the respondent had developed a "completely unique advisory service;" and that certain items covered by the market letter were "backed by the research and experience" of its "financial scientists and chartists." The Commission held that the advertisements, "in presenting a highly optimistic picture of the profits that would accrue to subscribers . . ., were materially misleading in failing to disclose the risks inherent in the purchase and sale of securities and were obviously designed to whet the speculative appetite of unsophisticated investors . . . ." Among other things, the Commission also pointed out that the reference to "financial scientists" was highly misleading in implying that techniques for evaluating securities could be reduced to an exact science.

Among court decisions affirming Commission orders in broker-dealer proceedings were the following:

In *Irish* v. *S.E.C.*,[10] the Court of Appeals for the Ninth Circuit affirmed an order of the Commission revoking the registration of Russell L. Irish and expelling him from membership in the NASD. The court held that the record contained substantial evidence to support the Comission's findings that "Mr. Irish advanced his own interests to the detriment of his customers by making excessive trades in mutual funds ('churning'), charging excessive commissions and making sales to customers at prices just below the minimum break points." The court held that certain delays in the proceeding were insufficient to warrant reversal or remand of the proceeding to the Commission and found that petitioner had "failed completely to show how the Commission caused him prejudice" by waiting from 1959, the time of the last hearing, until 1965 to revoke his registration. The court stated that instead of requesting that the proceedings be dismissed, petitioner should have sought "a speedy decision" by the Commission on the merits.

In *R. A. Holman & Co., Inc.* v. *S.E.C.*,[11] the Court of Appeals for the Second Circuit affirmed the Commission's order revoking petitioner's registration as a broker-dealer, expelling petitioner from membership in the NASD and making permanent an earlier Commission order temporarily suspending a Regulation A exemption. The opinion dealt principally with petitioner's claim that the proceedings before the Commission had not been fair.

The court held that an informal investigation initiated by the Division of Corporation Finance, while Commissioner Woodside was Di-

[10] 367 F. 2d 637 (1966), *cert. den.* 386 U.S. 911 (1967).

[11] 366 F. 2d 466 (C.A. 2, 1966), amended on rehearing as to other issues, 377 F. 2d 665 (1967), *cert den.* December 4, 1967.

rector, did not by itself, without some additional evidence, disqualify him from participating in an adjudicatory capacity in preliminary stages of the proceedings against petitioner. The court distinguished *Amos Treat & Co.*, v. *S.E.C.*,[12] noting that "in this case the SEC has made extensive disclosures, upon sworn statements, as to the nature of the investigation and as to Woodside's role in it" and, since petitioner had the burden of proof, it "was obliged either to offer evidence contradicting the sworn statements of the Commission, or to point out the inadequacy and inconsistency, if any, in the sworn statements, before [it] was entitled to subpoena the Commission members and staff."

The court refused to consider petitioner's contention that the hearing examiner was disqualified because he had passed mandatory retirement age, holding that the challenge was not timely made.

After proceedings had been instituted against petitioner involving certain of the violations charged, there were *ex parte* communications from the Commission staff to the Commission concerning consolidation of these proceedings with pending Regulation A proceedings and amendment of the order to include additional charges. The court held that the Commission "was not required to divulge the communications in question which merely concerned the nature of the proposed proceedings" and that these communications were not "the ex parte communications forbidden by Section 5(c) of the Administrative Procedure Act . . . ."

In two cases concluded this year, *M. G. Davis & Co., Inc.* v. *Cohen*[13] and *Fontaine* v. *S.E.C.*,[14] the Commission has successfully defended against attempts by registered broker-dealers to enjoin the continuation of administrative proceedings instituted against them. In both cases it was held that the district court lacked jurisdiction of an action requesting injunctive relief against the Commission because plaintiffs had failed to exhaust their administrative remedies and had not shown facts sufficient to bring their cases within the narrow exceptions to the exhaustion doctrine. In *Davis*, the Court of Appeals for the Second Circuit affirmed the decision of the district court[15] granting the Commission's motion to dismiss the complaint. While the district court had considered and rejected plaintiffs' contentions on their merits, the court of appeals held that even if plaintiffs had been correct in their contentions that the Commission was acting in excess of its authority they had failed to show an excess "so extreme as to warrant a district

[12] 305 F. 2d 260 (C.A.D.C. 1962).

[13] 369 F. 2d 360 (C.A. 2, 1966).

[14] 259 F. Supp. 880 (D.P.R., 1966), *appeal dismissed*, C.A. 1, No. 6840, May 25, 1967.

[15] See 32d Annual Report, p. 120.

court to upset the orderly course of review procedures." Alternatively, the court held that "even if appellants could surmount the jurisdictional hurdle, their action must fail, because they do not allege that they would be irreparably injured if denied relief." It added that "the usual factors of litigation expense and frustration due to delay . . . are not such threatened injuries as will satisfy this requirement."

The Court of Appeals for the First Circuit, in denying a motion for a stay pending appeal in *Fontaine*,[16] similarly found it "unthinkable that an administrative agency cannot even institute a proceeding until it has had, in effect, the permission of the district court and of the court of appeals whenever the parties to be investigated choose to deny its jurisdiction," although it recognized that injury, expense and inconvenience might be involved. In that case the district court had applied the doctrine of primary jurisdiction as well as the doctrine of exhaustion of administrative remedies in denying plaintiff's motion for a preliminary injunction against the conduct of an administrative proceeding and in granting the Commission's motion for summary judgment. The district court held that questions concerning the scope of the Commission's jurisdiction, application of Commission rules and regulations, and plaintiff's rights as a broker-dealer registered under the Securities Exchange Act "will not be ripe for judicial decision until the SEC has had the opportunity contemplated by the Exchange Act to pass upon them." It also held that plaintiff's arguments that the Commission had exceeded its jurisdiction in instituting the proceeding, and that if required to comply with certain demands made by the Commission the plaintiff might thereby be required to violate Swiss law, "provide no basis for an exception to the exhaustion and primary jurisdiction doctrines."

In a similar case, not yet concluded, *Thomson & McKinnon* v. *S.E.C.*,[17] the Court of Appeals for the Second Circuit affirmed from the bench the district court's denial of a motion by a registered broker-dealer for a preliminary injunction against an investigation into its activities. Plaintiffs had argued that the Commission could not investigate certain of its activities which had come to the Commission's attention in a related proceeding, previously concluded, to which plaintiffs had not been parties. Although plaintiffs had so contended before the Commission by a motion to limit the investigation, the district court held that it "lacks jurisdiction to enjoin, or partially enjoin, the investigation" because plaintiffs had not exhausted their administrative remedies.

Civil Proceedings.—Each of the several statutes administered by the Commission authorizes the Commission to seek injunctions against

[16] CCH Fed. Sec. L. Rep. ¶91,892 (C.A. 1, No. 6840, February 14, 1967).
[17] 268 F. Supp. 11, *affirmed without opinion*, C.A. 2, No. 31297 (May 1, 1967).

continuing or threatened violations. Such violations may involve a wide range of illegal practices, including the purchase or sale of securities by fraud, and the sale of securities without compliance with the registration requirements of the Securities Act. During the 1967 fiscal year, permanent injunctions were obtained against 34 registered broker-dealers, 3 of whom were also registered investment advisers.[18]

Criminal Prosecution.—The statutes administered by the Commission provide that the Commission may transmit evidence of violations of any provisions of these statutes to the Attorney General, who in turn may institute criminal proceedings. Where an investigation by the Commission's staff indicates that criminal prosecution is warranted, a detailed report is prepared. After careful review by the General Counsel's Office, the report and the General Counsel's recommendations are considered by the Commission, and if the Commission believes criminal proceedings are warranted the case is referred to the Attorney General and to the appropriate U.S. Attorney. Commission employees familiar with the case generally assist the U.S. Attorney in the presentation of the facts to the grand jury, the preparation of legal memoranda for use in the trial, the conduct of the trial, and the preparation of briefs on appeal.

During the past fiscal year 44 cases were referred to the Department of Justice for prosecution. As a result of these and prior referrals, 53 indictments were returned against 213 defendants, including 24 broker-dealers and principals of broker-dealers and 17 broker-dealer employees. Convictions were obtained against 127 defendants in 42 cases, including 25 broker-dealers and broker-dealer principals and 20 broker-dealer employees. Convictions were affirmed in 8 cases, and appeals were still pending in 12 other criminal cases at the close of the period. In addition, two individuals were convicted of criminal contempt during the fiscal year for violations of court orders previously entered enjoining further violations of the securities laws.[19]

As in prior years, several criminal prosecutions during the past fiscal year involved high pressure sales by broker-dealers of speculative, unseasoned securities of over-the-counter issuers. For instance, six principals of over-the-counter brokerage firms were convicted after a 10-week trial of violations of the anti-fraud provisions of the Securities Act of 1933 in the offer and sale of stock of Allied Entertainment Corporation of America.[20] Prior to trial, a market-letter writer for an investment advisory firm and two other principals of brokerage

[18] Other statistics regarding the Commission's civil litigation activities are contained in Appendix tables 10–12.

[19] Other statistics regarding criminal cases developed by the Commission are contained in Appendix tables 13–15.

[20] S.D.N.Y., 65 Cr. 198.

firms had pleaded guilty. The jury failed to reach a verdict with respect to Marvin Hayutin, the principal promoter of the scheme to distribute a large block of unregistered, "insider" Allied stock by means of fraudulent representations and a manipulated market in the quotation sheets for the over-the-counter market. However, Hayutin was convicted in a 6-week retrial on charges of conspiring to violate the anti-fraud and registration provisions of the Securities Act, and for substantive violations of the registration provisions of that Act, and was sentenced to 2½ years imprisonment and fined $14,000. This second Allied case is now on appeal. A European banker, through whom the stock transactions were channeled, remains a fugitive in the case.

In affirming the convictions of four of the defendants in the original Allied case, the Court of Appeals for the Second Circuit made clear that the failure of a broker-dealer to disclose secret cash commissions received from an insider of the issuer in return for recommending stock to public customers can constitute part of a scheme to defraud under Section 17 of the Securities Act, even though the broker sells the stock as principal rather than as agent.[21]

In a case involving a classic "boiler-room" promotion, Charters & Co. of Miami, Inc., a Florida broker-dealer, three principals of the firm, and a securities promoter were convicted of conspiracy to violate the anti-fraud provisions of the Securities Act for their participation with other defendants in selling stock of Bankers Intercontinental Investment Co., Ltd. and Florida Patsand Corp. by means of a high pressure telephone sales campaign. Certain other defendants, including Arnold Mahler, president of Broadwall Securities, a New York broker-dealer, pleaded guilty to the charges against them.[22] In a related case,[23] Mahler's conviction for conspiring to give and giving false testimony in a Commission investigation regarding Broadwall's "boiler-room" activities was affirmed. The court held among other things that the statute relating to the giving of false testimony covers oral as well as written statements, and that it was not necessary for the jury to find that the false statements made to the Commission were material.

Supervision of Activities of National Association of Securities Dealers, Inc.

Section 15A of the Exchange Act provides for registration with the Commission of national securities associations and establishes standards and requirements for such associations. The National Association of Securities Dealers, Inc. (NASD) is the only association registered under the Act. The Act contemplates that such associations will

[21] *United States* v. *Bilotti*, 380 F. 2d 649 (C.A. 2, 1967).

[22] S.D.N.Y., 65 Cr. 435.

[23] *United States* v. *Mahler*, 363 F. 2d 673 (C.A. 2, 1966).

serve as a medium for self-regulation by over-the-counter brokers and dealers. Their rules must be designed to protect investors and the public interest, to promote just and equitable principles of trade, and to meet other statutory requirements. They are to operate under the general supervision of the Commission, which is authorized to review disciplinary actions taken by them, to disapprove changes in their rules, and to alter or supplement their rules relating to specified matters. Review of NASD rules is carried out for similar purposes as the review of exchange rules described at page 55.

In adopting legislation permitting the formation and registration of national securities associations, Congress provided an incentive to membership by permitting such associations to adopt rules which preclude a member from dealing with a nonmember broker or dealer except on the same terms and conditions as the member affords the general public. The NASD has adopted such rules. As a result, membership is necessary to profitable participation in underwritings since members may properly grant price concessions, discounts and similar allowances only to other members.

At the close of the fiscal year the NASD had 3,659 members, reflecting a net decrease of 48 members during the year. This decrease was the net result of 218 admissions to and 266 terminations of membership. At the end of the year NASD member firms had 5,283 branch offices, reflecting a net increase of 258 offices during the year. This increase was the net result of the opening of 861 new offices and the closing of 603 offices. During the year the number of registered representatives and principals, which categories include all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in capacities which involve their doing business directly with the public, increased by 6,884 to stand at 90,525 as of June 30, 1967. This increase was the net result of 15,895 initial registrations, 11,734 re-registrations and 20,745 terminations of registrations during the year.

During this period the NASD administered 39,354 qualification examinations of which approximately 22,000 were for NASD qualification and the balance for other agencies, including major exchanges, the Commission [24] and various States.

NASD Disciplinary Actions.—The Commission receives from the NASD copies of its decisions in all disciplinary actions against members and registered representatives. In general, such actions are based on allegations that the respondents violated specified provisions of the NASD's Rules of Fair Practice. Where violations are found the NASD may impose one or more sanctions upon a member, including

[24] See pp. 15–16, *supra.*

expulsion, suspension, fine, or censure. If the violator is an individual, his registration as a representative may be suspended or revoked, he may be suspended or barred from being associated with any member, and he may be fined and/or censured. Under Section 15A(b)(4) of the Exchange Act and the NASD's by-laws, no broker-dealer may be admitted to or continued in NASD membership without Commission approval if he has been suspended or expelled from membership in the NASD or a national securities exchange; he is barred or suspended from association with a broker or dealer or with members of the NASD or an exchange; his registration as a broker-dealer has been denied, suspended, or revoked; he has been found to be a cause of certain sanctions imposed upon a broker-dealer by the Commission, the NASD or an exchange; or he has associated with him any person subject to one of the above disqualifications.

During the past fiscal year the NASD reported to the Commission its final disposition of disciplinary complaints against 143 member firms and 123 individuals associated with them. With respect to 32 members and 33 associated persons, complaints were dismissed because the alleged violations had not been established.[25] In the remaining cases, violations were found and penalties were imposed on 111 members and 90 registered representatives or other individuals. The maximum penalty of expulsion from membership was imposed against 13 members, and 7 members were suspended from membership for periods ranging from 5 days to 3 months. In many of these cases, substantial fines were also imposed. In another 80 cases, members were fined amounts ranging from $50 to $3,000. In 11 cases, the only sanction imposed was censure, although censure was usually a secondary penalty where a more severe penalty was also imposed.

Various penalties were also imposed on associated individuals found in violation of NASD rules. The registrations of 35 registered representatives were revoked, and 10 representatives had their registrations suspended for periods ranging from 5 days to 3 months. Fines in various amounts were also imposed against many revoked or suspended representatives. In addition, 43 other representatives were censured and/or fined amounts ranging from $100 to $4,000. Two individuals were barred from association with any NASD member.

---

[25] The majority of the cases where allegations against members were dismissed involved misuse of customers' and/or firm securities or funds by a representative under such circumstances that the member could not have known of or prevented the impropriety. The Securities Acts Amendments of 1964 authorized registered securities associations to take disciplinary action directly against individuals associated with members. The NASD has amended its rules to provide for such action. In the fiscal year there were 19 cases in which the sole respondents were individuals associated with members.

Commission Review of NASD Disciplinary Action.—Section 15A(g) of the Exchange Act provides that disciplinary actions by the NASD are subject to review by the Commission on its own motion or on the timely application of any aggrieved person. This Section also provides that upon application for or institution of review by the Commission the effectiveness of any penalty imposed by the NASD is automatically stayed pending Commission review, unless the Commission otherwise orders after notice and opportunity for hearing. Section 15A(h) of the Act defines the scope of the Commission's review. If the Commission finds that the disciplined party committed the acts found by the NASD and thereby violated the rules specified in the determination, and that such conduct was inconsistent with just and equitable principles of trade, the Commission must sustain the NASD's action unless it finds that the penalties imposed are excessive or oppressive, in which case it must cancel or reduce them.

At the start of the fiscal year, 15 NASD disciplinary decisions were pending before the Commission on review. During the year 4 additional cases were brought up for review. Twelve cases were disposed of by the Commission. In 5 of these cases, the Commission sustained in full the disciplinary action taken by the NASD.[26] It dismissed the review proceedings in 1 case as having been abandoned,[27] and permitted the withdrawal of 2 applications for review. With respect to the 4 remaining cases, in 2 the Commission sustained the action against some of the applicants, and reduced the penalty or set aside action against others;[28] in 1 it set aside the association's action;[29] and in the last case it reduced the penalty.[30] Seven cases were pending as of the end of the year.

Two of the decisions issued by the Commission during the year upon review of NASD action dealt with "interpositioning." In the first of these decisions, the Commission sustained the NASD's action expelling *H. C. Keister & Company* from membership in the association and revoking the registration as a registered representative of H. C. Keister, the member's principal partner.[31] However, it reduced from $1,000 to $500 a fine imposed on another partner who was not active in the member's business.

---

[26] Securities Exchange Act Release Nos. 7928 (August 5, 1966); 7950 (September 12, 1966); 7991 (November 16, 1966); 8003 (December 8, 1966); and 8066 (December 14, 1966).

[27] Securities Exchange Act Release No. 7963B (September 27, 1966).

[28] Securities Exchange Act Release Nos. 7986 (October 26, 1966) and 7988 (November 1, 1966).

[29] Securities Exchange Act Release No. 7964 (September 29, 1966).

[30] Securities Exchange Act Release No. 8032 (February 8, 1967).

[31] Securities Exchange Act Release No. 7988 (November 1, 1966).

According to the Commission's opinion, the member had been engaged principally in effecting retail transactions in the over-the-counter market. It then hired a trader for the purpose of developing an over-the-counter trading department which would serve as a vehicle for reciprocity for listed business given by the firm to exchange members. The trader entered into an arrangement with the senior order clerk of a large exchange firm under which over-the-counter orders of customers of the exchange firm would be directed to the member's trading department. Substantial payments were made to the order clerk to influence and reward him. The member effected a large number of transactions in a wide variety of securities with the exchange firm. Principal transactions were offset with, and agency transactions effected for, dealers who were market makers or traditional sources of those securities.

The Commission rejected applicants' contention that the public was not harmed because the member, as a wholesale dealer, assertedly could obtain a better price from market makers than the exchange firm. It stated that it was unlikely that the member had access to a more favorable market with respect to the many securities involved than the exchange firm, a substantial retailer of considerable standing. The Commission held that the interpositioning in fact operated to increase the price paid by the exchange firm's customers for securities purchased by them and to reduce the amount they received for securities sold as compared with the best prices obtainable. It concluded that the member's conduct aided and abetted the exchange firm's wrongful conduct and violated the NASD's rules, even aside from the payments to the order clerk. The Commission also concluded that Keister must have been aware of the interpositioning and should have known of the payments being made to the order clerk and that he was responsible for the violations.

In a companion disciplinary action, which was not appealed to the Commission, the exchange member was fined $2,000 and the partner in charge of its over-the-counter department was suspended for 30 days and fined $2,000. With reference to applicants' contention that by comparison the penalties as to them were unduly harsh, the Commission noted that it did not have the benefit of arguments on behalf of the exchange member and its partner. The Commission stated, however, that it would be of considerable assistance to it in reviewing cases such as this to have a fuller exposition of the reasons entering into the determination to apply different sanctions to respondents involved in the activity under scrutiny. It further stated that differences in sanctions for persons with seemingly similar responsibility for violations raise questions, in the absence of appropriate justification, respecting the adequacy of existing statutory provisions for review of NASD

disciplinary decisions (which allow the Commission to reduce NASD sanctions but not to increase them).

In a dissenting opinion, Commissioner Budge emphasized the unexplained disparity in treatment by the NASD of the two firms and their partners. Even aside from this disparity, he was of the view that the penalty against Keister was too severe in light of Keister's advanced age and his long period of employment in the securities business. Commissioner Wheat concurred in the views of Commissioner Budge as to the severity of the sanction imposed on Keister.

In a second interpositioning case, the Commission sustained the NASD's findings that *Thomas Brown III*, while employed as a trader for a member firm, interposed both his firm and another broker-dealer between a customer of the member and the best available market.[32] At a time when the member held a customer's open limited price order with respect to an over-the-counter security, Brown purchased shares of the same security from other dealers for the member's trading account at prices below the limit price. Brown then caused these shares to be sold to another broker-dealer, a nonmarket maker, at slightly higher prices and, pursuant to a buy-back arrangement, to be repurchased at the limit price for the customer's account. The Commission found that the purpose of the arrangement was to reciprocate for business in listed securities obtained from the other broker-dealer.

While Brown conceded that his conduct violated the NASD's rules of fair practice, he contended, among other things, that he should not be penalized because his method of handling the trades was consistent with what he believed to be the member's normal procedures. The Commission held that the record did not support this contention, but that in any event he should have been aware of his obligation to give the benefit of the best price to the customer. However, in view of the isolated nature of Brown's misconduct and his otherwise good record, the Commission reduced the penalty from a 3-month suspension of Brown's registration as a registered representative to a 30-day suspension.

Commission Review of NASD Action on Membership.—As previously noted, Section 15A(b)(4) of the Act and the by-laws of the NASD provide that, except where the Commission finds it appropriate in the public interest to approve or direct to the contrary, no broker or dealer may be admitted to or continued in membership if he, or any person associated with him, is under any of the several disabilities specified in the statute or the NASD by-laws. A Commission order approving or directing admission to or continuance in association

[32] Securities Exchange Act Release No. 8032 (February 8, 1967).

membership, notwithstanding a disqualification under Section 15A(b)(4) of the Act or under an effective association rule adopted under that Section or Section 15A(b)(3), is generally entered only after the matter has been submitted initially to the association by the member or applicant for membership. The association in its discretion may then file an application with the Commission on behalf of the petitioner. If the association refuses to sponsor such an application the broker or dealer may apply directly to the Commission for an order directing the association to admit or continue him in membership. At the beginning of the fiscal year, five applications for approval of admission to or continuance in membership were pending. During the year, eight additional applications were filed, six were approved, one was withdrawn, one was discontinued, and one was denied, leaving four applications pending at the year's end.

The Commission denied an application by the NASD for approval of a member's continuance in membership with *Michael Shaub* in its employ.[33] Commission approval was required because in March 1966 Shaub had been named a cause of the revocation of the broker-dealer registration of Crow, Brourman & Chatkin, Inc.[34] on the basis of his participation, while employed as a salesman by the Crow firm in 1962–63, in a high-pressure fraudulent sales campaign with respect to highly speculative securities.

The Commission noted that Shaub's proposed employment would involve retail sales of speculative securities, the same type of activity in which his previous violations occurred. It further noted that the required positive showing that Shaub's conduct since the violations had been on such a high level as to demonstrate that he had changed his ways had not been made. In addition, the Commission stated that it had not been shown that the supervisory procedures of the prospective employer would be adequate. The Commission also took into account the short lapse of time since Shaub had been named a cause.

Commission Inspections of NASD.—Under the regulatory scheme of the Exchange Act the Commission is also charged with general oversight of national securities associations in the performance of their self-regulatory activities. In carrying out this responsibility the Commission staff conducts periodic inspections of various phases of NASD activity. These inspections assist the Commission in insuring that the NASD is complying with its self-regulatory responsibilities and enable the Commission to recommend improvements designed to increase the effectiveness of such self-regulation.

During the past fiscal year, the Commission staff inspected the NASD's district office in New York City, focusing particular atten-

[33] Securities Exchange Act Release No. 8113 (June 30, 1967).

[34] Securities Exchange Act Release No. 7839 (March 15, 1966).

tion on the district's activities in certain substantive regulatory areas, including the enforcement of NASD standards of fair practice governing the reasonableness of prices charged to customers by member firms, the execution of over-the-counter retail transactions, and the maintenance of procedures for the supervision of salesmen and other employees. Another inspection covered the work of the NASD Committee on Underwriting Arrangements. That Committee has the responsibility for reviewing public offerings of securities of unseasoned companies and determining whether the arrangements for compensating the underwriter might be unreasonable and therefore in violation of applicable rules and policies. Where it appeared to the staff of the Commission that modifications of NASD procedures or policies were desirable in order to improve the association's performance, the staff's views were communicated to the association and conferences were held with a view toward arriving at appropriate solutions.

Supervision of Exchanges

Exchange Disciplinary Action.—Each national securities exchange reports to the Commission disciplinary actions taken against its members, member firms, and their associated persons for violation of any rule of the exchange or of the Securities Exchange Act or any rule or regulation thereunder. During the fiscal year, 10 exchanges reported over 100 separate actions, including impositions of fines in 39 cases ranging from $50 to $5,000, with total fines aggregating $29,775, the suspension from membership of 13 individuals and 2 member organizations and the censure of 2 member firms. These exchanges also reported the imposition of various sanctions against 81 registered representatives and employees of member firms. In addition, several exchanges reported a large number of informal staff actions of a cautionary nature.

Termination of Registration of San Francisco Mining Exchange.—In *San Francisco Mining Exchange* v. *S.E.C.*[35], the Court of Appeals for the Ninth Circuit affirmed an order of the Commission of April 22, 1966, entered pursuant to Section 19(a)(1) of the Securities Exchange Act, withdrawing the registration of the San Francisco Mining Exchange. The Commission had found that the Exchange over a period of years had repeatedly neglected to enforce compliance by its members and by issuers of securities listed thereon with the reporting, insider trading and anti-fraud provisions of the Exchange Act and had lent its facilities to securities distributions made in violation of the registration requirements of the Securities Act of 1933. The Commission had also found that officials of the Exchange had been personally involved in repeated violations of the securities laws. The

[35] 378 F. 2d 162 (C.A. 9, 1967).

Exchange did not contest these findings; it contended that the remedy proposed by the hearing examiner, which would have permitted it to reorganize within 90 days, was supported by the record and that the Commission's remedy, withdrawal of the Exchange's registration, was not. The court held that the Commission's decision was reasonable and was not an abuse of discretion, noting that "the complete reorganization proposed by the hearing examiner . . . would in essence be the withdrawal of the registration of the present Exchange, and the registration of a completely new exchange."

The court also rejected the Exchange's allegations that it had been denied due process because of the Commission's refusal to issue subpoenas *ad testificandum* and *duces tecum* directed to the Commissioners and the Secretary for the purpose of determining whether there had been prejudgment and bias in the administrative proceeding. The court held that the Commission was entitled to refuse such requests if, as here, the evidence sought was not shown to be generally relevant and material, stating, "Were that otherwise, an indiscriminate subpoenaing of Commission members would lead to an unreasonable and unnecessary delay of the administrative process."

MISREPRESENTATIONS IN THE SALE OR PURCHASE OF SECURITIES

Among the improper practices which constantly concern the Commission and its staff and which are the subject of frequent enforcement action is the use of false or misleading representations in connection with the sale or purchase of securities.[36] The comments in the preceding section regarding detection methods, investigations and sanctions are in general equally applicable to this type of conduct. The Commission also frequently participates as *amicus curiae* in litigation between private parties under the so-called anti-fraud provisions of the securities laws, where it considers it important to present its views regarding the interpretation of those provisions.

During the course of the fiscal year, the Commission participated either as a party or as *amicus curiae* in a number of cases involving important issues under the anti-fraud provisions.

In *S.E.C.* v. *Van Horn*,[37] an action to enjoin the defendants, among other things, from violating the anti-fraud provisions of the Securities Act of 1933 through false and misleading statements in the sale of securities, one of the principal issues was whether "scienter or fraudulent intent" must be proven as a prerequisite to injunctive relief under

[36] Misrepresentations are, of course, an integral part of "boiler-room" or similar high-pressure fraudulent operations by broker-dealers. To the extent misrepresentations are employed in that context, they are discussed in the section on improper broker-dealer practices.

[37] 371 F.2d 181 (C.A. 7, 1966).

Sections 17(a)(2) and (3) of the Act. In affirming the issuance of a preliminary injunction, the Court of Appeals for the Seventh Circuit held that there is no such requirement, stating that:

> "In view of the plain language employed by Congress, it would be presumptuous on our part to hold that the applicability of the clauses involved is dependent on intent to defraud. Not only did Congress fail to include such a requirement, but legislative history indicates that it did so deliberately."

During the year the Commission participated either as a party or as *amicus curiae* in cases in three different judicial circuits posing the question whether corporate mergers or consolidations constitute purchases or sales of securities within the meaning of Section 10(b) of the Securities Exchange Act and Rule 10b–5 thereunder as well as the other related anti-fraud provisions of the securities laws. In an *amicus* brief over two decades ago in *National Supply Co.* v. *Leland Stanford Jr. University*,[38] the Commission had taken the position that a merger was not a sale for purposes of the anti-fraud provision of the Securities Act of 1933,[39] and the Court of Appeals for the Ninth Circuit had adopted the Commission's "no-sale" position. For at least the past 15 years, however, the Commission has consistently taken the position that, whatever the status of a corporate merger or consolidation for purposes of the registration provisions of the Securities Act, it constitutes a purchase or sale of the securities for purpose of the anti-fraud provisions. This is the position that the Commission took in *amicus* briefs in *Vine* v. *Beneficial Finance Co.*[40] and *Dasho* v. *Susquehanna Corp.*[41] and as a party in *S.E.C.* v. *National Securities, Inc.*[42] Both the Court of Appeals for the Second Circuit in the *Vine* case, decided during the fiscal year, and the Court of Appeals for the Seventh Circuit in the *Dasho* case, decided soon after the close of the fiscal year, agreed with the Commission's *amicus* position in those cases. The Court of Appeals for the Second Circuit stated:

> "We note that whatever stance it adopted two decades ago, the Commission strongly urges in this case that the short form merger resulted in a purchase and sale of plaintiff's stock within the meaning of Rule 10b–5."

In the *Vine* case, which involved a short form merger, the court also held that no proof of reliance is required where "no volitional act is required and the result of a forced sale is exactly that intended by the wrongdoer." It therefore found it unnecessary to deal with the Commission's "interesting contention" that damages incurred by a security holder as a direct result of a violation of Section 10(b) and Rule

[38] 134 F. 2d 689 (C.A. 9), *cert. den.*, 320 U.S. 773 (1943).
[39] Section 17(a).
[40] 374 F. 2d 627 (C.A. 2, 1967), *cert. den.* December 4, 1967.
[41] 380 F. 2d 262 (C.A. 7, 1967) *cert. den.* December 4, 1967.
[42] Affirmed, CCH Fed. Sec. L. Rep. ¶ 92,018 (C.A. 9, November 14, 1967).

10b–5 are recoverable under those provisions even if he was not a purchaser or seller of those securities.

One of the most recurrent issues in litigation under anti-fraud provisions in recent years has been the scope of the Federal securities laws vis-à-vis State law in the corporate and other areas. With the almost universal acceptance of private rights of action under Section 10(b) and Rule 10b–5, persons with possible grievances under State law have increasingly asserted those grievances in the Federal courts under the anti-fraud provisions as well, in order to take advantage of the liberal substantive and procedural provisions of the Federal securities laws. In deciding such cases the courts have been faced with the question whether the conduct complained of falls in that area in which State and Federal law exist side by side and complement each other, or in the area occupied solely by State law. The Commission participated as *amicus curiae* during the fiscal year in cases posing this question.

One such case, *A. T. Brod & Co.* v. *Perlow*,[43] involved what has been called the "man bites dog" situation. In that case the plaintiff broker alleged that the defendant customer placed an order to purchase securities with the intention not to pay for them unless their market value had increased by the date that payment was due. The defendant argued that the Federal securities laws were only designed to protect investors, and that all that had been alleged was a breach of contract in violation of State law. The Court of Appeals for the Second Circuit agreed with the *amicus* position of the Commission that the securities laws were not designed only to protect investors, and that the alleged intention of the defendant customer to pay for the securities only under certain conditions constituted fraud within the meaning of Section 10(b) and Rule 10b–5 and not a mere breach of contract. The court also agreed with the Commission that the anti-fraud provisions are not limited to fraud as to the investment value of securities. It stated that:

> "We believe that § 10(b) and rule 10b–5 prohibit *all* fraudulent schemes in connection with the purchase or sale of securities, whether the artifices employed involve a garden type variety of fraud, or present a unique form of deception. Novel or atypical methods should not provide immunity from the securities laws."

The *Dasho* case, which was discussed earlier in connection with the no-sale issue,[44] involved a transaction in which the defendant corporation transferred cash and stock in another corporation to a dissident group of the defendant corporation's shareholders in exchange for the dissidents' stock in the defendant corporation. The transaction was

---

[43] 375 F. 2d 393 (C.A. 2, 1967).

[44] See p 93, *supra*.

allegedly entered into to prevent the dissident shareholders from bringing a derivative suit against management, and the exchange ratio was allegedly unfair to the defendant corporation. Although all the directors of the defendant corporation, who approved the transaction, were aware of these facts, they were either proposed defendants in the threatened derivative suit or representatives of the dissident group. The Commission took the position in its brief as *amicus curiae* that under these circumstances it was a violation of Rule 10b–5 for the directors to fail to disclose these facts to their stockholders even though stockholder approval of the transaction was neither required under State law nor sought. One member of the panel of the court of appeals wrote a concurring opinion in which another joined which considered *inter alia* the decision by the Court of Appeals for the Second Circuit in *Ruckle* v. *Roto-American Corp.*[45] where some of the directors had not been participants in the transaction and thus could be deceived in the ordinary sense. Here also, the opinion stated, there had been a violation of the anti-fraud provisions since

> "the failure of the defendant directors to perform their duty presumably injured the corporation, and I do not believe it is sound to differentiate between situations where the directors were unanimous in wrongdoing and those where less than all were involved."

A similar issue was involved in *Pappas* v. *Moss.*[46] In that case the directors of the defendant corporation had issued stock in the corporation to themselves and others at an allegedly inadequate price. All of the directors, who approved the transaction with themselves, were fully aware of the facts, and stockholder approval was not required under State law. In this case, however, shareholder approval was sought so that the stock could be listed on an exchange, and allegedly false statements were made to the shareholders in the process. The defendant directors owned a majority of the shares of the corporation and voted them in favor of the transaction. The Commission's position in its brief *amicus curiae* was that, when interested directors of a corporation approve a securities transaction on its behalf at an unfair price and make misrepresentations of material facts apparently designed to deceive the shareholders, they violate Section 10(b) and Rule 10b–5 regardless of their voting power either as directors or as shareholders. The case was awaiting decision at the end of the fiscal year.

The final case in this group, *Mutual Shares Corp.* v. *Genesco, Inc.*,[47] involved a tender offer made by the defendant corporation for the

---

[45] 339 F. 2d 24 (1964).

[46] Docket Nos. 16,405–16,411 (C.A. 3).

[47] CCH Fed. Sec. L. Rep. ¶ 91,983 (C.A. 2, 1967).

shares of a second corporation. The plaintiffs claimed to have purchased stock in the second corporation in reliance on this tender offer, which did not disclose either the fact that certain assets of the second corporation were worth substantially more than their book value or the alleged intention of the defendant corporation to loot the second corporation after gaining control. The Court of Appeals for the Second Circuit, in a decision handed down after the close of the fiscal year, agreed with the Commission that, since (1) the plaintiffs allegedly purchased rather than sold stock in the second corporation on the basis of the tender offer, (2) the information as to the true value of the corporate assets was publicly available and plaintiffs under their own allegations benefited from this nondisclosure by being able to purchase their stock at depressed prices, (3) there were no affirmative misrepresentations alleged and (4) the defendant corporation was not an insider of the second corporation, this aspect of the complaint stated no cause of action.

The court stated:

> "As the Commission's *amicus* brief points out, if plaintiffs' proposition were accepted, it would convert any instance of corporate mismanagement into a Rule 10b–5 case."

Also in agreement with the Commission's position, the court went on to state that with respect to the period after plaintiffs became security holders they would have a cause of action for any damages resulting from defendant's alleged downward manipulation of the market price of the stock, to enable it to purchase shares at depressed prices, although it held that they had not been damaged because they had not sold their stock. It held, however, that plaintiffs had standing to seek an injunction against the alleged manipulation without any proof of loss. In *Pacific Ins. Co.* v. *Blot* [48] the Commission, as *amicus*, stated that it was inclined to believe that a noninsider who is planning to make a tender offer may make open market purchases of the same stock at lower prices without disclosing the forthcoming tender offer. The district court did not reach this issue but instead denied a preliminary injunction against the use of the shares acquired in this manner on the basis of two points urged by the Commission: (1) that a corporation does not have standing to seek an injunction against a tender for its shares absent an allegation that the corporation was itself defrauded or injured by the tender, and (2) that the fact that one has acquired stock in violation of the anti-fraud provisions is not sufficient to prevent him from exercising such rights of a shareholder under State law as the right to obtain a list of shareholders.

In a decision involving the scope of the term "security" as defined in the Securities Exchange Act, the Court of Appeals for the Seventh

[48] 267 F. Supp. 956 (S.D. N.Y., 1967).

Circuit, in *Tcherepnin* v. *Knight*,[49] reversing the decision of the district court,[50] held, contrary to the views expressed by the Commission as *amicus curiae*, that withdrawable capital shares issued by a State-chartered savings and loan association are not securities within that definition and that the district court, therefore, did not have jurisdiction of a cause of action based upon alleged violation of Rule 10b–5 brought by the holders of such shares. Supported by the Commission, plaintiffs petitioned the Supreme Court for a writ of certiorari. The writ was granted and on August 31, 1967, a brief was filed on behalf of the Commission.

In the criminal area, further progress was made during the fiscal year in the prosecution of fraudulent securities promotions. Last year's report had discussed the return of indictments in the American Bonded Mortgage Company case, charging the defendants with employing a scheme to distribute notes purportedly "guaranteed" by mortgages, in violation of the anti-fraud provisions of the Securities Act.[51] In December 1966 the defendants were convicted. The most severe sentences were imposed on Mark H. Kroll and William Cahn, who were sentenced to 10 years imprisonment and fined $40,000 and $15,000, respectively.

In another prosecution involving the sale of high-interest bearing notes and debentures, John B. Sanders, Jr., was convicted of violating the anti-fraud provisions of the Securities Act on an indictment charging fraud in the sale of securities of three corporations known as the "Underwriters" group, as well as certificates of deposit of Lords Bank and Trust Company, Ltd., a Bahamian bank.[52] This bank was one of a number of Bahamian banking institutions that had been placed on the Commission's Foreign Restricted List due to unlawful securities distributions in the United States.[53] Sanders was sentenced to a total of 10 years imprisonment.

Eight individuals and three corporations were convicted of violating the anti-fraud provisions of the Securities Act in connection with the sale of stock of Air and Space Underwriters, Inc., primarily to residents of Indiana.[54] A particularly significant aspect of the case was the conviction of Van C. Vollmer, former editor of an Indiana financial newspaper, of violating the "anti-touting" provisions of Section 17(b) of the Securities Act by failing to disclose that he received compensation for promoting the company's securities in the news and editorial columns of the newspaper.

---

[49] 371 F. 2d 374 (C.A. 7), *certiorari granted*, 387 U.S. 941 (1967).
[50] N.D. Ill., No. 64 C 1285 (January 17, 1966).
[51] See p. 125.
[52] W. D. La., No. 17697.
[53] See p. 103, *infra*.
[54] S. D. Ind., 66 Cr. 108.

In sustaining the conviction of Donald R. Elbel of violations of the anti-fraud provisions of the Securities Act and of the Mail Fraud Statute, the Court of Appeals for the Tenth Circuit [55] made it plain that requisite criminal intent may be inferred from a "reckless disregard" for the underlying truth or falsity of the represenations made. The court also held that a defendant's allegation that he believed in the eventual success of the business venture is no defense to criminal charges of misrepresentations of material facts. Elbel had been convicted of devising a scheme to offer and sell securities of Coffeyville Loan and Investment Company by fraudulent means.

MANIPULATION

The Exchange Act and Commission rules under the Act prohibit various kinds of manipulative activities. In order to enable the Commission to meet its responsibilities for the surveillance of the securities markets, the market surveillance staff has devised a number of procedures to identify possible manipulative activities. A program has been adopted with respect to surveillance over listed securities, in which the staff's activities are closely coordinated with the stock watching operations of the New York and American Stock Exchanges. Within this framework, the staff reviews the daily and periodic stock watch reports prepared by these exchanges and on the basis of its analysis of the information developed by the exchanges and other sources, determines matters of interest, possible violations of applicable law, and the appropriate action to be taken.

In addition, the market surveillance staff maintains a continuous ticker tape watch of transactions on the New York and American Stock Exchanges and the sales and quotations sheets of regional exchanges to observe any unusual or unexplained price variations or market activity. The financial news ticker, leading newspapers and various financial publications and statistical services are also closely followed.

If any of these sources reveals possible violations, the market surveillance staff conducts a preliminary inquiry into the matter. These inquiries, some of which are conducted with the cooperation of the exchange concerned, generally begin with the identification of the brokerage firms which were active in the security. The staff may communicate with partners, officers or registered representatives of the firms, with customers, or with officials of the company in question to determine the reasons for the activity or price change in the securities involved and whether violations may have occurred.

The Commission has also developed an automated over-the-counter surveillance program to provide more efficient and comprehensive

[55] *Elbel* v. *U.S.*, 364 F. 2d 127 (1966).

surveillance. The automated equipment is programmed to identify, among other things, unlisted securities whose price movement or dealer interest varies beyond specified limits in a pre-established time period. When a security is so identified, the automated system prints out current and historic market information concerning it. This data, combined with other available information, is collated and analyzed to select those securities whose activity indicates the need for further inquiry or referral to the Commission's enforcement staff.

In addition to the Commission's market surveillance activities, the other detection methods previously discussed are also useful tools in the detection of manipulation. Prior comments of a general nature regarding investigations and the nature of sanctions available are equally pertinent to manipulations.

Among Commission decisions during the year dealing with manipulative activities by broker-dealers, the following are of particular interest:

In *Kamen & Company*,[56] the Commission dealt with a manipulative scheme perpetrated by a group of employees of the Kamen firm, a New York and American Stock Exchange member. The employees solicited numerous nonexchange member broker-dealers throughout the country to place their exchange business in listed securities with the firm in return for over-the-counter business to be furnished them by the firm. The only over-the-counter business furnished, however, was in the form of contrived transactions in the stock of Jerome, Richard & Co., Inc., a registered broker-dealer which certain of these employees had organized.

In the typical situation, a member of the group would telephone an out-of-town nonexchange member dealer (A) and in a single conversation instruct that dealer to purchase a specified number of Jerome shares from another designated dealer (B) at a specified price and simultaneously to sell the same shares to a third designated dealer (C) at a specified price which was usually ⅛ or ¼ of a point higher than the purchase price. This last dealer (C) was then in a similar manner instructed by a member of the group to buy the shares at that higher price from the prior dealer (A) and simultaneously to sell them to still another designated dealer (D) at an even higher price. In this manner a large number of circuits of transactions were effected among approximately 100 nonmember broker-dealers. Finally the group arranged for a large number of shares to end with two "dummy" corporations. The failure of these corporations to pay for the stock resulted in losses to various broker-dealers totaling more than $475,000.

The Commission found that although there was no evidence to support a finding that the firm's managing partner had actual knowledge

[56] Securities Exchange Act Release No. 7965 (September 29, 1966).

of the group's plan or the methods by which it was accomplished, the firm and the partner failed to discharge their responsibilities to institute and maintain adequate supervisory procedures designed to prevent violations. It suspended the firm from its exchange memberships and NASD membership for 10 business days and suspended the partner from association with any broker or dealer for 90 days.

In *F. S. Johns & Company, Inc.*,[57] the Commission found that a number of broker-dealers participated in a manipulative scheme with respect to the stock of Diversified Funding, Inc., masterminded by the Johns firm and its president, who were also engaged in retailing Diversified stock through a "boiler-room" sales campaign. The Commission found that the Johns firm, in order to create the appearance of a broad and active market and to facilitate the retail distribution at artificially inflated prices of substantial blocks of Diversified stock which it held or expected to acquire, induced other dealers to place ostensibly independent, but in reality fictitious, quotations in the quotation sheets for the over-the-counter market at continually increasing levels, in willful violation of the anti-fraud provisions. The Commission further held that the other dealers, who should have realized that they were cogs in a manipulative scheme, were culpable participants in the scheme. With respect to one of the respondents, Reuben Rose & Co., Inc., whose trader had on his own entered into the arrangement with F. S. Johns, the Commission held that the firm failed to exercise the necessary supervision over the trader. It found that the firm "exercised no supervision whatever over the day-to-day activities of its trader . . . . The controls which were assertedly maintained were directed toward protection of the firm's capital rather than to protection of investors. Under the circumstances, the firm's failure of supervision made it a participant in [the trader's] misconduct."

Two criminal cases developed during the fiscal year involved the manipulation of stocks listed on the American Stock Exchange. In *United States* v. *Osborne Andreas*,[58] six defendants were indicted for conspiring to manipulate the price of the stock of Pentron Electronics Corporation while distributing a block of Pentron stock for Andreas, the former president of the corporation. Two of the defendants, Mark Rolland, a partner in a Chicago factoring firm called Investment Associates, and Spero Furla, a securities salesman, have pleaded guilty to the charges. In *United States* v. *Henry Dubbin*,[59] seven defendants, including Dubbin, the president of Canaveral International Corporation, were indicted for conspiring to manipulate the price of Canaveral stock.

[57] Securities Exchange Act Release No. 7972 (October 10, 1966).

[58] S.D.N.Y., 67 Cr. 243.

[59] S.D.N.Y., 67 Cr. 361.

IMPROPER USE OF INSIDE INFORMATION

Corporate insiders by virtue of their position may have knowledge of material facts which are unavailable to the general public and may be able to use such knowledge to their advantage in transactions in the company's securities. Section 16 of the Securities Exchange Act was designed to curb the misuse of inside information. As previously noted, that section requires insiders to report their security holdings and transactions and provides for the recovery by or on behalf of the issuer of short-swing trading profits realized by insiders. The Commission is not a party in suits under Section 16, but frequently participate as *amicus curiae* in those instances where significant interpretive issues are involved. Aside from Section 16, however, those who make improper use of inside information in the purchase or sale of securities may also be liable for damages or subject to injunctive action under the anti-fraud provisions of the securities acts, either at the instance of injured private litigants or the Commission itself, or subject to disciplinary action in administrative proceedings instituted by the Commission.

In *Pennaluna & Company, Inc.*,[60] the Commission held, among other things, that where a director and controlling person of a company sold its securities without making disclosure of the adverse financial condition of the company which condition was inconsistent with the favorable public image of the company known to and even fostered by him, his sales violated the anti-fraud provisions.

The last annual report [61] discused at some length the decision of the trial court in *S.E.C.* v. *Texas Gulf Sulphur Co.*,[62] rendered early in the 1967 fiscal year. This is an action by the Commission for injunctive and other relief against various insiders of Texas Gulf as well as against the company itself raising important issues under the anti-fraud provisions of Rule 10b–5 with respect to insiders' securities transactions based on undisclosed inside information. Both the Commission and the two individuals who were found by the trial court to have violated the law appealed from the decision, and the appeals were argued in March 1967 before the Court of Appeals for the Second Circuit.

In *Petteys* v. *Butler*,[63] an action under Section 16(b) of the Securities Exchange Act, the Court of Appeals for the Eighth Circuit, contrary to the position urged by the Commission in an *amicus curiae* brief, held that a conversion of preferred stock into common stock, at a time when the preferred had been called for redemption, did not

[60] Securities Exchange Act Release No. 8063 (April 27, 1967).
[61] 32nd Annual Report, pp. 114–115.
[62] 258 F. Supp. 262 (S.D.N.Y., 1966).
[63] 367 F. 2d. 528 (C.A. 8, 1966), *cert. den.*, 385 U.S. 1006 (1967).

constitute a "purchase" of the common within the meaning of that section.

In *Chemical Fund, Inc.* v. *Xerox Corporation*,[64] the Court of Appeals for the Second Circuit held that for purposes of determining beneficial ownership under Section 16 of the Securities Exchange Act convertible debentures are not a separate "class" of an equity security. It further held that the test of liability under Section 16(b) where convertible debentures are involved is whether the total percentage of common stock which a holder would own following a hypothetical conversion of his debentures would exceed 10 percent of the outstanding common stock thus hypothetically augmented. The Commission had filed a brief, *amicus curiae*, urging that the debentures constituted a separate class of an equity security.

ENFORCEMENT PROBLEMS WITH RESPECT TO FOREIGN SECURITIES

The unlawful offer and sale of Canadian securities in the United States remained at a fairly low level in fiscal 1967, continuing the trend of the past few years. The decline of unlawful Canadian promotions since the operations of the Toronto and Montreal "boiler-rooms" of the late 1950's is due primarily to effective cooperation and liaison between the Commission and the Alberta, Ontario and Quebec Securities Commissions and quasi-official bodies such as the Toronto and Montreal Stock Exchanges and the Broker-Dealers' Association of Ontario. A promising development during the year was the enactment of new securities laws in Ontario and several other Canadian provinces. The Commission is following with considerable interest the steps being taken to create a Federal securities agency in Canada, and has offered to provide full assistance to it.

The Commission has continued to work closely with the Ontario Royal Commission on Atlantic Acceptance Corporation Limited in its investigation into the circumstances surrounding the collapse in June 1965 of Atlantic Acceptance, a large Canadian finance company. The Royal Commission, which was appointed in the wake of Atlantic's financial debacle, has held 124 days of public hearings, at several of which a member of this Commission's staff testified. The Atlantic Acceptance collapse had wide ramifications, and resulted in a loss of almost $100 million to Canadian and American investors. Numerous criminal charges have been brought, mostly in Ontario, as a result of the investigation, and the Commission has assisted the Ontario Securities Commission and the Attorney General's Department of Ontario in connection with many of those cases.

In response to a request from the Internal Revenue Service, the Commission assisted it in an investigation of substantial evasions of

[64] 377 F. 2d 107 (C.A. 2, 1967).

the Interest Equalization Tax on purchases by Americans of foreign securities from foreign sellers. These evasions have taken place through the use of false certificates of American ownership of foreign securities. Two indictments have been returned against alleged tax evaders. In addition, a new system for substantiation of the fact of prior United States ownership of taxable securities has been established by the Internal Revenue Service in order to avoid the evasive practices. This system implements a recent amendment of the Interest Equalization Tax section of the Internal Revenue Code of 1954.

Offers and sales to American residents of unregistered securities in the form of certificates of deposit issued by Bahamian banks have declined considerably due to the enactment in late 1965 of Bahamian legislation regulating the bank business in that colony. The name of one Bahamian savings and loan association was added to the Commission's Foreign Restricted List [65] during the year, however, as a result of the offer and sale of its securities (in the form of savings account passbooks) to United States residents. The Commission deleted the names of 13 Bahamian "banks" from the Foreign Restricted List after being informed by the Bahamas Ministry of Finance that their corporate charters had been revoked.

The Commission's Foreign Restricted List has reflected the changing character of its foreign enforcement effort. As of June 30, 1967, only 26 companies remained on the list, the smallest number since its establishment. The names of 41 Canadian and 14 Bahamian companies were deleted from the list during the fiscal year in accordance with established procedures, while the names of 1 Canadian, 2 Bahamian, 1 British Honduran and 4 Panamanian companies were added to the list. The current list and supplements to it are issued to and published by the press, and copies are mailed to all registered broker-dealers and are made available to the press.

As of September 30, 1967, there were 30 companies on the list, including 18 Canadian, 4 Bahamian, 7 Panamanian and 1 British Honduran companies, as follows:

Bahamian

American International Mining
Bahamas Savings and Loan Association
Bankers International Investment Corporation
Compressed Air Corporation Limited

British Honduran

Caribbean Empire Company, Ltd.

[65] The Foreign Restricted List consists of foreign companies whose securities the Commission has reason to believe are being, or recently have been, distributed in the United States in violation of the registration requirements of the Securities Act of 1933.

Canadian

Allegheny Mining and Exploration Company Limited
Autofab, Ltd.
Bayonne Mine, Ltd.
Briar Court Mines, Ltd.
International Claim Brokers, Ltd.
Ironco Mining & Smelting Company, Ltd.
Keele Industrial Developments, Ltd.
Kenilworth Mines, Ltd.
Mack Lake Mining Corporation, Ltd.
Norart Minerals Limited
North West Pacific Developments, Ltd. now known as Pacific Northwest Developments, Ltd.
Obsco Corporation, Ltd.
Paracanusa Coffee Growers, Ltd.
St. Lawrence Industrial Development Corporation
Ste. Sophie Development Corporation
St. Stephen Nickel Mines, Ltd.
Trans-Oceanic Hotels Corporation, Ltd.
Victoria Algoma Mineral Company, Ltd.

Panamanian

British Overseas Mutual Fund Corporation
Cerro Azul Coffee Plantation
Darien Exploration Company, S.A.
DeVeers Consolidated Mining Corporation, S.A.
Euroforeign Banking Corporation, Ltd.
Panamerican Bank & Trust Company
Victoria Oriente, Inc.

In dealing with fraudulent foreign promotions, the Commission is continuing to benefit from simplified procedures for obtaining foreign postal fraud orders. The Post Office Department has cooperated fully with the Commission's program.

PART VI

REGULATION OF INVESTMENT COMPANIES

The Investment Company Act of 1940 provides for the registration and regulation of companies primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities. The Act, among other things, requires disclosure of the financial condition and investment policies of such companies; prohibits changes in the nature of their business or their investment policies without shareholder approval; regulates the means of custody of their assets; requires management contracts to be submitted to shareholders for approval; prohibits underwriters, investment bankers, or brokers from constituting more than a minority of the board of directors; and prohibits transactions between investment companies and their officers, directors, or other affiliates except with approval of the Commission. The Act also regulates the issuance of senior securities and requires face-amount certificate companies to maintain reserves adequate to meet maturity payments. Investment companies must also file periodic reports and are subject to the Commission's proxy rules, and certain "insiders" of closed-end companies are subject to the insider reporting and "short swing" trading rules. The securities of investment companies which are offered to the public are required to be registered under the Securities Act of 1933.

The Division of Corporate Regulation performs the principal functions under the Investment Company Act. In addition, it has responsibility for the administration of disclosure requirements with respect to registration statements filed by investment companies under the Securities Act of 1933 and the administration of the periodic reporting, proxy solicitation and other applicable provisions of the Securities Exchange Act of 1934 with respect to such companies.

Part I of this report summarizes the Commission's Report on the Public Policy Implications of Investment Company Growth, which was submitted to Congress in December 1966, and the legislative proposals implementing the recommendations of the Report for amendment of the Investment Company Act, submitted in May 1967.

COMPANIES REGISTERED UNDER THE ACT

As of June 30, 1967, there were 842 investment companies registered under the Act, including 68 small business investment companies. Of

this total, 743 were "active" companies, whose assets had an aggregate market value of approximately $58.2 billion. Compared with the corresponding totals at June 30, 1966, these figures represent an overall increase of approximately $8.4 billion in the market value of assets and an increase of 76 in the number of active registered companies. The asset increase is partly due to appreciation in the assets of previously registered companies and partly to the large increase in the number of registered companies. The following table shows the various categories of registered companies as well as the number of companies and the approximate market value of the assets in each category as of June 30, 1967:

	Number of registered companies			Approximate market value of assets of active companies (millions)
	Active	Inactive*	Total	
Management open-end ("mutual funds")	435	24	459	$44,557
Management closed-end	161	41	202	7,549
Unit investment trust	141	32	173	4,983
Face-amount certificate	6	2	8	1,108
Total	743	99	842	$58,197

* "Inactive" refers to registered companies which as of June 30, 1967, were in the process of being liquidated or merged, or have filed an application pursuant to Section 8(f) of the Act for deregistration, or which have otherwise gone out of existence and remain registered only until such time as the Commission issues orders under Section 8(f) terminating their registration.

The approximately $5 billion of assets of the "active" registered unit investment trusts include approximately $4.4 billion of assets of unit investment trusts which invest in securities of other registered investment companies, substantially all of them mutual funds.

During the fiscal year, 108 new companies, including 1 small business investment company, registered under the Act while the registrations of 41 companies, including 3 small business investment companies, were terminated. The classification of these companies is as follows:

	Registered during the fiscal year	Registration terminated during the fiscal year
Management open-end	68	19
Management closed-end	29	16
Unit investment trust	11	6
Face-amount certificate		
Total	108	41

GROWTH OF INVESTMENT COMPANY ASSETS

The following table illustrates the striking growth of assets of investment companies over the years since the enactment of the Investment Company Act:

Number of investment companies registered under the Investment Company Act and their estimated aggregate assets, in round amounts, at the end of each fiscal year, 1941 through 1967

Fiscal year ended June 30	Number of companies				Estimated aggregate market value of assets at end of year (in millions)*
	Registered at beginning of year	Registered during year	Registration terminated during year	Registered at end of year	
1941	0	450	14	436	$2,500
1942	436	17	46	407	2,400
1943	407	14	31	390	2,300
1944	390	8	27	371	2,200
1945	371	14	19	366	3,250
1946	366	13	18	361	3,750
1947	361	12	21	352	3,600
1948	352	18	11	359	3,825
1949	359	12	13	358	3,700
1950	358	26	18	366	4,700
1951	366	12	10	368	5,600
1952	368	13	14	367	6,800
1953	367	17	15	369	7,000
1954	369	20	5	384	8,700
1955	384	37	34	387	12,000
1956	387	46	34	399	14,000
1957	399	49	16	432	15,000
1958	432	42	21	453	17,000
1959	453	70	11	512	20,000
1960	512	67	9	570	23,500
1961	570	118	25	663	29,000
1962	663	97	33	727	27,300
1963	727	48	48	727	36,000
1964	727	52	48	731	41,600
1965	731	50	54	727	44,600
1966	727	78	30	775	49,800
1967	775	108	41	842	58,197

* The increase in aggregate assets reflects the sale of new securities as well as capital appreciation.

CAPITAL LEVERAGED FUNDS

During fiscal year 1967 a new type of investment company known as a capital leveraged investment company developed and nine such companies registered under the Investment Company Act.

In the capital leveraged company, one-half of the capital is contributed by "Income Shareholders" and the other half by "Capital Shareholders." The Income Shareholders are entitled to the entire income of the company for a specified number of years, and at the end of the specified period to a liquidation value. With respect to the companies which have registered, the specified period ranges from 12 to 18 years. The Capital Shareholders are entitled to the capital appreciation on the total capital of the company at the expiration of the specified period less the liquidation value of the income shares. In other words, the Income Shareholders give up the capital appreciation on their investment to the Capital Shareholders in return for which the latter give up the income on their investment. The stated purpose of these companies is to enable investors who seek either income or growth of capital to the exclusion of the other to maximize their goals. Seven of the capital leveraged companies have sold their securities to the public for cash and the two others issued their securities in exchange for securities held by public investors.

All but one of the registered capital leveraged companies are closed-end investment companies which, so long as their income shares are outstanding, will neither issue more stock of either class nor redeem any securities which they have already issued. The one open-end company sold the two classes as a unit and will redeem as a unit. The holders of units may, if they so desire, sell either class on the open market. This open-end company also will not issue any additional shares.

All of the closed-end capital leveraged companies filed applications for exemption from Section 18(a)(2)(E) of the Act, which requires dividends on senior securities that are stocks (here the income shares) to be cumulative. The one open-end company, which provided safeguards with respect to its income shares substantially equivalent to those that would be operative if the restrictions of Section 18(a) were applicable, applied for exemption from Section 18(f)(1) which generally prohibits an open-end company from issuing any senior security. The Commission granted these applications. In order to minimize the conflict of interest between the two classes and to protect against undue leverage, the Commission, with the consent of the companies, imposed certain conditions in the exemptive orders.

THE "FLEXIBLE FUND ANNUITY"—S.E.C. v. UNITED BENEFIT LIFE INSURANCE CO.

In *S.E.C. v. United Benefit Life Insurance Co.*,[1] the Supreme Court, reversing the decision of the court of appeals,[2] held that the "Flexible Fund Annuity" contract offered and sold by United Benefit Life Insurance Company is subject to the registration requirements of the Securities Act of 1933. Rejecting the view of the court of appeals that the contract must be characterized in its entirety, the Supreme Court held that the operation of the contract during the accumulation, or pay-in, period, when the company "promises to serve as an investment agency and allow the policyholder to share in its investment experience," must be assessed independently "to determine whether that separable portion of the contract falls within the class of those exempted by Congress from the requirements of the Securities Act, and, if not, whether the contract constitutes a 'security' within Section 2 of that Act. . . ." In holding that the exemption from registration provided by Section 3(a)(8) of the Act for insurance and annuity contracts is unavailable with respect to the accumulation portion of the contract, the Court emphasized that arrangements of this type

[1] 387 U.S. 202 (1967). Earlier stages of the litigation in this case are discussed in the 32nd Annual Report, pp. 112–13; 31st Annual Report, p. 127; 29th Annual Report, pp. 119–20.

[2] 359 F. 2d 619 (1966).

"require special modifications of State law, and are considered to appeal to the purchaser not on the usual insurance basis of stability and security but on the prospect of 'growth' through sound investment management." The Court added that the contract provision under which the company guarantees a partial repayment to the purchaser does not convert the contract into one of insurance; "the basic difference between a contract which to some degree is insured and a contract of insurance must be recognized." Finally, the Court held that the accumulation provisions constitute an "investment contract" within the meaning of Section 2 of the Securities Act. In so holding, the Court noted that "contracts such as the 'Flexible Fund' offer important competition to mutual funds . . . and are pitched to the same consumer interest in growth through professionally managed investment," and then stated that "it seems eminently fair that a purchaser of such a plan be afforded the same advantages of disclosure which inure to a mutual fund purchaser under . . . [the registration provisions] of the Securities Act." Having thus disposed of the issues raised under the Securities Act, the Court remanded the case to the court of appeals for consideration of the question whether the Flexible Fund is an investment company under the Investment Company Act—an issue which the lower courts had not reached.

CONTROL OF IMPROPER PRACTICES

Inspection and Investigation Program

Section 31(b) of the Investment Company Act authorizes the Commission to make periodic and special examinations of registered investment companies. Pursuant to this authority the Commission's staff conducted 156 inspections during fiscal 1967. Many of these inspections disclosed violations not only of the Investment Company Act but also of other statutes administered by the Commission. Most of the violations uncovered during routine inspections appear to have resulted from unfamiliarity with the Investment Company Act and were resolved after they were brought to the attention of management. Some of the violations uncovered, however, were serious in nature. These included inadequate arrangements for the safekeeping of investment company assets, failure to disclose true sources of periodic income and capital gain distributions paid to shareholders, inadequate disclosures concerning the activities of the investment company and failure to maintain adequate fidelity bond coverage for persons dealing with investment company assets. The inspections also disclosed several instances where the procedures for pricing investment company shares did not conform with statutory requirements and with procedures set forth in the company's prospectus. Instances were also uncovered

in which self-dealing transactions had been effected by affiliated persons in violation of Section 17 of the Act.

Largely as an outgrowth of the information obtained during routine inspections, 12 private investigations were commenced during the fiscal year to develop the facts concerning what appeared to be serious violations.

Civil, Administrative and Criminal Proceedings

During the fiscal year, the Commission, on the basis of facts developed through investigations, instituted three civil and two administrative actions. In two other cases, which had been referred to the Department of Justice for criminal prosecution, indictments were returned. Other proceedings, previously instituted, were concluded or progressed toward conclusion.

In one of the civil actions, *S.E.C.* v. *Montauk Financial Corporation*,[3] the Commission obtained a permanent injunction prohibiting the company from operating as an unregistered investment company and its president from aiding and abetting such conduct, and enjoining both respondents from violating the anti-fraud provisions of the Securities Act of 1933 by selling securities of the company without disclosing material facts regarding its financial condition. The complaint also sought a receiver of Montauk's assets. By agreement among the court and the parties, however, the defendants filed a plan for the voluntary liquidation of Montauk which the court approved. The plan provides, among other things, for the surrender by the president and certain other stockholders of some of the stock originally issued to them in exchange for certain securities.

In *S.E.C.* v. *Milton*,[4] the Commission sought an injunction prohibiting David M. Milton, former chairman of the board of directors and chief executive officer of The Equity Corporation, a registered investment company, from acting as an officer or director of Equity or any other registered investment company. The Commission also sought an accounting and restitution from Milton in favor of Equity and a majority-owned subsidiary of Equity, Bell Intercontinental Corporation. The complaint alleged that Milton was guilty of gross misconduct and gross abuse of trust in respect of Equity, that he converted to his own use certain assets of Equity and that he caused Bell to purchase at an excessive price the assets of a company with which he was affiliated. It further alleged that he made false and misleading statements to the board of directors of Equity and concealed from the board material information concerning the business of, and transactions engaged in

[3] E. D. Mo., Civ. No. S67C13.

[4] S.D. N.Y., 66 Civ. 3053.

by, Equity and its subsidiaries and affiliated persons; that he concealed from the board certain conflicts of interest between his fiduciary duties to Equity and his personal interests; that by means of these concealments and false and misleading statements he secured authorization from Equity's board of directors for numerous transactions which benefited himself and certain of his associates and controlled companies; and that he prevented Equity's directors from being furnished with sufficient information to enable them to discharge their obligations and responsibilities to direct and manage the business and affairs of Equity.

Following the close of the fiscal year Milton consented in a stipulation of settlement to the entry of a permanent injunction. In view of the pendency of certain shareholder derivative actions seeking recovery from Milton and others in favor of Equity and Bell on the basis of the same matters alleged in the Commission's complaint, the Commission agreed, as part of the settlement, to the dismissal of that portion of its complaint which sought monetary relief against Milton in favor of Equity and Bell. Included in the stipulation of settlement, which was incorporated into the final judgment, were several provisions designed to protect the interests of the shareholders of Equity and Bell.

In *S.E.C.* v. *Sterling Precision Corporation*,[5] the Commission sought an injunction prohibiting further violations of Section 17(a) of the Investment Company Act and an order decreeing that the redemption by Sterling of certain of its preferred stock and debentures held by a registered investment company affiliated with Sterling violated that section and was void. After the close of the fiscal year, the district court granted Sterling's motion for summary judgment, holding that although supervision by the Commission of the redemption might have been desirable in the public interest, it was not required under the statute. The court held that the omission from Section 17(a)(2) of a specific reference to "redemption" indicated that Congress meant to exclude redemption transactions from the prohibition in that section of "purchase[s]" from a registered investment company by affiliated persons. The Commission has appealed from the district court's decision.

The last annual report [6] discussed earlier stages of the litigation in *S.E.C.* v. *Wong*, an action in which the Commission, among other things, sought an order under Section 36 of the Investment Company Act enjoining the defendants from serving as officers or directors of

[5] S.D. N.Y., 66 Civ. 3052.

[6] Page 118.

a registered investment company, because of their alleged "gross abuse of trust" while serving in those capacities for Puerto Rico Capital Corporation. As previously noted, the district court denied motions to dismiss the complaint.[7] It also denied a motion by one of the defendants to permit an interlocutory appeal with respect to the court's rulings that (1) a former officer or director of a registered investment company who allegedly committed gross abuse of trust while serving in that capacity cannot evade the injunctive provisions of Section 36 by resigning before the complaint is filed; and (2) the Commission may seek ancillary relief of restitution and an accounting in injunctive actions instituted under the Investment Company Act and the Securities Exchange Act.[8] Subsequently, the court granted an application by the receiver for the investment company to be substituted for the company, which had been named as a nominal defendant, and to be realigned as a co-party plaintiff. In connection with this application the court held that an implied private right of action exists under Section 36.

The two administrative proceedings principally involved alleged improprieties by the investment advisers and principal underwriters of mutual funds in the execution of portfolio transactions for the funds, as well as related misrepresentations in the sale of the funds' securities. In one of the proceedings, *Delaware Management Company, Inc.*, it was charged that a broker-dealer, which was a substantial dealer in the shares of the two funds involved, was improperly "interposed" between the funds and the best market, thus causing the funds to incur excessive costs in their portfolio transactions. This proceeding culminated during the year in the issuance of an order by the Commission accepting offers of settlement submitted by the respondents, which provided among other things for reimbursement of the mutual funds for excess costs incurred.[9] Subsequent to the close of the year the Commission issued its detailed findings and opinion.[10] This case is discussed at greater length at pages 78–79, *supra*. The other administrative proceeding, which was still pending at the close of the fiscal year, involves allegations, among others, that the adviser and principal underwriter of a mutual fund caused the fund to purchase for its portfolio highly speculative securities which were unsuitable for the fund and inconsistent with its stated investment policies.

In February 1966, the Commission had instituted administrative broker-dealer proceedings against Investors Overseas Services (IOS) and its wholly-owned subsidiary, Investors Continental Services, Ltd.,

[7] 252 F. Supp. 608 (D.P.R., 1966).
[8] 254 F. Supp. 66 (D.P.R., 1966).
[9] Securities Act Release No. 4863 (May 1, 1967).
[10] Securities Exchange Act Release No. 8128 (July 19, 1967).

(ICS), both registered broker-dealers, as well as several persons associated with those firms. The order alleged violations of (1) the registration provisions of Section 5 of the Securities Act of 1933 and Section 7 of the Investment Company Act with respect to the offer and sale of unregistered interests in The Fund of Funds, Ltd. (FOF) (a foreign investment company whose portfolio consists largely of shares of investment companies registered under the Investment Company Act) and unregistered participations in the IOS Investment Program (a program for the accumulation of interests in FOF); (2) Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, relating to transactions between International Investment Trust, an investment company affiliate of IOS and FOF, and certain registered investment companies; and (3) Section 17 of the Securities Exchange Act relating to the failure to preserve and produce certain books and records of IOS and ICS.[11]

In May 1967, the Commission announced that it had accepted an offer of settlement submitted by the respondents proposing termination of the proceedings without any findings as to these allegations and agreeing for that purpose that: (1) respondents would not engage in any activities subject to the Commission's jurisdiction; (2) IOS and its affiliates would cease all sales of securities to U.S. citizens or nationals wherever located (with certain very limited exceptions), and IOS would return funds which certain U.S. citizens and residents had invested in FOF; (3) respondents would remove the IOS securities complex from the jurisdiction of the Commission by the sale or other disposition of Investors Planning Corporation of America, a registered broker-dealer, and ICS, withdrawal of IOS's registration as a broker-dealer, and deregistration under the Investment Company Act of five registered investment companies wholly owned by FOF; (4) IOS and its affiliates would not acquire directly or indirectly any controlling interest in any financial entity doing business in the United States; and (5) IOS would cause FOF and its affiliated investment companies to make only such further purchases of shares of registered investment companies as are within the percentage limitations now provided in Section 12(d)(1) of the Investment Company Act and would abide by any future legislation applicable to foreign fund holding companies such as FOF.[12]

In one of the criminal actions, a former sales representative and divisional manager for the investment adviser and underwriter of an investment company was charged in an 11-count indictment with violations of the anti-embezzlement and larceny provisions of the In-

[11] Securities Exchange Act Release No. 7816 (February 7, 1966).
[12] Securities Exchange Act Release No. 8083 (May 23, 1967).

vestment Company Act as well as violations of the anti-fraud provisions of the Securities Act of 1933 and violation of the Mail Fraud Statute. The indictment alleges that the defendant embezzled and converted to his own use funds and assets of the investment company. In the other action, the former president of an investment company was charged in a 6-count indictment with misappropriating $69,900 from the company's shareholders through a series of sham transactions. He was also charged with conspiring with another to defraud the company by causing it to purchase shares of companies which are now worthless. The investment company is currently in receivership.

The Commission's enforcement program under the Investment Company Act was responsible for the return of approximately $700,000 to investors, directly or indirectly, during the fiscal year, including approximately $376,000 as a result of the settlement in the *Delaware Management* matter.

FILINGS REVIEWED

As previously noted, investment companies offering their shares for sale to the public must register them under the Securities Act of 1933. The companies themselves, of course, must register under the Investment Company Act. The registration statements of investment companies filed pursuant to the Securities Act are reviewed for compliance with that Act and the Investment Company Act. The Commission's rules promulgated under the Investment Company Act generally require that the basic information contained in notifications of registration and in registration statements of investment companies filed under the Investment Company Act be kept current through periodic and other reports. In addition, proxy soliciting material filed by investment companies is reviewed for compliance with the Commission's proxy rules. The following table sets forth the nature and volume of filings processed during the past fiscal year:

Type of Material	Pending June 30, 1966	Filed	Processed	Pending June 30, 1967
Registration statements and post-effective amendments under the Securities Act of 1933	63	1,001	964	100
Registrations under the Investment Company Act of 1940	• 50	94	86	58
Proxy soliciting material	30	489	441	78
Annual reports	612	564	574	602
Quarterly reports	67	271	287	51
Periodic reports to shareholders containing financial statements	705	1,669	2,108	266
Copies of sales literature	633	2,766	3,045	354

• This figure represents an adjustment of last year's figure.

APPLICATIONS AND PROCEEDINGS

Under Section 6(c) of the Act, the Commission, by rules and regulations, upon its own motion or by order upon application, may

exempt any person, security, or transaction from any provision of the Act if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Other sections, such as 6(d), 9(b), 10(f), 17(b), 17(d), and 23(c), contain specific provisions and standards pursuant to which the Commission may grant exemptions from particular sections of the Act or may approve certain types of transactions. Also, under certain provisions of Section 2, 3, and 8, the Commission may determine the status of persons and companies under the Act. One of the principal activities of the Commission in its regulation of investment companies is the consideration of applications for orders under the above sections.

During the fiscal year, 226 applications were filed under these and other sections of the Act, and 211 applications were disposed of. As of the end of the year, 115 applications were pending. The following table presents a break-down, by sections involved, of the number of applications filed and disposed of during the year and the number pending at the beginning and close of the year.

Applications filed with or acted upon by the Commission under the Investment Company Act during the fiscal year ended June 30, 1967

Sections	Subject	Pending July 1, 1966	Filed	Closed	Pen June 196
3, 6	Status and exemption	22	44	36	
7	Registration of investment companies	3	3	4	
8(f)	Termination of registration	33	39	41	
9, 10, 16	Regulation of affiliation of directors, officers, employees, investment advisers, underwriters, and others	3	13	13	
12, 13, 14(a), 15	Regulation of functions and activities of investment companies	7	29	23	
11, 25	Regulation of securities exchange offers and reorganization matters	0	3	0	
17	Regulation of transactions with affiliated persons	21	49	46	24
18, 19, 21, 22, 23	Requirements as to capital structure, loans, distributions and redemptions and related matters	10	36	40	6
27	Periodic payment plans	0	2	1	1
28	Regulation of face-amount certificate companies	1	0	0	1
30	Periodic and other reports	0	8	7	1
Total		100	226	211	115

Some of the more significant matters in which applications were considered are summarized below:

The Commission denied an exemption from Section 17(a) of the Investment Company Act for a proposed purchase by *Bowser, Inc.* of 222,600 shares of its voting common stock from The Equity Corporation, a registered investment company, Sterling Precision Corporation, an affiliate of Bowser and Equity, J. Russell Duncan, chairman of Sterling's board of directors, and Jardun Corporation, a company wholly owned by Duncan.[13] The Commission determined that the appli-

[13] Investment Company Act Release No. 4842 (February 8, 1967).

cants had failed to establish that the terms of the proposed transaction, including the consideration to be paid, met the test of Section 17(b) of the Act that such terms be reasonable and fair and not involve overreaching on the part of any person concerned.

The Commission found that in arranging for the proposed purchase, Bowser's president and his adherents on the Bowser board of directors were primarily motivated by the desire to maintain control of Bowser. The proposed purchase would have avoided a threatened proxy contest or tender offer by Duncan and the interests aligned with him. The Commission stated that applicants had not shown that the use of the corporation's funds for such a purpose would be fair to all of Bowser's stockholders.

The Commission further found that applicants had failed to establish that the proposed purchase price of $13 per share was fair. Applicants relied on the fact that this price was about the same as the market price quoted for Bowser stock on the American Stock Exchange at the time the parties entered into the purchase agreement. The Commission stated, however, that such market price could not furnish an appropriate standard by which to judge the fairness of the purchase price, since the market price was significantly inflated as a result of the heavy volume of insider buying by the vying groups.

The Commission subsequently denied a petition for rehearing filed by Sterling, Duncan and Jardun, and these parties have appealed the Commission's order to the Court of Appeals for the District of Columbia Circuit.

In December 1966, Electric Bond and Share Company and American & Foreign Power Company Inc., its 56 percent-owned subsidiary, both registered investment companies, entered into a merger agreement providing for the exchange of each share of common stock of Foreign Power not owned by Bond and Share for $\frac{6}{10}$th of a share of Bond and Share common stock. The companies filed a joint application pursuant to Sections 17(b) and 6(c) of the Act for an order exempting the proposed merger from Section 17(a) and other sections of the Act.[14]

Prior to the date set for hearings, a shareholder of Foreign Power instituted an action in a State court to enjoin the merger and moved the Commission to dismiss its proceedings or to stay them pending determination of the court action. The court thereafter granted a motion by Foreign Power and Bond and Share to stay its proceedings pending the Commission's proceedings, and the Commission denied the motion before it. The shareholder participated in the hearings which were concluded in May 1967. The parties and participants waived a

[14] See Investment Company Act Release No. 4826 (January 23, 1967).

decision by the hearing examiner and submitted briefs to the Commission. At the close of the fiscal year the matter was pending.

New Rule Relating to Transactions Between Affiliated Investment Companies

Section 17(a) of the Act, broadly speaking, prohibits purchase and sale transactions between investment companies and persons or companies affiliated with such companies. Under Section 17(b), however, the Commission may exempt proposed transactions from this prohibition when it finds that the terms are fair and that certain other conditions are met. Rule 17a–7 exempts from Section 17(a) transactions between affiliated registered investment companies involving the purchase or sale for cash and at the "independent current market price" of securities traded on a national securities exchange.[15] The rule is designed to eliminate the need for filing a Section 17(b) application under circumstances where it is unlikely that the findings required by that section for an exemption could not be made. In addition, it appears that the rule will serve the interests of investors by permitting affiliated registered investment companies which previously may have purchased or sold securities on the open market in order to avoid the application procedures of Section 17(b) and thereby incurred duplicate brokerage charges, to effect such transactions with each other and pay no such charges.

NEW RULES RELATING TO "RELOADING"

Section 11(a) of the Act, in substance, prohibits an open-end investment company from imposing a sales load in connection with the "exchange" of new shares for outstanding shares in the same company. Certain open-end companies have issued shares which, by their terms, terminate after a stated period of time. Upon investment of the proceeds of the terminated shares in new shares, a new sales load has been imposed. Rule 11a–1, published for comment during the fiscal year and adopted shortly after the close of the year, makes it clear that the term "exchange" includes the issuance of new shares under the above circumstances and thus precludes the imposition of a new sales load.[16]

Section 11(b)(2) exempts from Section 11(a) an offer of exchange made pursuant to the right of conversion, at the shareholder's option, from one class or series into another "class or series of securities issued by the same company." Rule 11b–1 was adopted as a companion rule to Rule 11a–1 to make it clear that the exemption is not available to all investment companies which might seek to escape the provisions of Rule 11a–1.[17] It does so by specifying that the exemption is available

[15] Investment Company Act Release No. 4697 (September 8, 1966).
[16] Investment Company Act Release No. 5024 (July 12, 1967).
[17] Investment Company Act Release No. 5025 (July 12, 1967).

only to the type of "series company" described in Section 18(f)(2) of the Act, i.e., a company which maintains a series of separate differentiated pools of assets in respect to each of which there is a class or series of securities outstanding with exclusive participation in the particular pool.

PART VII

REGULATION OF PUBLIC-UTILITY HOLDING COMPANIES

Under the Public Utility Holding Company Act of 1935, the Commission regulates interstate public-utility holding-company systems engaged in the electric utility business and/or in the retail distribution of gas. The Commission's jurisdiction also extends to natural gas pipeline companies and other nonutility companies which are subsidiaries of registered holding companies. There are three principal regulatory areas under the Act. The first includes those provisions of the Act which require the physical integration of public-utility companies and functionally related properties of holding-company systems and the simplification of intercorporate relationships and financial structures of such systems. The second covers the financing operations of registered holding companies and their subsidiaries, the acquisition and disposition of securities and properties, and certain accounting practices, servicing arrangements, and intercompany transactions. The third area of regulation includes the exemptive provisions of the Act, and provisions relating to the status under the Act of persons and companies and regulating the right of persons affiliated with a public-utility company to become affiliated with a second such company through the acquisition of securities.

COMPOSITION OF REGISTERED HOLDING-COMPANY SYSTEMS

At the close of the fiscal year, there were 27 holding companies registered under the Act. Of these, 22 are included in the 18 "active" registered holding-company systems, 4 of the 22 being subholding utility operating companies in these systems.[1] The remaining 5 registered holding companies, which are relatively small, are not considered part of "active" systems.[2] In the 18 active systems, there are 89

[1] The four subholding companies are Louisiana Power & Light Company, a public-utility subsidiary of Middle South Utilities, Inc.; The Potomac Edison Company and Monongahela Power Company, public-utility subsidiaries of Allegheny Power Systems, Incorporated; and Southwestern Electric Power Company, a public-utility subsidiary of Central and South West Corporation.

[2] These holding companies are British American Utilities Corporation; Kinzua Oil & Gas Corporation and its subholding company, Northwestern Pennsylvania Gas Corporation; and American Gas Company and Standard Gas & Electric Company, which are in the process of dissolution.

Classification of Companies as of June 30, 1967

Registered holding company systems Name	Solely registered holding companies	Registered holding operating companies	Electric and/or gas utility subsidiaries	Non-utility subsidiaries	Inactive companies	Total companies	Aggregate system assets, less valuation reserves, at December 31, 1966 [a] (thousands)
1. Allegheny Power System, Inc.	1	2	9	5	3	20	$751,256
2. American Electric Power Company, Inc.	1	0	12	9	1	23	1,938,520
3. American Natural Gas Company	1	0	3	4	0	8	1,246,726
4. Central and South West Corporation	1	1	4	1	1	8	902,299
5. Columbia Gas System, Inc., The	1	0	13	8	0	22	1,612,807
6. Consolidated Natural Gas Company	1	0	4	2	0	7	997,321
7. Delmarva Power & Light Company	0	1	2	0	0	3	266,784
8. Eastern Utilities Associates	1	0	4	0	2	7	114,446
9. General Public Utilities Corporation	1	0	5	4	0	10	1,364,943
10. Middle South Utilities, Inc.	1	1	6	1	3	12	1,232,634
11. National Fuel Gas Company	1	0	3	2	0	6	280,589
12. New England Electric System	1	0	13	1	0	15	811,052
13. Northeast Utilities	1	0	6	7	6	20	888,320
14. Ohio Edison Company	0	1	3	0	0	4	792,777
15. Pennzoil Company	1	0	1	22	21	45	1,119,086
16. Philadelphia Electric Power Company	0	1	1	0	1	3	59,094
17. Southern Company, The	1	0	5	2	0	8	2,121,998
18. Utah Power & Light Company	0	1	1	0	0	2	340,817
Subtotals	14	8	95	68	38	223	16,890,469
Less: Adjustment to eliminate duplication in count resulting from three companies being subsidiaries in two systems and two companies being subsidiaries in three systems [b]			−6	−1		−7	
Add: Adjustment to include the assets of these five jointly-owned subsidiaries and to remove the parent companies' investments therein which are included in the system assets above							32,179
Yankee Atomic Electric Power Company and Connecticut Yankee Atomic Power Company are included as utility subsidiaries of Northeast Utilities. These companies are also statutory subsidiaries of NEES, but they have not been included above as such. Add: Adjustment to include total assets of these two companies, less valuation reserves, and to eliminate Northeast Utilities' and NEES' investment therein							95,309
Total companies and assets in active systems	14	8	89	67	38	216	17,017,957

[a] Represents the consolidated assets, less valuation reserves, of each system as reported to the Commission on Form U5S for the year 1966.

[b] These five companies are Beechbottom Power Company, Inc. and Windsor Power House Coal Company, which are indirect subsidiaries of American Electric Power Company, Inc. and Allegheny Power System, Inc.; Ohio Valley Electric Corporation and its subsidiary, Indiana-Kentucky Electric Corporation, which are owned 37.8 percent by American Electric Power Company, Inc., 16.5 percent by Ohio Edison Company, 12.5 percent by Allegheny Power System, Inc., and 33.2 percent by other companies; and The Arklahoma Corp., which is owned 32 percent by the Central and South West Corporation system, 34 percent by the Middle South Utilities, Inc. system, and 34 percent by an electric utility company not associated with a registered system.

electric and/or gas utility subsidiaries, 67 nonutility subsidiaries, and 38 inactive companies, or a total, including the parent holding companies and the subholding companies, of 216 system companies. The table on page 120 shows the number of active holding companies and the number of subsidiaries (classified as utility, nonutility, and inactive) in each of the active systems as of June 30, 1967, and the aggregate assets of these systems, less valuation reserves, as of December 31, 1966.

SECTION 11 MATTERS IN REGISTERED HOLDING-COMPANY SYSTEMS

In *New England Electric System*, as reported earlier,[3] the Court of Appeals for the First Circuit disagreed with the Commission's interpretation of the phrase "loss of substantial economies" in Clause (A) of Section 11(b)(1) and reversed the order of the Commission directing New England Electric System to divest itself of its gas properties. The Supreme Court of the United States, however, sustained the Commission's position and remanded the case to the court of appeals for further consideration.[4] On remand, the court of appeals, after the filing of further briefs, again set aside the Commission's order.[5] Proceeding on the premise that the Commission is to be held to a "most stringent" standard in applying the "loss of substantial economies" test, the court concluded that the Commission's analysis was not adequate to sustain its divestment order. The Supreme Court has granted the Commission's petition for a writ of certiorari.[6]

As reported previously,[7] during fiscal year 1966 *Pennzoil Company*, a registered holding company, and *United Gas Corporation*, its gas utility subsidiary, jointly filed a two-part plan with the Commission pursuant to Section 11(e) of the Act. Part I proposed the sale of United's gas distribution system, and Part II the consolidation of Pennzoil and United. Part I of the plan was abandoned after completion of hearings thereon; an amended plan provides solely for the consolidation of Pennzoil and United. The proceedings on the amended plan were consolidated with proceedings instituted by the Commission under Sections 11(b)(1) and 11(b)(2). Hearings have been concluded, and, at the close of the fiscal year, the case was pending before the Commission for decision.

---

[3] 32nd Annual Report, p. 77; 31st Annual Report, pp. 86–87.

[4] *SEC* v. *New England Electric System*, 384 U.S. 176 (1966).

[5] *New England Electric System* v. *SEC*, 376 F.2d 107 (1967).

[6] *SEC* v. *New England Electric System*, October Term, 1967, No. 305.

For the status of similar Section 11(b)(1) problems of other registered holding companies which have not been disposed of, see 31st Annual Report, p. 87; 27th Annual Report, p. 104.

[7] 32nd Annual Report, pp. 77–78.

In *Eastern Utilities Associates*, the Commission approved a plan under Section 11(e) of the Act to eliminate the publicly-held minority interests in the three subsidiary companies of Eastern.[8] In *Northeast Utilities*, the Commission, after the close of the fiscal year, approved a Section 11(e) plan proposing the elimination of the publicly-held minority interests in two of the subsidiary companies of Northeast.[9]

American Gas Company, a registered holding company, filed a two-part plan in fiscal year 1966 proposing its liquidation and dissolution pursuant to Section 11(e) of the Act. Pursuant to Part I, approved by the Commission,[10] American sold its gas utility properties and paid certain of its indebtedness. After a public hearing on Part II of the plan, the Commission approved an initial 20 percent cash distribution to the debenture holders.[11] By separate Findings, Opinion and Order, the Commission, over the objection of a debenture holder, authorized American to acquire for $400,000 in cash additional shares of its sole subsidiary company's common stock to provide the latter with necessary funds to complete construction of additional facilities.[12] The remaining aspects of Part II are pending for decision by the Commission.

PROCEEDINGS WITH RESPECT TO ACQUISITIONS, SALES, AND OTHER MATTERS

During the fiscal year, the Commission approved a proposal by *American Natural Gas Company*, a registered holding company, to acquire through CIG Corporation, its recently-organized subsidiary company, substantially all of the assets of Central Indiana Gas Company, a nonaffiliated gas utility company in exchange for the issuance of 746,691 shares of its $10 par value common stock to Central Indiana.[13] Under the proposal, Central Indiana would be dissolved following the distribution of the American Natural stock to its stockholders.

Several other proceedings were pending at the close of the fiscal year. In some of these, decisions were issued shortly after the end of the

[8] *Eastern Utilities Associates*, Holding Company Act Release No. 15637 (January 3, 1967).

The U.S. District Court for the District of Massachusetts entered an order on April 3, 1967, approving and enforcing the plan. Civil Action No. 67-137-F.

[9] *Northeast Utilities*, Holding Company Act Release No. 15808 (August 7, 1967).

[10] Part I of the plan was approved by the Commission in *American Gas Co.*, Holding Company Act Release No. 15568 (September 26, 1966) and enforced by the U.S. District Court for the District of Nebraska, Civil Action No. 02622, by order dated December 2, 1966.

[11] *American Gas Co.*, Holding Company Act Release No. 15774 (June 22, 1967).

[12] *American Gas Co.*, Holding Company Act Release No. 15784 (July 12, 1967).

[13] *American Natural Gas Co.*, Holding Company Act Release No. 15620 (December 12, 1966).

year. *American Electric Power Company, Inc.*, a registered holding company, had filed an application-declaration with the Commission regarding the proposed acquisititon by American of outstanding shares of common stock of Michigan Gas and Electric Company ("MGE"), a nonassociate gas and electric utility company. A hearing was held, and, after the close of the fiscal year, the Commission, in a three to one decision, authorized the proposed acquisition by American.[14] The MGE shares are to be acquired from public stockholders pursuant to a tender offer, from Michigan Gas Utilities Company ("MGU"), a nonassociate gas utility company, and in the open market. The Commission also authorized the disposition to MGU of MGE's gas properties. MGE is to be liquidated and the electric interests retained by the American holding-company system.

Northeast Utilities, a registered holding company, filed an application-declaration relating to a proposed offer by Northeast to exchange, through an invitation for tenders, common stock to be issued by it for the outstanding shares of capital stock of Holyoke Water Power Company, a nonassociate company. The City of Holyoke, Massachusetts, and its Gas and Electric Department urged the imposition of certain conditions if the proposed acquisition were approved. Following the close of the fiscal year, the Commission issued a decision authorizing Northeast to proceed with the offer.[15] The Commission ruled that it was not appropriate to impose the conditions requested.

As reported previously,[16] *Eastern Gas and Fuel Associates*, an exempt holding company which owns all the outstanding stock of Boston Gas Company, has filed an application for permission to acquire common stock of Brockton Taunton Gas Company, a nonassociate gas utility company, pursuant to a tender offer and by the exercise of an option. The management of Brockton Taunton opposed the application, and extensive hearings were held. After the end of fiscal year, the Commission granted the application subject to certain conditions (Holding Company Act Release No. 15887, November 3, 1967).

Vermont Yankee Nuclear Power Corporation and 7 of its 10 sponsor-companies filed an application relating to the initial financing by Vermont Yankee of its proposed nuclear-powered electric generating plant through the issuance of common stock to the sponsor-companies.[17] A substantially identical proposal was filed by *Maine Yankee*

[14] *American Electric Power Co.*, Holding Company Act Release No. 15800 (July 24, 1967).

[15] *Northeast Utilities*, Holding Company Act Release No. 15825 (August 18, 1967).

[16] 32nd Annual Report, p. 80.

[17] *Vermont Yankee Nuclear Power Corp.*, Holding Company Act Release No. 15652 (February 1, 1967).

Atomic Power Company and 9 of its 11 sponsor-companies.[18] Applications for intervention and requests for hearing have been filed in these proceedings and, at the close of the fiscal year, both cases were pending.

FINANCING OF ACTIVE REGISTERED PUBLIC-UTILITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

During the fiscal year 1967, 12 active registered holding-company systems issued and sold for cash 31 issues of long-term debt and capital stock, aggregating $659 million,[19] pursuant to authorizations granted by the Commission under Sections 6 and 7 of the Act.[20] All of these issues were sold for the purpose of raising new capital.

The following table shows the amounts and types of securities issued and sold by registered holding companies and their subsidiaries during fiscal 1967:

Securities issued and sold for cash to the public and financial institutions by active registered holding companies and their subsidiaries, fiscal year 1967

[In millions]

Holding-company system	Bonds	Debentures	Preferred stock	Common stock
Allegheny Power System, Inc.:				
Potomac Edison Co., The			$10	
American Electric Power Co., Inc.				$48
American Natural Gas Co.:				
Michigan Consolidated Gas Co.	$35			
Michigan Wisconsin Pipe Line Co.	45			
Wisconsin Gas Co.	18			
Columbia Gas System, Inc., The		$40		
Delmarva Power & Light Co.				12
Eastern Utilities Associates:				
Blackstone Valley Electric Co.	7			
General Public Utilities Corp.				28
Jersey Central Power & Light Co.	30	15		
Pennsylvania Electric Co.	[a] 51			
New Jersey Power & Light Co.	10			
Middle South Utilities, Inc.:				
Arkansas Power & Light Co.	30		10	
Louisiana Power & Light Co.	16		8	
Mississippi Power & Light Co.	10			
New Orleans Public Service Co.	12		6	
New England Electric System.				
New England Power Co.	10			
Northeast Utilities:				
Connecticut Light and Power Co., The	35			
Hartford Electric Light Co., The	20		10	
Western Massachusetts Electric Co.	15			
Pennzoil Co.:				
Duval Corp.		25		
Southern Company, The				52
Alabama Power Co.	34		7	
Mississippi Power Co.	10			
Total	388	80	51	140

[a] Two issues.

[18] *Maine Yankee Atomic Power Co.*, Holding Company Act Release No. 15655 (February 6, 1967).

[19] Debt securities are computed at their principal amount, preferred stock at the offering price, and common stock at offering or subscription price.

[20] The active systems which did not sell stock or long-term debt securities to the public are: Central and South West Corporation; Consolidated Natural Gas Company; National Fuel Gas Company; Ohio Edison Company; Philadelphia Electric Power Company; and Utah Power & Light Company.

The table does not include securities issued and sold by subsidiaries to their parent holding companies, debt securities maturing in less than 10 years which were issued as temporary financing, portfolio sales by system companies, or securities issued for assets or securities of other companies. Transactions of this nature also require authorization by the Commission except, pursuant to Section 6(b) of the Act, the issuance of notes having a maturity of less than 9 months where the aggregate amount does not exceed 5 percent of the principal amount and par value of the other securities then outstanding.

Competitive Bidding

Rule 50 under the Act requires that all proposed issuances or sales of any securities of, or owned by, any system company be at competitive bidding unless an exception from such requirement is available under the terms of paragraphs (*a*)(1) to (*a*)(5), inclusive, of the rule. Of the 31 issues of securities shown in the preceding table, 28 issues, aggregating $594 million, were offered for competitive bidding pursuant to the requirements of Rule 50. The remaining three issues, aggregating $65 million, were sold to the public or to existing shareholders at prices and terms determined by the issuers or set by negotiation with underwriters. These three issues consisted of: (1) a nonunderwritten rights offering of $28 million of common stock by General Public Utilities Corporation, a registered holding company, to its shareholders; (2) a negotiated underwritten public offering of $25 million of debentures, maturing March 1, 1982, by Duval Corporation, a nonutility subsidiary of United Gas Corporation, which is a public-utility subsidiary of Pennzoil Company; and (3) a nonunderwritten rights offering of $12 million of common stock by Delmarva Power & Light Company, a registered holding operating company, to its shareholders and employees of its subsidiaries. With respect to the General Public Utilities Corporation and Duval Corporation issues, the Commission, pursuant to paragraph (*a*)(5) of Rule 50, granted exceptions from the competitive bidding requirements.[21] The Delmarva Power & Light Company issue was automatically exempt from those requirements pursuant to paragraph (*a*)(1) of Rule 50.

During the period from May 7, 1941, the effective date of Rule 50, to June 30, 1967, a total of 969 issues of securities with an aggregate value of $14,930 million have been sold at competitive bidding under

[21] Paragraph (*a*)(5) of Rule 50 provides for exceptions from the competitive bidding requirements of the rule where the Commission finds such bidding is not necessary or appropriate under the particular circumstances of the individual case. In *General Public Utilities Corp.*, the exception was granted ". . . to the extent such rule may be applicable to the proposed sale." Holding Company Act Release No. 15601 (November 16, 1966).

the rule. These totals compare with 238 issues of securities with an aggregate value of $2,636 million which have been sold pursuant to orders granting exceptions under paragraph (*a*)(5). Of the total amount of securities sold pursuant to such orders, 133 issues with a total value of $2,153 million were sold by the issuers and the balance of 105 issues aggregating $483 million were portfolio sales. Of the 133 issues sold by the issuers, 71 were in amounts of from $1 to $5 million, 3 debt issues were in excess of $100 million each,[22] and 2 stock issues totaling $36 million were issued in fiscal 1966 to holders of convertible debentures and employee stock options.

POLICY AS TO REFUNDABILITY OF DEBT ISSUES

In accordance with its long-standing policy under the Act, the Commission has continued to require that all debt securities and preferred stocks sold by registered holding companies and their subsidiaries be fully refundable at the option of the issuer upon reasonable notice and that any redemption premium be reasonable in amount. Exceptions from this policy have been permitted only where clearly warranted by the circumstances of a particular case.

The 32nd Annual Report, pages 82–84, contains a summary of the results of an examination by the Commission's staff of all electric and gas utility bond issues (including debentures) sold at competitive bidding between May 14, 1957, and June 30, 1966, by companies subject to the Act as well as those not so subject. This study was extended to include the fiscal year 1967.

During the period from May 14, 1957 to June 30, 1967, a total of 666 electric and gas utility debt issues, aggregating $16,005.4 million principal amount, was offered at competitive bidding. These included 471 refundable issues totaling $9,497.5 million, and 195 nonrefundable issues totaling $6,507.9 million. The latter issues were all nonrefundable for 5 years except one, which was nonrefundable for 7 years. The refundable issues thus represented 70.7 percent of the total number of issues and 59.3 percent of principal amount.

During fiscal year 1967, 75 debt issues were offered, aggregating $2,234.5 million principal amount. They consisted of 37 refundable issues totaling $915 million and 38 nonrefundable issues totaling $1,319.5 million. The number of refundable issues thus represented 49.3 percent of the number of issues and 40.9 percent of principal amount.

The weighted average number of bids for fiscal 1967 was 4.41 on the refundable issues and 4.16 on the nonrefundable issues, while the median number of bids was 4 both on the refundables and the nonrefund-

[22] Ohio Valley Electric Corporation, a $360 million bond issue; United Gas Corporation, a $116 million bond issue; and Pennzoil Company, a $135 million note issue maturing in 18 months sold to underwriters.

ables.[23] With respect to the success of the marketing of the debt issues, an issue was considered to have been successfully marketed if at least 95 percent of the issue was sold at the syndicate price prior to termination of the syndicate. On this basis, during fiscal 1967, 51 percent of the refundable issues were successful, as against 47.4 percent of the nonrefundable issues.[24] In terms of principal amount for fiscal 1967, 60.2 percent of the refundable issues were successful, as compared to 36.3 percent of the nonrefundable issues.[25] Extension of the comparison to include the aggregate principal amount of all issues which were sold at the applicable syndicate prices up to the termination of the respective syndicates, regardless of whether a particular issue met the definition of a successful marketing, indicates that during fiscal year 1967, 81 percent of the combined principal amount of all the refundable issues was sold, as compared with 76 percent of the nonrefundable issues.[26]

[23] The weighted average number of bids received during the period from May 14, 1957 to June 30, 1967, was 4.77 on the refundable issues and 4.27 on the nonrefundable issues. The median number of bids was 5 on the refundables and 4 on the nonrefundables.

[24] For the period from May 14, 1957 to June 30, 1967, 62.8 percent of the refundable issues and 58.5 percent of the nonrefundable issues were successful.

[25] For the period from May 14, 1957 to June 30, 1967, 59.4 percent of the refundable issues were successful, as against 54.7 percent of the nonrefundable ones.

[26] For the period from May 14, 1957 to June 30, 1967, the applicable percentages were 81 percent of the refundables and 79 percent of the nonrefundables.

PART VIII

PARTICIPATION IN CORPORATE REORGANIZATIONS

The Commission's role under Chapter X of the Bankruptcy Act, which provides a procedure for reorganizing corporations in the U.S. district courts, differs from that under the various other statutes which it administers. The Commission does not initiate Chapter X proceedings or hold its own hearings, and it has no authority to determine any of the issues in such proceedings. The Commission participates in proceedings under Chapter X in order to provide independent, expert assistance to the courts, the participants, and investors in a highly complex area of corporate law and finance. It pays special attention to the interests of public security holders who may not otherwise be represented effectively.

Where the scheduled indebtedness of a debtor corporation exceeds $3 million, Section 172 of Chapter X requires the judge, before approving any plan of reorganization, to submit it to the Commission for its examination and report. If the indebtedness does not exceed $3 million, the judge may, if he deems it advisable to do so, submit the plan to the Commission before deciding whether to approve it. When the Commission files a report, copies or a summary must be sent to all security holders and creditors when they are asked to vote on the plan. The Commission has no authority to veto or to require the adoption of a plan of reorganization.

The Commission has not considered it necessary or appropriate to participate in every Chapter X case. Apart from the excessive administrative burden, many of the cases involve only trade or bank creditors and few public investors. The Commission seeks to participate principally in those proceedings in which a substantial public investor interest is involved. However, the Commission may also participate because an unfair plan has been or is about to be proposed, public security holders are not represented adequately, the reorganization proceedings are being conducted in violation of important provisions of the Act, the facts indicate that the Commission can perform a useful service, or the judge requests the Commission's participation.

For purposes of carrying out its functions under Chapter X, the Commission has divided the country into five geographic areas. The New York, Chicago, San Francisco and Seattle regional offices of the Commission each have responsibility for one of these areas. Each of

these offices has lawyers, accountants, and financial analysts who are engaged actively in Chapter X cases in which the Commission has filed its appearance. Supervision and review of the regional offices' Chapter X work is the responsibility of the Division of Corporate Regulation of the Commission, which, through its Branch of Reorganization, also serves as a field office for the fifth area.

SUMMARY OF ACTIVITIES

In the fiscal year 1967, the Commission continued to maintain a high level of activity under Chapter X. It entered its appearance in 16 new proceedings involving companies with aggregate stated assets of approximately $200 million and aggregate indebtedness of approximately $131 million. These proceedings involved the rehabilitation of corporations engaged in various businesses, including, among others, plastics manufacturing, pre-fabricated homes, well logging services, manufacture of geophysical instruments and aerospace equipment, real estate and mortgage investments, operation of hospitals, bowling alleys, and an amusement park.

Including the new proceedings, the Commission was a party in a total of 103 reorganization proceedings during the year. The stated assets of the companies involved in these proceedings totaled approximately $777 million and their indebtedness approximately $661 million. The proceedings were scattered among district courts in 33 States and the District of Columbia, as follows: 13 in New York, 9 in California, 7 in Florida, 6 in New Jersey, 5 each in Arizona and Texas, 4 each in Illinois, Kentucky, Michigan, North Carolina, Pennsylvania and Washington, 2 each in Colorado, the District of Columbia, Indiana, Kansas, Louisiana, Minnesota, Montana, Nevada, Oklahoma, South Dakota and West Virginia; and 1 each in Alabama, Arkansas, Connecticut, Hawaii, Idaho, Maryland, Massachusetts, Missouri, Ohio, Tennessee, Utah and Virginia.

During the year, 17 proceedings were closed. As of the end of the year the Commission was a party in 86 reorganization proceedings.

JURISDICTIONAL, PROCEDURAL AND ADMINISTRATIVE MATTERS

In Chapter X proceedings in which it participates, the Commission seeks to advise the courts with respect to application of the procedural and substantive safeguards to which all parties are entitled. The Commission also attempts to secure judicial uniformity in the construction of Chapter X and the procedures thereunder.

In *Parkwood, Inc.*,[1] answers to the Chapter X petitions were filed by several secured creditors alleging that the petitions had not been filed in

[1] D. D.C., No. 39–66.

good faith, primarily because it was unreasonable to expect that a plan of reorganization could be effected. The Commission supported the good faith of the Chapter X petitions, taking the position that for purposes of determining whether it is unreasonable to expect that a plan of reorganization can be effected, the appraisal values of the debtor's property should be based on assumed normal market conditions and should not be adjusted downward because of alleged "tight money" conditions. The special master concluded that the petitions were filed in good faith. After the close of the fiscal year, a hearing was held before the judge on objections to the special master's report and the matter is pending.

In *Tower Credit Corp.*,[2] as previously reported,[3] a second involuntary Chapter X petition, filed by three creditors, and supported by the Commission, was approved by the court as having been filed in good faith. There are pending appeals by the State court receiver and by the debtor, and certain of its officers and creditors.[4] The State court receiver contends on appeal, as he did in the district court, that the Chapter X petition had not been filed in good faith, and should have been dismissed, chiefly on the ground that the pending State court receivership proceeding would better subserve the interests of the debtor's creditors and stockholders.

In *Bankers Trust*,[5] the Commission moved to disqualify, as not disinterested under Section 158 of Chapter X, the law firms serving as attorneys for the trustee because, prior to Chapter X, the firms had served as attorneys for the debtor trusts and certain members of the firms had served as trustees of the debtors, positions similar to those of corporate directors. Although the court indicated that the Commission's motion was well founded, it denied the motion because it was reluctant to disqualify persons who were already familiar with the debtors' properties and problems, especially where no specific allegations of impropriety had been made. The Commission does not agree with this interpretation of Section 158.

In *Minneapolis Scientific Controls Corp.*,[6] the Commission filed a motion to restrain an attorney representing the management group from soliciting public stockholders to sign powers of attorney granting him authorization to appear on behalf of the stockholders in the proceedings and to vote on all plans of reorganization. The attorney agreed to limit his representation to the management and, after the other stockholders were notified that he had withdrawn his represen-

[2] M.D. Fla., No. 66–171–Bk–T.
[3] 32nd Annual Report, p. 95.
[4] C.A. 5, No. 24572.
[5] S.D. Ind., No. IP–66–B–2375.
[6] D. Minn., No. 4–66–Bky–117.

tation of the solicited stockholders, the Commission withdrew its motion.

In *Westec Corporation*,[7] the Commission opposed the trustee's petition for authority to employ an investment firm both as financial adviser and as exclusive agent for the trustee in the sale of any of the debtor's assets because, under the agreement, the firm was to receive a fixed fee as financial adviser and compensation as sales agent based on a percentage of the proceeds received in any sale. The Commission took the position that this arrangement might involve a conflict of interest, since the firm's advice might be influenced by the fact that a sale would bring it compensation as sales agent. After several hearings the court authorized the employment of the firm only as financial adviser on the basis of a monthly interim fee, with final compensation to be determined by the court, upon application, at the termination of the firm's services.

In *Webb & Knapp, Inc.*,[8] the Chemical Bank New York Trust Company, a creditor secured by a pledge of a large block of stock owned by the debtor, petitioned the court for a modification of its earlier injunctive orders so as to permit the bank to foreclose on the stock. The Commission took the position, with which the court agreed, that foreclosure should not be permitted, at least until the court had the benefit of the trustee's recommendations as to the possibility of utilizing this stock in connection with a plan of reorganization. The petition was denied without prejudice.

In *Indiana Business and Investment Trust*,[9] the court restrained a mortgagee of real property of the debtor from exercising its rights to the income from the mortgaged property under an assignment clause in the mortgage. The court held that the trustee may utilize income from the mortgaged property for operating and maintenance expenses attributable to such property. It also held that the trustee, upon petition, could use the income for "general overhead expenses directly related to the servicing of all properties of the estate."

In *Canandaigua Enterprises Corp.*,[10] the Court of Appeals for the Second Circuit[11] granted the Commission's motion to dismiss an appeal by the first mortagagee from an order of the district court fixing a date for the filing of plans of reorganization, after which date plans may be filed only by leave of court. The Commission's motion pointed out that the appellant had had abundant opportunity to submit a plan, and that if stockholders and creditors were given an unlimited

[7] S.D. Texas, No. 66–H–62.
[8] S.D.N.Y., No. 65–B–365.
[9] S.D. Ind., No. IP–66–B–2382.
[10] W.D.N.Y., No. Bk–63–1954.
[11] No. 31423 (June 26, 1967).

right to file amendments and substitute plans at any time, they would be able to delay proceedings interminably.

In *Imperial '400' National, Inc.*,[12] the district court directed that co-owners of a motel, in which the debtor held a 75 percent partnership interest, account for the financial operations of the motel to the reorganization trustee. The co-owners contended that the reorganization court lacked summary jurisdiction and that the trustee was required to sue in a plenary action. The Commission contended that the district court had summary jurisdiction over the entire complex of motels which made up the debtor's business and, accordingly, over funds derived from operation of the motels. The district court stated that the accounting was a preliminary inquiry to determine whether the co-owners held assets of the debtor and that whether the court would order any turnover of such assets would be considered upon completion of the accounting. The co-owners appealed but the court of appeals [13] granted the Commission's motion to dismiss the appeal because the district court's order was entered for the purpose of assisting it in determining its jurisdiction and not for the purpose of deciding the merits of the accounting.

In *Minneapolis Scientific Controls Corp.*,[14] and in *General United Corporation, Inc.*,[15] the Commission took the position that stockholders of these companies, who had been defrauded in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b–5 thereunder, had claims arising therefrom on the basis of which they were entitled to participate as creditors in any plan of reorganization. After the close of the fiscal year the referee in bankruptcy in *General United* concluded that the Commission lacked standing to present this issue, and the Commission is seeking review by the district judge.

In *Swan-Finch Oil Corp.*,[16] the confirmed plan of reorganization provided for full payment of creditor claims, but was silent as to interest accrued during the proceeding. The Commission took the position that creditors are entitled to such interest (1) if the estate is solvent, or (2) where the claim is secured and the value of the security exceeds the principal balance due on the claim. The court, agreeing with the Commission, awarded interest to the secured creditor and reserved decision on whether interest is to be paid to all other creditors until it is determined whether the debtor is solvent.

In *F. L. Jacobs Co.*,[17] the Commission has opposed a petition filed by

[12] D. N.J., No. B–656–65.
[13] C.A. 3, No. 16,478 (May 11, 1967).
[14] D. Minn., No. 4–66–Bky–117.
[15] D. Kansas, No. 3763–B–1.
[16] S.D.N.Y., No. 93046.
[17] E.D. Mich., No. 42235.

the trustees with the reorganization court to restrain the New York Stock Exchange and the Commission from delisting the debtor's common stock and to order the restoration of trading of the stock on the Exchange. The Exchange had suspended trading in the debtor's stock in 1958, and in 1959 the Exchange filed an application with the Commission, which is still pending, pursuant to Section 12(d) of the Securities Exchange Act of 1934, to strike the debtor's common stock from listing and registration. It is the Commission's position that a Chapter X court has no jurisdiction to enjoin an administrative proceeding for delisting and that the Commission has exclusive jurisdiction over such matters, subject to statutory review by the court of appeals.

In another matter involved in the same proceeding,[18] the court, over the objections of the Commission, approved the appointment of the two Chapter X trustees as members of the board of directors of the reorganized company and their election by the board as chairman and vice-chairman, respectively. The Commission took the position that, the trustees and their attorney, who must be disinterested, should not be permitted to assume management or executive positions with the reorganized company.

In *Yale Express System, Inc.*,[19] the district court denied a motion of a secured creditor to reclaim a substantial number of truck trailers and truck bodies. In reversing the district court,[20] the court of appeals held that the right of reclamation depends upon equitable considerations and not upon whether a security agreement is labeled a "conditional sales contract" or a "chattel mortgage." [21] The court of appeals remanded the case to the district court to determine, in light of these principles, whether the secured creditor was entitled to reclamation or, in the alternative, to rental payments for the use of the trucks and trailers during the reorganization.[22]

TRUSTEE'S INVESTIGATION

A complete accounting for the stewardship of corporate affairs by the prior management is a requisite under Chapter X. One of the primary duties of the trustee is to make a thorough study of the debtor to assure the discovery and collection of all assets of the estate, including claims against officers, directors, or controlling persons who may have mismanaged the debtor's affairs. The staff of the Commission often aids the trustee in his investigation.

[18] *F. L. Jacobs Co.*, E.D. Mich., No. 42235.

[19] S.D.N.Y., No. 65B–404.

[20] 250 F. Supp. 249 (S.D.N.Y., 1966).

[21] *Fruehauf Corporation* v. *Yale Express System*, 370 F.2d 433 (C.A. 2, 1966).

[22] This decision overrules *In re Lake's Laundry, Inc.*, 79 F.2d 326 (C.A. 2, 1935).

As previously reported,[23] the trustee in *Continental Vending Machine Corp.*[24] filed a civil suit against the former management and directors of the debtor, its accountants and others, seeking $41 million in damages. He began taking depositions of the accountants and before completion of the depositions a criminal indictment was returned against three members of the accounting firm and others, charging mail fraud and securities law violations based upon false statements in the debtor's annual report and in reports filed with the Commission. The district court in which the indictments are pending[25] enjoined the trustee from taking civil depositions of those persons who were already under indictment because the subject matter of the civil examination was expected to cover matters related to the indictment. The court of appeals[26] reversed (2–1) the order of the district court and the Supreme Court[27] has granted *certiorari.*

In *Webb & Knapp, Inc.*,[28] the trustee was authorized to bring three major lawsuits, one of them an action against the indenture trustee, based on the latter's alleged breach of trust, to recover on behalf of debenture holders the entire principal amount of debentures outstanding ($4,298,000). The Commission supported the trustee's petition even though the proceeds of recovery would be paid to the debenture holders rather than to the estate.[29]

In *Edward N. Siegler & Co.*,[30] the trustees, together with a Chicago, Illinois investment firm, brought a plenary suit against First National Bank of Lincolnwood (Ill.) and 25 individuals, seeking a total of $3,150,000 in compensatory and exemplary damages for losses from allegedly fraudulent stock transactions. The reorganization court had approved an agreement, as reported previously,[31] under which the customers of the debtor received, in effect, full satisfaction of their claims with funds contributed by the Midwest Stock Exchange and Hartzmark & Co., a Cleveland, Ohio, broker-dealer firm which took over the debtor's customer accounts. Any proceeds from the suit would go to unsecured creditors, payment to whom was deferred in order to permit full satisfaction of customer accounts.

---

[23] 32nd Annual Report, p. 90.

[24] E.D.N.Y., No. 63–B–663.

[25] 262 F. Supp. 64 (S.D.N.Y., 1966).

[26] *U.S.* v. *Simon, et al*, 373 F.2d 649 (C.A. 2, 1967).

[27] *Simon, et al* v. *Wharton, Trustee*, Oct. Term 1967, No. 1185.

[28] S.D.N.Y., No. 65–B–365.

[29] The other two lawsuits are an action against former directors of the debtor for alleged waste and mismanagement of corporate assets, seeking damages of $50 million, and an action seeking damages of $1,160,000 against the former president and chairman of the board of the debtor and certain others who allegedly usurped a corporate opportunity belonging to the debtor.

[30] N.D. Ohio, No. 66–2957.

[31] 32nd Annual Report, p. 92.

REPORTS ON PLANS OF REORGANIZATION

Generally, the Commission files a formal advisory report only in a case involving a substantial public investor interest and presenting significant problems. When no such formal report is filed, the Commission may state its view briefly by letter, or authorize its counsel to make an oral or written presentation to amplify the Commission's views. During this fiscal year the Commission did not publish any formal advisory reports; its views on seven plans involved in four proceedings were presented orally at the hearings on approval of the plans.[32]

In *TMT Trailer Ferry, Inc.*,[33] the Supreme Court granted the petition for a writ of *certiorari*[34] filed by the stockholders protective committee to review decisions of the Court of Appeals for the Fifth Circuit which had affirmed orders of the district court confirming a plan of reorganization from which the debtor's 7,000 stockholders were excluded.[35] In response to an order of the Supreme Court inviting the United States to express its views, a memorandum was submitted on behalf of the Commission supporting the petition. The principal contentions of the Commission and the committee are: (1) that the plan is objectionable in that it contemplates employment of the trustee as president of the reorganized company; (2) that stockholders should have been afforded a hearing on their contention that they have claims against the debtor arising out of the sale of the debtor's stock to them in violation of the Federal securities laws and are entitled to participate in any plan as creditors; and (3) that the plan is not fair in excluding stockholders because the district court's finding of insolvency had been based on an inadequate record as to valuation, and the court, without hearings, had allowed substantial, seriously contested, claims almost in full.

In *Hydrocarbon Chemicals, Inc.*,[36] the plan of reorganization, which the court confirmed, provided that the plan proponents together with unsecured creditors who elected to receive new common stock of the reorganized debtor in payment of their claims would receive 85 percent of the new common stock to be outstanding, and that the debtor's public stockholders would receive 15 percent of the new stock. The Commission did not object to the plan but proposed amendments to

[32] In re *Hydrocarbon Chemicals, Inc.*, D. N.J., No. B–743–63; In re *Intercontinental Motels Ltd.*, W.D. N.C., No. 1716–1723; In re *Minneapolis Scientific Controls Corp.*, D. Minn., No. 4–66–Bky–117 (four plans); In re *Oceanside Properties, Inc.*, D. Hawaii, No. 67–109.

[33] S.D. Fla., No. 3659–M.

[34] *Protective Committee, etc.* v. *Anderson*, Oct. Term 1967, No. 38.

[35] 32nd Annual Report, pp. 92–93; 31st Annual Report, p. 100. For previous reports see also 30th Annual Report, p. 105, 29th Annual Report, pp. 91–92.

[36] D. N.J., No. B–743–63.

include preemptive rights and representation on the initial board of directors for present stockholders who would have a minority stock equity in the reorganized company. The court adopted these recommendations.

In *Oceanside Properties, Inc.*,[37] the plan of reorganization was based primarily upon the construction and sale of five condominium apartment buildings in the Hawaii area within a 30-month period. The Commission supported the plan but urged that it should not be confirmed unless firm commitments were obtained for the interim and long-term financing contemplated by the plan.

In *Atlas Sewing Centers, Inc.*,[38] although an order had been entered by the district court in July 1965 declaring the plan of reorganization to have been substantially consummated pursuant to Section 229, the new securities and cash required to be issued to creditors and stockholders under the plan were never issued. In April 1967, the district court, after lengthy hearings, held that the plan proponent had not fulfilled his contractual obligations to provide certain additional funds under the plan and that a group of banks had gained a position of dominion and control over the debtor's affairs, causing it to close down its business except for the collection of several million dollars of pledged accounts receivable. The district court appointed a receiver for the debtor's assets and suggested that proceedings be instituted to surcharge the banks and others. On appeal by the plan proponent and the banks, the court of appeals,[39] among other things, agreed with the Commission that the jurisdiction of a Chapter X court continues over a debtor corporation's affairs until the plan of reorganization has been substantially consummated in fact and that, at least until such time, persons entrusted with the handling of any debtor's assets act at their peril without the approval of the district court.[40]

ACTIVITIES WITH REGARD TO ALLOWANCES

Every reorganization case ultimately presents the difficult problem of determining the allowance of compensation to be paid to the various parties for services rendered and for expenses incurred in the proceeding. The Commission, which under Section 242 of the Bankruptcy

[37] D. Hawaii, No. 67–109.

[38] S.D. Fla., No. 168–62–M–Bk–EC.

[39] 380 F. 2d 41 (C.A. 5, 1967).

[40] In *Florida-Patsand Corp.*, a Chapter X case in which the Commission did not participate, the Chapter X trustee was convicted of criminal abuse of trust by the district court in Miami, Florida, and sentenced to 2 years probation for knowingly and fraudulently selling real property of the debtor to a company with which he was affiliated as financial adviser, and for receiving remuneration from the purchaser as compensation for the transfer of the property (S.D. Fla., No. 4516–M).

Act may not receive any allowance for the services it renders, has sought to assist the courts in assuring economy of administration and in allocating compensation equitably on the basis of the claimants' contributions to the administration of estates and the formulation of plans. During the fiscal year, 197 applications for compensation totaling about $6.9 million were reviewed.

In *Hydrocarbon Chemicals, Inc.*,[41] 17 applicants requested final allowances aggregating $1,053,855. The Commission recommended allowances of $343,648, and the court awarded $465,000. The court, in accordance with the Commission's recommendation, denied a fee to the debtor's attorney who had made a short sale of the debtor's stock just prior to the inception of the Chapter XI proceeding and had purchased shares of the debtor's stock to cover the short sale, just after the Chapter XI petition was filed. The Commission urged denial of an allowance both on equitable principles and on the ground that Section 249 of Chapter X was applicable to securities transactions during the superseded Chapter XI proceeding, since Section 328 of Chapter XI, pursuant to which the Chapter X petition was filed,[42] provides that the amended Chapter X petition shall "for all purposes of Chapter X . . . be deemed to have been originally filed under such chapter." The court also adopted the Commission's recommendation that two attorneys who had been retained by the debtor's attorney during the Chapter XI proceeding should be denied a fee because their retention had not been authorized as provided under General Order 44 of the Bankruptcy Act.[43] In *Cosmo Capital, Inc.*,[44] the court granted the Commission's objections and refused to award any fees or reimbursement of expenses to members of a stockholders' protective committee who had purchased shares of the debtor's stock, in violation of Section 249, after they had solicited powers of attorney from stockholders.

In *Imperial '400' National, Inc.*,[45] the debtor had paid a total of $67,595 in fees to two law firms 6 days prior to filing a Chapter XI petition. After an amended Chapter X petition was filed under Section 328, as reported previously,[46] the Chapter X trustee moved, pursuant to Section 60d, for examination by the court of the fees paid and a recovery by the estate of the portion of the fees in excess of a reasonable amount. The Commission, supporting the Chapter X trustee, recommended that amounts in excess of $4,000 should be returned to the

[41] D. N.J., No. B–743–63.

[42] See 30th Annual Report, p. 108.

[43] All attorneys have filed motions for leave to appeal to the Court of Appeals for the Third Circuit.

[44] N.D. Ill., No. 63–B–3880.

[45] D. N.J., No. B–656–65.

[46] 32nd Annual Report, pp. 94–95.

estate. The court, after the close of the fiscal year, ordered that the firms refund to the estate all sums paid to them in connection with the proceedings, except a nominal filing fee, and that the award of reasonable fees be determined and made at the conclusion of the Chapter X proceeding.

In *Bankers Trust*,[47] the court, in its order awarding interim allowances to the trustee and trustee's counsel, stressed the need for accurate daily time records so that in the future it could determine, among other things, whether there had been an unnecessary duplication of effort by the applicants.[48] In *Republic Aluminum Co.*,[49] the trustee applied for a final allowance. The Commission advised the court that, because of contradictory and apparently unreconcilable estimates of the time spent by the trustee on services rendered in this and another Chapter X proceeding in which he had concurrently served as trustee, it was impossible to make an informed judgment as to the value of his services in the pending case. The Commission recommended that the trustee should be afforded an opportunity to clarify his time estimates on the record before it recommended any allowance to him.

In *Yuba Consolidated Industries, Inc.*,[50] 12 applicants requested allowances totaling about $1,949,000 and the Commission recommended a total of about $1,110,000. The awards made by the court aggregated approximately $1,567,000. The court, among other things, disagreed with the Commission's view that time spent by attorneys for committees in reading and reviewing pleadings and merely attending court hearings was largely unproductive time, for which little, if any, compensation should be paid.[51]

In *Coast Investors, Inc.*,[52] the Commission recommended an allowance of $18,000 to counsel for a committee and the district court, allowing $10,000, stated that a different standard for allowances in Chapter X applies when, as in this case, the plan provides for an orderly liquidation over a period of years, rather than a reorganization as a going concern. In its brief in support of counsel's petition for leave to appeal, the Commission urged that the governing standard for allowances is the same since Chapter X contemplates that a reorganization may take the form of a liquidation. The court of appeals granted the petition and the case is pending.[53]

---

[47] S.D. Ind., No. IP–66–B–2375.

[48] See In re *Hudson & Manhattan Railroad Co.*, 339 F.2d 114, 115 (C.A. 2, 1964); In re *Nazareth Fair Grounds & Farmers Market, Inc.*, 374 F.2d 595 (C.A. 2, 1967).

[49] N.D. Texas, No. 3–507.

[50] N.D. Calif., No. 64103.

[51] *Cf. Milbank, Tweed & Hope* v. *McCue*, 111 F.2d 100, 101 (C.A. 4, 1940).

[53] W.D. Wash., No. 53448.

[53] C.A. 9, No. 21573.

In *Anglo-American Properties, Inc.*,[54] the Commission, though not participating in the Chapter X proceeding, filed a brief *amicus curiae* in the court of appeals [55] in opposition to the motion of the appellant, a secured creditor, to stay the hearings in the district court on applications for interim allowances on behalf of the trustee and his attorney, pending a determination of its appeal in which it urged that the trustee and his attorney were not disinterested. In a separate appeal the same appellant contended that the Chapter X petition, which the district court had approved, was not filed in good faith. In its brief, the Commission argued that the trustee and his attorney were entitled to an allowance for their services in the Chapter X proceeding even if it were determined on appeal that they were not disinterested, provided that full disclosure of all the facts was made at the time of their appointment, or if the appellant should succeed in his other appeal and the Chapter X petition be dismissed for lack of good faith. The court of appeals denied a stay and subsequently both appeals were settled.

The allowance of interim fees during the course of the proceeding has continued to receive the attention of the courts. While Chapter X does not expressly provide for interim or partial allowances, courts have awarded interim fees to the trustee and his counsel in order to alleviate any economic hardship to them which may result from postponing all payments of fees until the conclusion of the Chapter X proceeding.[56] The amounts awarded, however, have been generally well below the possible amounts of any final allowances. They are considered to be partial payments on account and do not reflect or measure the value of the services rendered to the date of the interim allowance.

Section 247 requires that the judge consider applications for allowances at a hearing, notice of which is to be given to creditors, stockholders, the Commission and other interested parties. At the suggestion of the Commission, the courts have adopted a procedure in respect of interim allowances which differs somewhat from that described in an earlier annual report.[57] Under the present practice, notice is given of a hearing at which the court is to establish a schedule for hearing applications for future interim allowances. At the conclusion of this hearing a second notice is given to creditors and stockholders of hearings scheduled on specified dates in the future at which the court will consider applications for interim allowances and the maximum amounts which may be awarded at such future hearings. In this manner the requirements of the statute are met without an undue burden upon

[54] S.D. Miss., No. 2171–B.

[55] *Rosenthal and Rosenthal, Inc.* v. *Tibbetts, Trustee* (C.A. 5, No. 24170).

[56] See, *e.g.*, In re *Keystone Realty Holding Co.*, 117 F.2d 1003 (C.A. 3, 1941), and In re *McGann Mfg. Co.*, 188 F.2d 110 (C.A. 3, 1951).

[57] See 6th Annual Report (1940), pp. 63–64.

the estate and an opportunity is afforded all parties for adequate scrutiny of interim fees for which periodic applications may be filed by the trustee and his counsel.

INTERVENTION IN CHAPTER XI PROCEEDINGS

Chapter XI of the Bankruptcy Act provides a procedure by which debtors can effect arrangements with respect to their unsecured debts under court supervision. From time to time it appears that the proper protection of public investors and the needs of the company for rehabilitation require a more thoroughgoing reorganization than is possible under the summary procedures of Chapter XI. The Commission or any other party in interest is authorized, under Section 328 of Chapter XI, to make application to the court to dismiss the Chapter XI proceeding unless the debtor's petition is amended to comply with requirements of Chapter X, or a creditors' petition under Chapter X is filed.

In *Arlington Discount Co.*,[58] the debtor was engaged in the business of purchasing, at a discount, second mortgages and installment land contract receivables. It proposed an arrangement under Chapter XI whereby the 400 holders of $1,194,000 of subordinated certificates of indebtedness would receive 5 percent of their claims in cash at confirmation, 60 percent in noninterest-bearing notes and the balance in preferred stock. The Commission's motion under Section 328 was based on the need for an impartial investigation of management activities and for a comprehensive reorganization under Chapter X, including an adjustment of secured debt, rather than a simple composition of unsecured debts. The court granted the Commission's motion and the debtor filed an amended Chapter X petition, which the court approved.

In *Embarcadero Ranchos, Inc.*,[59] the Commission had filed a motion under Section 328 in July 1962. Prior to the hearing on the motion the Chapter XI receiver had negotiated a sale of the land owned by the debtor and requested that the Commission withdraw its motion because it appeared that the public investors, who held mortgages on the land, might be paid in full from the proceeds of the sale. The Commission agreed not to press its motion, pending consummation of the sale. The sale was closed in October 1966, and the public investors were paid in full including interest to date of payment. The Commission thereupon withdrew its motion.

---

[58] S.D. Ohio, No. 48421.

[59] S.D. Calif., No. 131812Y.

PART IX

SUPPORTING ACTIVITIES

PUBLIC INFORMATION SERVICES

Dissemination of Information

As the discussion in prior sections of this Report indicates, most large corporations (except banks and insurance companies) in which there is a substantial public investor interest have filed registration statements or registration applications under the Securities Act or the Securities Exchange Act with the Commission and are required to file annual and other periodic reports. Widespread public dissemination of the financial and other data included in these documents is essential if public investors generally are to benefit by the disclosure requirements of the securities laws. This is accomplished in part by distribution of the prospectus or offering circular in connection with new offerings. Much of the data is also reprinted and receives general circulation through the medium of securities manuals and other financial publications, thus becoming available to broker-dealer and investment adviser firms, trust departments and other financial institutions and, through them, to public investors generally.

Various activities of the Commission also facilitate public dissemination of information filed as well as other information. Among these is the issuance of a daily "News Digest" which contains (1) a résumé of each proposal for the public offering of securities for which a Securities Act registration statement is filed; (2) a list of issuers of securities traded over-the-counter which have filed registration statements under the Securities Exchange Act; (3) a list of companies which have filed interim reports disclosing significant corporate developments; (4) a summary of all notices of filings of applications and declarations, and of all orders, decisions, rules and rule proposals issued by the Commission; (5) announcements of the Commission's participation in corporate reorganization proceedings under Chapter X of the Bankruptcy Act and of the filing of advisory reports of the Commission on the fairness and feasibility of reorganization plans; (6) a brief report regarding actions of courts in litigation resulting from the Commission's law enforcement program; and (7) a brief reference to each statistical report issued by the Commission. During the year, the News Digest included summary reports on the 1,637 registration statements filed with the Commission, 900 notices of filings, orders, decisions, rules and rule proposals issued by the Commission, 227 develop-

ments in litigation under its enforcement program, 13 releases on corporate reorganization proceedings, and 78 statistical releases.

The News Digest is made immediately available to the press, and it is also reprinted and distributed by the Government Printing Office, on a subscription basis, to some 2,368 investors, securities firms, practicing lawyers and others. In addition, the Commission maintains mailing lists for the distribution of the full text of its orders, decisions, rules and rule proposals.

These informational activities are supplemented by public discussions from time to time of legal, accounting and other problems arising in the administration of the Federal securities laws. During the year, members of the Commission and numerous staff officers made speeches before various professional, business and other groups interested in the Federal securities laws and their administration and participated in panel discussions of like nature. Participation in these discussions not only serves to keep attorneys, accountants, corporate executives and others abreast of developments in the administration of those laws, but it also is of considerable value to the Commission in learning first-hand about the problems experienced by those who seek to comply with those laws. In order to facilitate such compliance the Commission also issues from time to time general interpretive releases and policy statements explaining the operation of particular provisions of the Federal securities laws and outlining policies and practices of the Commission. An example of such a general interpretive statement is the Commission's net capital release discussed at page 71.

Publications.—In addition to the daily News Digest, and releases concerning Commission action under the Acts administered by it and litigation involving securities violations, the Commission issues a number of other publications, including the following:

Weekly:

Weekly Trading Data on New York Exchanges: Round-lot and odd-lot transactions effected on the New York and American Stock Exchanges (information is also included in the Statistical Bulletin).

Monthly:

Statistical Bulletin.[a]

Official Summary of Securities Transactions and Holdings of Officers, Directors and Principal Stockholders.[a]

Quarterly:

Financial Report, U.S. Manufacturing Corporations (jointly with the Federal Trade Commission.)[a] (Statistical Series Release summarizing this report is available from the Publications Unit.)

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

New Securities Offerings.

Volume and Composition of Individuals' Saving.

Working Capital of U.S. Corporations.

Stock Transactions of Financial Institutions.

See footnotes on following page.

Annually:

Annual Report of the Commission.[a]

Securities Traded on Exchanges under the Securities Exchange Act of 1934.

List of Companies Registered under the Investment Company Act of 1940.

Classification, Assets and Location of Registered Investment Companies under the Investment Company Act of 1940.[b]

Private Noninsured Pension Funds (assets available quarterly in the Statistical Bulletin).

Directory of Companies Filing Annual Reports.[a]

Other Publications:

Decisions and Reports of the Commission (Volumes 40 and 41 only).[a]

Securities and Exchange Commission—The Work of the Securities and Exchange Commission.

Commission Report on Public Policy Implications of Investment Company Growth.[a]

Availability of Information for Public Inspection

The many thousands of registration statements, applications, declarations and annual and other periodic reports filed with the Commission each year are available for public inspection at the Commission's principal office in Washington, D.C. In addition, at each regional office of the Commission there are available for inspection copies of prospectuses used in recent offerings of securities registered under the Securities Act; registration statements, recent annual reports and definitive proxy statements filed pursuant to the Exchange Act by companies having their principal office in the particular region; broker-dealer and investment adviser applications, amendments thereto, and broker-dealer financial reports originating in the region; and letters of notification under Regulation A filed in the region. Additional material is available in the New York, Chicago and San Francisco regional offices.

Members of the public may purchase copies of material in the Commission's public files. Under the existing contract with a printing company for the reproduction of such material, the cost is 9 cents per page for pages not exceeding 8⅓″ x 14″ in size. The detailed price schedule may be obtained from the Publications Unit of the Commission. (Release No. 34–8109.) A charge of $2 is imposed for each certification of a document by the Commission. Visitors to the Public Reference Room in Washington may make immediate reproductions of material on coin-operated copiers. Similar machines are located in the New York and Chicago regional offices.

Each year many thousands of requests for copies of and information from the public files of the Commission are received by the Public Reference Section in Washington, D.C. During the 1967 fiscal year, 6,932 persons examined material on file in Washington and several

[a] Must be ordered from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

[b] This document is available in photocopy form. Purchasers are billed by the printing company which prepares the photocopies.

thousand others examined files in the New York and Chicago regional offices. More than 15,593 searches were made for individuals requesting information and approximately 2,478 letters were written with respect to information requested.

Implementation of Public Information Act.—To implement the provisions of the Public Information Amendment to Section 3 of the Administrative Procedure Act,[1] which became effective on July 4, 1967, the Commission amended its rule pertaining to records and information, 17 CFR 200.80.[2] The rule specifies the categories of documentary materials available to the public upon request at the Commission's principal office, and the materials which are also available at regional offices. It establishes a procedure to be followed in requesting records or copies thereof, provides a method of administrative appeal from the denial of access to any record, and provides for the imposition of fees when more than one-half man-hour of work is performed by members of the Commission's staff to locate and make available records requested.

All materials previously available for public inspection and copying continue to be available under the new provisions. In addition, some documents contained in Commission files previously considered nonpublic, certain materials developed for use by the Commission's staff, including indexes of Commission decisions, and a current index as specified in the statute and covering Commission adjudicatory opinions and orders issued after July 1, 1967, will now be available to the public.

PERSONNEL AND FINANCIAL MANAGEMENT

Organizational Changes

During fiscal year 1967, certain organizational changes were effected in accordance with the Commission's policy of continuing review of all its operations to assure maximum utilization of manpower and the most efficient and economical operations possible.

In July 1966, a number of changes were effected in the Division of Trading and Markets. The Office of Criminal Reference and the Office of Proceedings, which performed similar functions, were consolidated; the Branch of Distribution and Stabilization was abolished; and the three Branches of Enforcement were consolidated into two Branches.

In December 1966, the Commission discontinued its Branch Office in St. Paul, Minnesota. The investigative work previously done by that office in the St. Paul-Minneapolis area was taken over by the Chicago Regional Office. It is expected that this change will increase

[1] 80 Stat. 250, as codified, 81 Stat. 54, 5 U.S.C. § 552.

[2] Securities Act Release No. 4871 (June 30, 1967).

the effectiveness of the Commission's work in that area. The elimination of three positions and related expenses will also result in an annual savings of about $40,000, which will be applied to higher priority activities.

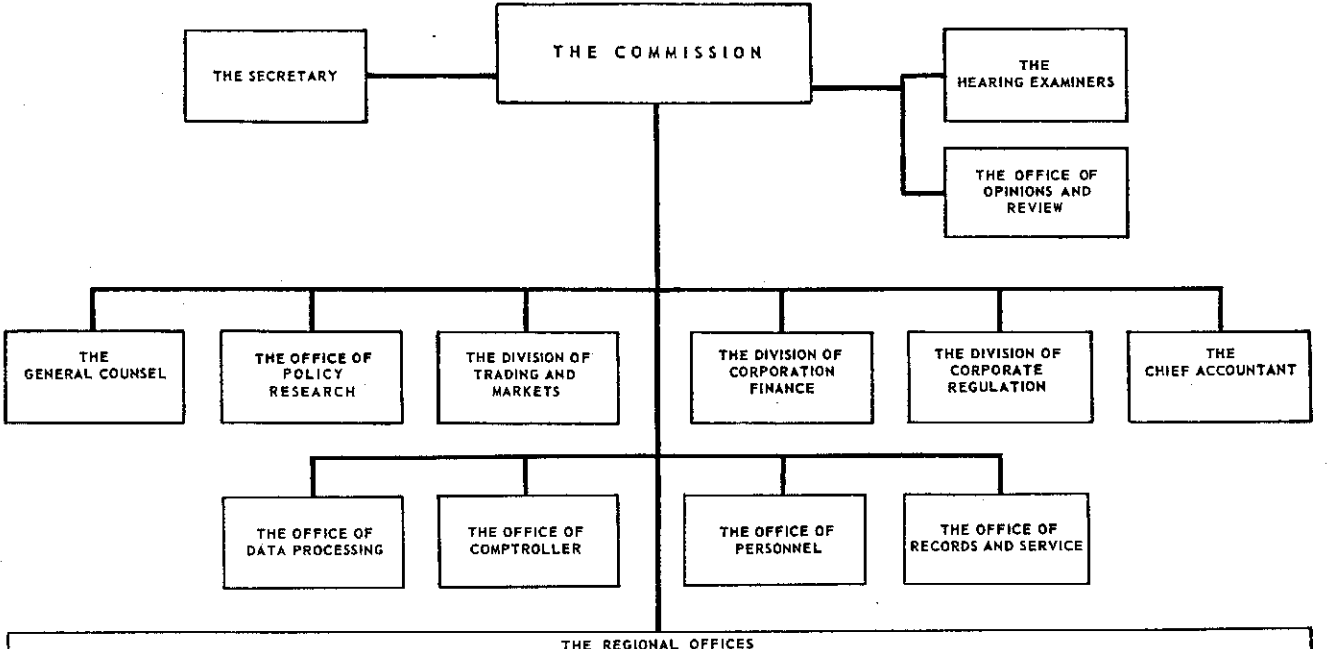
In March 1967, a realignment of certain functions and staff in the New York Regional Office, designed to strengthen its enforcement and regulatory programs and activities, was effected. An additional Assistant Regional Administrator for enforcement was appointed to share with the existing Assistant Regional Administrator for enforcement primary responsibility for directing the enforcement activities of the New York Office. At the same time, the Assistant Regional Administrator for regulation was given the additional responsibility of directing the work of the Branches of Small Issues and Interpretations.

Recruitment and Training Programs

In fiscal 1967, the Commission continued its efforts to recruit "quality" graduates to fill its entrance level positions. The Chairman sent a personal letter to the deans of undergraduate and graduate schools of business and of law schools explaining the Commission's staffing needs and seeking their assistance in identifying outstanding students interested in Federal employment. Campus visitations were arranged and Commission recruiters from the Headquarters Office and the various regional offices interviewed numerous students. The GS–9 entrance salary of $7,696 for recent graduates of law schools was found to be competitive with salaries paid by most law firms. Competition for graduates of business schools was much more severe and the Commission found that it could not meet the average salary of $10,000 offered by private industry to the superior applicant possessing a Master of Business Administration degree.

The Commission continued during the year to supplement its on-the-job training of professional employees with more formalized training sessions. The Division of Corporate Regulation conducted a 2-week seminar on the Investment Company Act for personnel of the Division as well as those regional office employees who are concerned with investment company matters. The lectures given during the seminar covered matters involved in the performance of current staff duties as well as various new and unusual types of investment companies now coming to the fore, such as variable annuity life insurance companies, insurance "packages," swap funds, speculative funds, and dual policy funds. The Division of Trading and Markets conducted an enforcement seminar designed to strengthen skills and increase knowledge in the enforcement aspects of the Commission's work, and the Division of Corporation Finance sponsored a series of lectures by outside authorities on corporate mergers and acquisitions. These training

SECURITIES AND EXCHANGE COMMISSION



THE REGIONAL OFFICES								
NEW YORK REGIONAL OFFICE	BOSTON REGIONAL OFFICE	ATLANTA REGIONAL OFFICE	CHICAGO REGIONAL OFFICE	FORT WORTH REGIONAL OFFICE	DENVER REGIONAL OFFICE	SAN FRANCISCO REGIONAL OFFICE	SEATTLE REGIONAL OFFICE	WASHINGTON, D.C. REGIONAL OFFICE
		Miami, Fla. Branch	Cleveland, Ohio Branch Detroit, Mich. Branch St. Louis, Mo. Branch	Houston, Texas Branch	Salt Lake City, Utah Branch	Los Angeles, Calif. Branch		

DS-4802

AS OF JULY 1967

sessions were attended by employees of the sponsoring divisions, other home office employees, and personnel from the regional offices.

An unusual experiment in legal education in the Federal service conducted during the fiscal year was the SEC Staff Seminar on current problems in securities regulation. Selected staff attorneys participated in the seminar. As distinguished from the more narrow focus of normal staff training, this seminar focused on some of the broad policy problems facing the Commission.

In the summer of 1967 an unusual feature was introduced into the Commission's training program for summer finance and law students. Members of the Commission met with the interns in a session entitled "At the Commission Table." The interns were given background material on certain major matters which had been considered by the Commission and were afforded the opportunity to discuss these matters with the Commissioners. Following the session with the Commissioners, knowledgeable staff members discussed at greater length the problems which were raised with the Commission.

In fiscal 1967, the Commission tripled the amount of funds allocated for training conducted outside the agency. A total of 133 employees were able to attend courses given by the Civil Service Commission, and by various schools, universities and professional associations.

The Commission participated in the educational program developed jointly by the Bureau of the Budget and the Civil Service Commission to provide intensive training in modern analytic methods required to implement a planning-programing-budgeting system within the Commission. One employee attended Carnegie Institute of Technology for a year and another attended a 3-week residence seminar at the University of Virginia.

In anticipation of greater utilization of the Commission's IBM 360 computer, selected employees have been sent to the IBM Education Center to acquire basic knowledge in computer capabilities. Also, in cooperation with IBM, field investigators have been exposed to the use of computers in brokerage operations in anticipation that most of the large brokerage houses will become fully automated as to their "back office" procedures in the foreseeable future. In addition, a planned training program geared to the specific needs of individual employees directly engaged in computer work is now in operation. It takes into account the development of new and more advanced hardware or more sophisticated systems which offer more opportunities for computerization of Commission processes.

Merit Awards to Employees

As part of its Twelfth Annual Service and Merit Awards Ceremony held in October 1966, the Commission gave "Distinguished Service

Awards" to Messrs. Philip A. Loomis, Jr., General Counsel; Thomas B. Hart, Administrator of the Chicago Regional Office; and William E. Becker, Chief Management Analyst. Nineteen employees were given 30-year pins for SEC service. Within-grade salary increases in recognition of high quality performance were granted to 81 employees. These awards are authorized by the Salary Reform Act of 1962. In addition, cash awards totaling $9,926 were presented to 65 employees for superior performance and 5 employees were awarded a total of $245 for adopted suggestions.

On the occasion of his 25th anniversary with the Commission, Chairman Manuel F. Cohen received a special length of service award which displayed official medallions of the five Presidents—Roosevelt, Truman, Eisenhower, Kennedy and Johnson—under whom he has served.

Employee Benefit Programs

In May 1966, coincident with the Commission's move into the new building, the SEC Recreation and Welfare Association commenced the operation in the two sub-basements of a parking garage for 90 automobiles under a 10-year lease negotiated with the owners of the building. The Commission actively encouraged the Association to enter into this venture in order to assure that members of the staff would have parking facilities at reasonable rates. As another employee service, at no cost to the Commission, the Association also sponsors accident, income protection, and dependent life insurance programs at low-cost group rates.

Personnel Strength; Financial Management

The following comparative table shows the personnel strength of the Commission as of June 30, 1966 and 1967:

	June 30, 1966	June 30, 1967
Commissioners	5	5
Staff:		
Headquarters Office	842	860
Regional Offices	538	525
Total Staff	1,380	1,385
Grand Total	1,385	1,390

The table on page 150 shows the status of the Commission's budget estimates for the fiscal years 1963 to 1968, from the initial submission to the Bureau of the Budget to final enactment of the annual appropriation.

The Commission is required by law to collect fees for (1) registration of securities under the Securities Act; (2) qualification of trust indentures; (3) registration of exchanges; (4) certification of docu-

ments filed with the Commission; and from (5) brokers and dealers who are registered with the Commission but who are not members of a registered securities association (the National Association of Securities Dealers (NASD) is the only such organization).[8]

The following table shows the Commission's appropriation, total fees collected, percentage of fees collected to total appropriation, and the net cost to the taxpayers of Commission operations for the fiscal years 1965, 1966 and 1967.

Year	Appropriation	Fees collected	Percentage of fees collected to total appropriation	Net cost of Commission operations
1965	$15,442,000	$3,300,165	21	$12,141,835
1966	16,442,000	6,608,064	40	9,833,936
1967	17,550,000	9,705,977	55	7,844,023

[8] The principal rates are as follows: (1) for registration of securities, 1/50 of 1 percent of the maximum aggregate price of securities proposed to be offered, or 20 cents per $1,000, with a minimum fee of $100; (2) for registration of exchanges, 1/500 of 1 percent of the aggregate dollar amount of the sales of securities transacted on the exchanges; and (3) with respect to non-NASD members, the rates are as specified in Rule 15b9-1 under the Securities Exchange Act.

Securities and Exchange Commission

Action taken on budget estimates and appropriation from fiscal 1963 through fiscal 1968

Action	Fiscal 1963		Fiscal 1964		Fiscal 1965		Fiscal 1966		Fiscal 1967		Fiscal 1968	
	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money
Estimate submitted to the Bureau of the Budget	1,671	[a]$14,516,500	1,577	$14,800,000	1,677	[b]$17,165,000	1,564	$17,782,000	1,450	$17,582,000	1,437	$17,625,000
Action by the Bureau of the Budget	91	−716,500	−42	−400,000	−84	−1,450,000	−31	−382,000		−32,000	−21	−180,000
Amount allowed by the Bureau of the Budget	1,580	13,800,000	1,535	14,400,000	1,593	15,715,000	1,533	17,400,000	1,450	17,550,000	1,416	17,445,000
Action by the House of Representatives	−47	−500,000	−67	−625,000	−131	−885,000	−71	−958,000	−25	−300,000	−11	−95,000
Subtotal	1,533	13,300,000	1,468	13,775,000	1,462	14,830,000	1,462	16,442,000	1,425	17,250,000	1,405	17,350,000
Action by the Senate				+325,000							+11	+95,000
Subtotal	1,533	13,300,000	1,468	14,100,000	1,462	14,830,000	1,462	16,442,000	1,425	17,250,000	1,416	17,445,000
Action by Conferees	−52	−500,000		−162,500							−11	−95,000
Annual Appropriation	1,481	12,800,000	1,468	13,937,500	1,462	14,830,000	1,462	16,442,000	1,425	17,250,000	1,405	17,350,000
Supplemental appropriation for statutory pay increase		461,700				612,000				300,000		
Total appropriation	1,481	13,261,700	1,468	13,937,500	1,462	15,442,000	1,462	[c]16,442,000	1,425	17,550,000	1,405	17,350,000

[a] Includes a supplemental request for $1,366,000.
[b] Includes 2 supplemental requests; $800,000 and $390,000—a total of $1,190,000.
[c] Includes $1,000,000 for relocation of offices in Washington, D.C., to commercial space.

PART X

APPENDIX

STATISTICAL TABLES

TABLE 1.—*A 33-year record of registrations effective under the Securities Act of 1933—fiscal years 1935–1967*

[Amounts in millions of dollars]

Fiscal year ended June 30	Number of statements [1]	All registrations	For cash sale for account of issuers			
			Total	Bonds, debentures, and notes	Preferred stock	Common stock
1935 [2]	284	$913	$686	$490	$28	$168
1936	689	4,835	3,936	3,153	252	531
1937	840	4,851	3,635	2,426	406	802
1938	412	2,101	1,349	666	209	474
1939	344	2,579	2,020	1,593	109	318
1940	306	1,787	1,433	1,112	110	210
1941	313	2,611	2,081	1,721	164	196
1942	193	2,003	1,465	1,041	162	263
1943	123	659	486	316	22	137
1944	221	1,760	1,347	732	343	272
1945	340	3,225	2,715	1,851	407	456
1946	661	7,073	5,424	3,102	991	1,331
1947	493	6,732	4,874	2,937	787	1,150
1948	435	6,405	5,032	2,817	537	1,678
1949	429	5,333	4,204	2,795	326	1,083
1950	487	5,307	4,381	2,127	468	1,786
1951	487	6,459	5,169	2,838	427	1,904
1952	635	9,500	7,529	3,346	851	3,332
1953	593	7,507	6,326	3,093	424	2,808
1954	631	9,174	7,381	4,240	531	2,610
1955	779	10,960	8,277	3,951	462	3,864
1956	906	13,096	9,206	4,123	539	4,544
1957	876	14,624	12,019	5,689	472	5,858
1958	813	16,490	13,281	6,857	427	5,998
1959	1,070	15,657	12,095	5,265	443	6,387
1960	1,426	14,367	11,738	4,224	253	7,260
1961	1,550	19,070	16,260	6,162	248	9,850
1962	1,844	19,547	16,286	4,512	253	11,521
1963	1,157	14,790	11,869	4,372	270	7,227
1964	1,121	16,860	14,784	4,554	224	10,006
1965	1,266	19,437	14,656	3,710	307	10,638
1966	1,523	30,109	25,723	7,061	444	18,218
1967	1,649	34,218	27,950	12,309	558	15,083

[1] Statements registering American Depositary Receipts against outstanding foreign securities as provided by Form S-12 are included.

[2] For 10 months ended June 30, 1935.

TABLE 2.—*Registrations effective under the Securities Act of 1933, fiscal year ended June 30, 1967*

PART 1.—DISTRIBUTION BY MONTHS

[Amounts in thousands of dollars [1]]

Year and month	All registrations			Proposed for sale for account of issuers [2]			
				Totals [3]		Corporate [4]	
	Number of statements	Number of issues [2]	Amount	Number of issues [2]	Amount	Number of issues [2]	Amount
1966							
July	105	129	$1,353,193	95	$978,197	45	$465,128
August	147	186	3,012,953	148	2,403,214	65	1,450,485
September	95	112	1,523,377	90	1,204,725	39	707,643
October	96	119	1,644,643	98	1,450,567	45	511,823
November	119	137	2,215,966	106	2,007,975	50	913,344
December	114	134	2,689,214	110	2,304,965	40	1,085,877
1967							
January	104	130	2,526,986	109	2,309,398	42	799,136
February	103	127	2,088,453	100	1,844,251	41	874,075
March	141	174	4,436,176	134	3,006,531	67	1,744,987
April	209	251	4,597,895	205	4,157,544	81	1,581,653
May	206	255	3,833,000	184	2,997,070	76	1,160,117
June	210	269	4,296,243	200	3,285,685	116	2,146,282
Total, fiscal year [5] 1967	1,649	2,023	34,218,098	1,579	27,950,121	707	13,440,551

PART 2.—PURPOSE OF REGISTRATION AND TYPE OF SECURITY

[Amounts in thousands of dollars [1]]

Purpose of registration	All types	Type of security		
		Bonds, debentures, and notes [6]	Preferred stock	Common stock [7]
All registrations (estimated value)	$34,218,098	$12,529,423	$1,099,362	$20,589,314
For account of issuer for cash sale	27,950,121	12,308,899	558,458	15,082,764
For immediate offering [4]	14,124,426	13,145,904	494,346	1,484,175
Corporate	13,440,551	11,462,030	494,346	1,484,175
Offered to:				
General public	11,371,828	10,170,091	408,894	792,843
Security holders	1,792,926	1,055,578	63,190	674,158
Other special groups	275,798	236,360	22,262	17,175
Foreign governments	683,874	683,874	0	0
For extended cash sale and other issues [3]	13,825,695	162,995	64,112	13,598,588
For account of issuer for other than cash sale	4,575,619	187,225	197,964	4,190,430
For account of other than issuer	1,692,358	33,299	342,940	1,316,119
For cash sale	958,819	11,208	505	947,106
Other	733,540	22,091	342,435	369,014

See footnotes at end of part 4 of table.

TABLE 2.—*Registrations effective under the Securities Act of 1933, fiscal year ended June 30, 1967*—Continued

PART 3.—PURPOSE OF REGISTRATION AND INDUSTRY OF REGISTRANT

[Amounts in thousands of dollars [1]]

Purpose of registration	Type of issuer									
	All registrations	Manufacturing	Extractive	Electric, gas and water	Communication	Financial and real estate	Commercial and other [8]	Foreign governments	Investment companies	Other types
Number of statements	1,649	369	57	123	42	118	179	19	269	473
Number of issues [2]	2,023	504	63	133	51	148	252	21	311	540
All registrations (estimated value)	$34,218,098	$8,701,794	$375,645	$3,518,521	$2,316,517	$1,462,434	$3,333,618	$683,874	$9,437,567	$4,388,128
For account of issuer	32,525,740	7,453,172	347,752	3,497,709	2,266,893	1,404,051	3,046,594	683,874	9,437,567	4,388,128
For cash sale	27,950,121	5,489,757	203,123	3,421,005	2,142,688	529,602	1,654,376	683,874	9,437,567	4,388,128
For immediate offering	14,124,426	5,489,757	203,123	3,421,005	2,142,688	529,602	1,654,376	683,874		
Corporate	13,440,551	5,489,757	203,123	3,421,005	2,142,688	529,602	1,654,476			
Foreign governments	683,874							683,874		
For extended sale [3]	13,825,695								9,437,567	4,388,128
Investment companies [9]	9,437,567								9,437,567	
Employees saving plan certificates	1,357,222									1,357,222
Securities for employee stock option plans	2,608,965									2,608,965
Other [10]	421,941									421,941
For other than cash sale	4,575,619	1,963,415	144,628	76,704	124,205	874,449	1,392,219			
Exchange transactions [11]	1,070,004	70,778	52,629	27,825	34,980	686,641	197,151			
Reserved for conversion	3,407,141	1,883,671	69,008	47,989	89,225	137,396	1,179,853			
Other	98,474	8,966	22,991	890		50,412	15,215			
For account of other than issuer	1,692,358	1,248,623	27,893	20,812	49,624	58,383	287,024			
For cash sale	958,819	690,679	15,558	6,888	41,423	29,075	175,196			
Other	733,540	557,944	12,336	13,924	8,201	29,308	111,828			

See footnotes at end of part 4 of table.

TABLE 2.—*Registrations effective under the Securities Act of 1933, fiscal year ended June 30, 1967*—Continued

PART 4.—USE OF PROCEEDS AND INDUSTRY OF REGISTRANT

[Amounts in thousands of dollars [1]]

Use of proceeds	Industry of issuer						
	All corporate	Manufacturing	Extractive	Electric, gas and water	Communication	Financial and real estate	Commercial and other [8]
Corporate issues for immediate cash offering for account of issuers (estimated gross proceeds)	$13,440,551	$5,489,757	$203,123	$3,421,005	$2,142,688	$529,602	$1,654,376
Cost of flotation	243,285	97,062	6,401	51,223	23,867	17,269	47,464
Commissions and discounts	192,285	78,435	4,932	39,035	20,306	13,406	36,171
Expenses	51,001	18,627	1,469	12,188	3,561	3,862	11,293
Expected net proceeds	13,197,266	5,392,695	196,722	3,369,782	2,118,821	512,333	1,606,912
New money purposes	12,308,169	4,765,780	194,991	3,348,324	2,112,611	384,114	1,502,349
Plant and equipment	10,247,371	3,359,768	90,480	3,348,324	2,112,220	6,292	1,330,287
Working capital	2,060,797	1,406,012	104,511		391	377,821	172,062
Retirement of securities	102,761	74,718	1,459	17,958		423	8,202
Other purposes	786,336	552,197	272	3,500	6,210	127,797	96,360

[1] Dollar amounts are rounded and will not necessarily add to totals shown.

[2] Warrants are excluded from the count of the number of issues although included in dollar amount.

[3] Includes issues to be offered for sale continuously over an extended period of time, such as investment company issues and securities reserved for exercise of warrants or options.

[4] Covers only issues proposed for sale immediately following effective registration.

[5] The 1,649 effective registration statements covered in this table differ from the 1,642 "net" effective statements shown in the text table "Number and disposition of registration statements filed" as follows:

Included in fully effectives but excluded from net effectives:
2 registrations effective in fiscal 1966 prior to receiving competitive bids. The amendments disclosing the accepted terms were received in fiscal 1967.
10 registrations effective in fiscal 1967 which were later withdrawn.

Excluded from fully effectives but included in net effectives:
5 registrations effective prior to receiving competitive bids. The amendments disclosing the accepted terms were not received in fiscal 1967.

[6] Includes face amount certificates.

[7] Includes certificates of participation, warrants and voting trust certificates.

[8] Includes trade, construction, transportation other than railroad, and service industries.

[9] Includes registrations of new investment companies organized for the purpose of exchanging investment company shares for individuals' portfolio holdings.

[10] Includes securities for exercise of warrants, options and other contingent offerings mostly involving parts of issues being registered, the other parts being included elsewhere in the table. Also includes issues offered over an extended period to employees under plans other than savings and stock option plans, and certificates of participation in retirement plans of the self-employed.

[11] Includes voting trust certificates and certificates of deposit registered for issuance in exchange for original securities deposited.

TABLE 3.—*Brokers and dealers registered under the Securities Exchange Act of 1934* [1]*—effective registrations as of June 30, 1967, 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] [3]			
	Total	Sole proprietorships	Partnerships	Corporations [4]	Total	Sole proprietorships	Partnerships	Corporations
Alabama	30	10	2	18	116	10	5	101
Alaska	3	3	0	0	3	3	0	0
Arizona	20	6	2	12	66	6	4	56
Arkansas	21	4	2	15	94	4	4	86
California	398	141	58	199	1,845	141	564	1,140
Colorado	71	18	6	47	270	18	24	228
Connecticut	40	11	9	20	185	11	62	92
Delaware	19	4	3	12	158	4	24	130
District of Columbia	53	9	11	33	292	9	64	219
Florida	100	23	8	69	336	23	21	292
Georgia	38	8	7	23	224	8	31	185
Hawaii	35	8	3	24	149	8	8	133
Idaho	11	5	0	6	28	5	0	23
Illinois	174	24	45	105	1,041	24	237	780
Indiana	54	19	2	33	242	19	6	217
Iowa	39	9	5	25	175	9	15	151
Kansas	28	6	3	19	140	6	11	123
Kentucky	15	3	4	8	60	3	24	33
Louisiana	36	14	9	13	149	14	70	65
Maine	20	6	2	12	69	6	9	54
Maryland	37	10	9	18	182	10	73	99
Massachusetts	186	72	26	88	900	72	169	659
Michigan	69	11	14	44	386	11	101	274
Minnesota	56	5	6	45	369	5	39	325
Mississippi	22	6	6	10	61	6	18	37
Missouri	86	19	11	56	664	19	156	489
Montana	13	7	1	5	28	7	2	19
Nebraska	21	6	0	15	114	6	0	108
Nevada	5	4	0	1	9	4	0	5
New Hampshire	8	6	0	2	12	6	0	6
New Jersey	179	78	27	74	473	78	66	329
New Mexico	5	3	2	0	17	3	14	0
New York State (excluding New York City)	299	137	28	134	691	137	108	446
North Carolina	36	10	5	21	190	10	17	163
North Dakota	7	1	0	6	26	1	0	25
Ohio	118	19	29	70	657	19	216	422
Oklahoma	33	15	3	15	86	15	6	65
Oregon	27	4	3	20	103	4	6	93
Pennsylvania	189	38	63	88	971	38	361	572
Rhode Island	22	4	5	13	73	4	16	53
South Carolina	18	3	1	14	78	3	2	73
South Dakota	3	1	0	2	7	1	0	6
Tennessee	41	8	4	29	235	8	27	200
Texas	148	48	6	94	677	48	24	605
Utah	38	8	6	24	136	8	14	114
Vermont	4	2	1	1	9	2	4	3
Virginia	52	13	12	27	235	13	61	161
Washington	76	28	3	45	245	28	6	211
West Virginia	11	2	2	7	41	2	5	34
Wisconsin	41	4	1	36	263	4	27	232
Wyoming	8	4	0	4	15	4	0	11
Total (excluding New York City)	3,063	907	455	1,701	13,575	907	2,721	9,947
New York City	1,065	171	436	458	7,965	171	3,726	4,068
Total	4,128	1,078	891	2,159	21,540	1,078	6,447	14,015

[1] Does not include 47 registrants whose principal offices are located in foreign countries or other territorial jurisdictions not listed.

[2] Includes directors, officers, trustees, and all other persons occupying similar status or performing similar functions.

[3] Allocations made on the basis of location of principal offices of registrants, not actual location of persons. Information taken from latest reports filed prior to June 30, 1967.

[4] Includes all forms of organizations other than sole proprietorships and partnerships.

TABLE 4.—*Number of security issues and issuers on exchanges*

PART 1.—UNDUPLICATED COUNT AS OF JUNE 30, 1967, OF THE NUMBER OF STOCK AND BOND ISSUES ADMITTED TO TRADING ON EXCHANGES, AND THE NUMBER OF ISSUERS INVOLVED.

Status under the Act [1]	Stocks	Bonds	Total stocks and bonds	Issuers involved
Registered pursuant to Section 12(b)	3,008	1,362	4,370	2,606
Temporarily exempted from registration by Commission rule	10	14	24	5
Admitted to unlisted trading privileges on registered exchanges pursuant to Section 12(f)	93	12	105	77
Listed on exempted exchanges under exemption orders of the Commission	56	5	61	47
Admitted to unlisted trading privileges on exempted exchanges under exemption orders of the Commission	13	0	13	13
Total	3,180	1,393	4,573	2,748

[1] Registered: Section 12(b) of the Act provides that a security may be registered on a national securities exchange by the issuer filing an application with the exchange and with the Commission containing specified information.

Temporarily exempted: These are stocks of certain banks and other securities resulting from mergers, consolidations, etc., which the Commission has by published rules exempted from registration under specified conditions and for stated periods.

Admitted to unlisted trading privileges: Section 12(f), as amended, provides, in effect, that securities which were admitted to unlisted trading privileges (i.e., without applications for listing filed by the issuers) before July 1, 1964, may continue such status. Additional securities may be granted unlisted trading privileges on exchanges only if they are listed and registered on another exchange.

Listed on exempted exchanges: Certain exchanges were exempted from full registration under Section 6 of the Act because of the limited volume of transactions. The Commission's exemption order specifies in each instance that securities which were listed on the exchange at the date of such order may continue to be listed thereon, and that thereafter no additional securities may be listed except upon compliance with Sections 12(b), (c), and (d).

Unlisted on exempted exchanges: The Commission's exemption order specifies in each instance that securities which were admitted to unlisted trading privileges on the exchange at the date of such order may continue such privileges, and that no additional securities may be admitted to unlisted trading privileges except upon compliance with Section 12(f).

PART 2.—NUMBER OF STOCK AND BOND ISSUES ON EACH EXCHANGE AS OF JUNE 30, 1967, CLASSIFIED BY TRADING STATUS, AND NUMBER OF ISSUERS INVOLVED

Exchanges	Issuers	Stocks						Bonds				
		R	X	U	XL	XU	Total	R	X	U	XL	Total
American	1,024	965	3	104	------	------	1,072	93	2	13	------	108
Boston	493	54	1	448	------	------	503	10	------	------	------	10
Chicago Board of Trade	8	5	------	3	------	------	8	------	------	------	------	------
Cincinnati	184	32	------	157	------	------	189	9	1	------	------	10
Colorado Springs*	10	------	------	------	10	------	10	------	------	------	------	------
Detroit	286	95	1	200	------	------	296	------	------	------	------	------
Honolulu*	51	------	------	------	44	13	57	------	------	------	5	5
Midwest	447	340	1	141	------	------	482	12	------	------	------	12
National	15	16	------	------	------	------	16	1	------	------	------	1
New York	1,478	1,686	7	------	------	------	1,693	1,250	12	------	------	1,262
Pacific Coast	593	451	1	217	------	------	669	27	------	------	------	27
Philadelphia-Baltimore-Washington	657	179	2	560	------	------	741	50	------	------	------	50
Pittsburgh	113	36	------	84	------	------	120	1	------	------	------	1
Richmond*	15	------	------	------	25	------	25	------	------	------	1	1
Salt Lake	60	58	------	3	------	------	61	------	------	------	------	------
San Francisco Mining	24	24	------	------	------	------	24	------	------	------	------	------
Spokane	25	22	------	6	------	------	28	------	------	------	------	------

Symbols: R—registered; X—temporarily exempted; U—admitted to unlisted trading privileges; XL—listed on an exempted exchange; XU—admitted to unlisted trading privileges on an exempted exchange.

Note.—Issues exempted under Section 3(a)(12) of the Act, such as obligations of the U.S. Government, the States and cities, are not included in this table.

*Exempted exchanges.

TABLE 5.—*Value of stocks on exchanges*

(billions of dollars)

December 31	New York Stock Exchange	American Stock Exchange	Exclusively on other exchanges	Total [1]
1936	$59.9	$14.8	----------	$74.7
1937	38.9	10.2	----------	49.1
1938	47.5	10.8	----------	58.3
1939	46.5	10.1	----------	56.6
1940	41.9	8.6	----------	50.5
1941	35.8	7.4	----------	43.2
1942	38.8	7.8	----------	46.6
1943	47.6	9.9	----------	57.5
1944	55.5	11.2	----------	66.7
1945	73.8	14.4	----------	88.2
1946	68.6	13.2	----------	81.8
1947	68.3	12.1	----------	80.4
1948	67.0	11.9	$3.0	81.9
1949	76.3	12.2	3.1	91.6
1950	93.8	13.9	3.3	111.0
1951	109.5	16.5	3.2	129.2
1952	120.5	16.9	3.1	140.5
1953	117.3	15.3	2.8	135.4
1954	169.1	22.1	3.6	194.8
1955	207.7	27.1	4.0	238.8
1956	219.2	31.0	3.8	254.0
1957	195.6	25.5	3.1	224.2
1958	276.7	31.7	4.3	312.7
1959	307.7	26.4	4.2	338.4
1960	307.0	24.2	4.1	335.3
1961	387.8	33.0	5.3	426.2
1962	345.8	24.4	4.0	374.2
1963	411.3	26.1	4.3	441.7
1964	474.3	28.2	4.3	506.8
1965	537.5	30.9	4.7	573.1
1966	482.5	27.9	4.0	514.4

[1] Total values 1936–47 inclusive are for the New York Stock Exchange and the American Stock Exchange only.

TABLE 6.—*Dollar volume and share volume of sales effected on securities exchanges in the calendar year 1966 and the 6-month period ended June 30, 1967*

[Amounts in thousands]

PART I.—12 MONTHS ENDED DEC. 31, 1966

Exchanges	Total dollar volume	Bonds		Stocks		Rights and warrants	
		Dollar volume	Principal amount	Dollar volume	Share volume	Dollar volume	Number of units
Registered exchanges	127,913,832	4,261,124	3,740,481	123,033,926	3,187,949	618,782	122,659
American	14,807,070	159,903	150,480	14,130,112	730,946	517,054	25,996
Boston	700,629	0	0	700,624	13,272	6	28
Chicago Board of Trade	0	0	0	0	0	0	0
Cincinnati	97,657	21	29	97,635	1,820	*	*
Detroit	706,054	0	0	705,922	15,029	132	104
Midwest	3,887,388	39	22	3,886,875	84,748	473	367
National	1,149	0	0	1,149	408	0	0
New York	102,753,863	4,100,858	3,589,625	98,565,294	2,204,761	87,711	93,122
Pacific Coast	3,524,306	288	313	3,510,986	86,273	13,032	2,659
Philadelphia-Baltimore-Washington	1,365,895	13	13	1,366,307	28,182	375	382
Pittsburgh	51,792	0	0	51,792	1,174	0	0
Salt Lake	5,879	0	0	5,879	6,875	0	0
San Francisco Mining	2,298	0	0	2,298	5,251	0	0
Spokane	10,053	0	0	10,053	9,210	0	0
Exempted exchanges	13,756	22	8	13,709	1,659	25	117
Colorado Springs	172	0	0	172	1,088	0	0
Honolulu	11,354	22	8	11,307	515	25	117
Richmond	2,229	0	0	2,229	56	0	0

PART II.—6 MONTHS ENDED JUNE 30, 1967

Exchanges	Total dollar volume	Bonds		Stocks		Rights and warrants	
		Dollar volume	Principal amount	Dollar volume	Share volume	Dollar volume	Number of units
Registered exchanges	80,458,232	2,789,160	2,412,272	77,428,523	2,148,955	240,549	49,245
American	10,505,908	225,173	176,793	10,062,684	578,691	218,052	14,841
Boston	473,307	0	0	473,305	8,487	1	2
Chicago Board of Trade	0	0	0	0	0	0	0
Cincinnati	33,736	24	35	33,711	651	1	1
Detroit	348,760	0	0	348,759	7,398	1	4
Midwest	2,356,270	62	61	2,356,156	50,887	52	85
National	5,585	0	0	5,585	1,058	0	0
New York	63,526,780	2,563,753	2,235,212	60,945,465	1,414,345	17,562	33,276
Pacific Coast	2,276,436	147	171	2,271,575	55,339	4,713	767
Philadelphia-Baltimore-Washington	895,898	*	*	895,732	18,476	166	268
Pittsburgh	26,472	0	0	26,472	533	0	0
Salt Lake	4,060	0	0	4,060	4,491	0	0
San Francisco Mining	725	0	0	725	3,658	0	0
Spokane	4,295	0	0	4,295	4,941	0	0
Exempted exchanges	11,600	37	9	11,563	765	0	0
Colorado Springs	0	0	0	0	0	0	0
Honolulu	10,390	37	9	10,352	735	0	0
Richmond	1,210	0	0	1,210	30	0	0

*Less than 500 units or $500.

Note.—Data on the value and volume of securities sales on the registered exchanges are reported in connection with fees paid under Section 31 of the Securities Exchange Act of 1934. Included are all securities sales, odd-lot as well as round-lot transactions, effected on exchanges except sales of bonds of the U.S. Government which are not subject to the fee. Comparable data are also supplied by the exempted exchanges. Reports of most exchanges for a given month cover transactions cleared during the calendar month. Clearances generally occur on the 4th business day after that on which the trade was effected. Figures are rounded and will not necessarily add to the totals as shown.

TABLE 7.—*Comparative share sales and dollar volumes on exchanges*

Year	Share sales	NYS %	AMS %	MSE %	PCS %	PBS %	BSE %	DSE %	PIT %	CIN %	Other %
1935	681,970,500	73.13	12 42	1.91	2.69	0.76	0.96	0.85	0.34	0.03	6.91
1940	377,896,572	75.44	13.20	2 11	2.78	1.02	1.19	.82	.31	.08	2.05
1945	769,018,138	65.87	21.31	1.77	2.98	.66	.66	.79	.40	.05	5.51
1950	893,320,458	76.32	13.54	2.16	3.11	.79	.65	.55	.18	.09	2.61
1955	1,321,400,711	68.85	19.19	2.09	3.08	.75	.48	.39	.10	.05	5.02
1956	1,182,487,085	66.31	21.01	2.32	3.25	.72	.47	.49	.11	.05	5.27
1957	1,293,021,856	70.70	18.14	2.33	2.73	.98	.40	.39	.13	.06	4.14
1958	1,400,578,512	71.31	19.14	2.13	2.99	.73	.45	.35	.11	.05	2.74
1959	1,699,696,619	65 59	24.50	2.00	2.81	.90	.37	.31	.07	.04	3.41
1960	1,441,047,564	68 48	22.27	2.20	3.11	.89	.39	.34	.06	.05	2.21
1961	2,142,523,490	64 99	25.58	2.22	3.42	.79	.31	.31	.05	.04	2.29
1962	1,711,945,297	71.32	20.12	2 34	2.95	.87	.31	.36	.05	.05	1.63
1963	1,880,798,423	72.94	18 84	2 33	2.83	.84	.29	.47	.04	.04	1.38
1964	2,126,373,821	72.54	19.35	2.43	2.64	.93	.29	.54	.05	.04	1.19
1965	2,671,011,839	69 91	22.53	2.63	2 34	.82	.27	.53	.04	.05	.88
1966	3,312,383,465	69.37	22.85	2.57	2.68	.86	.40	.46	.04	.05	.72
Six months to June 30, 1967	2,198,964,580	65.84	26.99	2.32	2.55	.85	.39	.34	.02	.03	.67
	Dollar volume (in thousands)										
1935	$15,396,139	86.64	7.83	1.32	1.39	.68	1.34	.40	.20	.04	.16
1940	8,419,772	85.17	7.68	2.07	1.52	.92	1.91	.36	.19	.09	.09
1945	16,284,552	82.75	10.81	2.00	1.78	.82	1.16	.35	.14	.06	.13
1950	21,808,284	85.91	6.85	2.35	2.19	.92	1.12	.39	.11	.11	.05
1955	38,039,107	86.31	6.98	2.44	1.90	.90	.78	.39	.13	.09	.08
1956	35,143,115	84.95	7.77	2.75	2.08	.96	.80	.42	.12	.08	.07
1957	32,214,846	85.51	7.33	2.69	2.02	1.00	.76	.42	.12	.08	.07
1958	38,419,560	85.42	7.45	2.71	2.11	1.01	.71	.37	.09	.08	.05
1959	52,001,255	83,66	9.53	2.67	1.94	1.01	.66	.33	.08	.07	.05
1960	45,306,603	83.81	9.35	2.73	1.95	1.04	.60	.34	.06	.08	.04
1961	64,071,623	82.44	10.71	2.75	2.00	1.04	.50	.37	.06	.07	.06
1962	54,855,894	86.32	6.81	2.76	2.00	1.05	.46	.42	.06	.07	.05
1963	64,438,073	85.19	7.52	2.73	2.39	1.07	.42	.52	.05	.06	.05
1964	72,461,750	83.49	8.46	3.16	2.48	1.15	.43	.66	.06	.06	.05
1965	89,549,093	81.78	9.91	3.45	2.43	1.13	.43	.70	.05	.08	.04
1966	123,666,443	79.78	11.84	3.14	2.85	1.10	.57	.57	.04	.08	.03
Six months to June 30, 1967	77,680,635	78.48	13.24	3.04	2.93	1.15	.61	.45	.03	.04	.03

Note.—Annual sales, including stocks, warrants and rights, as reported by all U.S. exchanges to the Commission. Figures for merged exchanges are included in those of the exchanges into which they were merged. Details for all years prior to 1955 appear in Table 7 in the Appendix of the 32nd Annual Report.

Symbols.—NYS, New York Stock Exchange; AMS, American Stock Exchange; MSE, Midwest Stock Exchange; PCS, Pacific Coast Stock Exchange; PBS, Philadelphia-Baltimore-Washington Stock Exchange; BSE, Boston Stock Exchange; DSE, Detroit Stock Exchange; PIT, Pittsburgh Stock Exchange; CIN, Cincinnati Stock Exchange.

TABLE 8.—*Block distributions of stocks reported by exchanges*

[Value in thousands of dollars]

Year	Special offerings			Exchange distributions			Secondary distributions		
	Number	Shares sold	Value	Number	Shares sold	Value	Number	Shares sold	Value
1942	79	812,390	$22,694	-------	-------	-------	116	2,397,454	$82,840
1943	80	1,097,338	31,054	-------	-------	-------	81	4,270,580	127,462
1944	87	1,053,667	32,454	-------	-------	-------	94	4,097,298	135,760
1945	79	947,231	29,878	-------	-------	-------	115	9,457,358	191,961
1946	23	308,134	11,002	-------	-------	-------	100	6,481,291	232,398
1947	24	314,270	9,133	-------	-------	-------	73	3,961,572	124,671
1948	21	238,879	5,466	-------	-------	-------	95	7,302,420	175,991
1949	32	500,211	10,956	-------	-------	-------	86	3,737,249	104,062
1950	20	150,308	4,940	-------	-------	-------	77	4,280,681	83,743
1951	27	323,013	10,751	-------	-------	-------	88	5,193,766	146,459
1952	22	357,897	9,931	-------	-------	-------	76	4,223,258	149,117
1953	17	380,680	10,486	-------	-------	-------	68	6,906,017	108,229
1954	14	189,772	6,670	57	705,781	$24,664	84	5,738,359	218,490
1955	9	161,850	7,223	19	258,348	10,211	116	6,756,767	344,871
1956	8	131,755	4,557	17	156,481	4,645	146	11,696,174	520,966
1957	5	63,408	1,845	33	390,832	15,865	99	9,324,599	339,062
1958	5	88,152	3,286	38	619,876	29,454	122	9,508,505	361,886
1959	3	33,500	3,730	28	545,038	26,491	148	17,330,941	822,336
1960	3	63,663	5,439	20	441,664	11,108	92	11,439,065	424,688
1961	2	35,000	1,504	33	1,127,266	58,072	130	19,910,013	926,514
1962	2	48,200	588	41	2,345,076	65,459	59	12,143,656	658,780
1963	0	0	0	72	2,892,233	107,498	100	18,937,935	814,984
1964	0	0	0	68	2,553,237	97,711	110	19,462,343	909,821
1965	0	0	0	57	2,334,277	86,479	142	31,153,319	1,603,107
1966	0	0	0	52	3,042,599	118,349	126	29,045,038	1,523,373

Note.—The first special offering plan was made effective Feb. 14, 1942; the plan of exchange distribution was made effective Aug. 21, 1953; secondary distributions are not made pursuant to any plan but generally exchanges require members to obtain approval of the exchange to participate in a secondary distribution and a report on such distribution is filed with this Commission.

TABLE 9.—*Unlisted Stocks on Exchanges*

PART 1.—NUMBER OF STOCKS ON THE EXCHANGES AS OF JUNE 30, 1967 [1]

Exchanges	Unlisted only [2]	Listed and registered on another exchange	
		Admitted prior to Mar. 1, 1934 [3]	Admitted since Mar. 1, 1934 [4]
American	86	14	4
Boston	0	116	331
Chicago Board of Trade	0	3	0
Cincinnati	0	0	156
Detroit	0	13	185
Honolulu	13	0	0
Midwest	0	0	140
Pacific Coast	0	50	165
Philadelphia-Baltimore-Washington	0	187	371
Pittsburgh	0	14	70
Salt Lake	2	0	1
Spokane	2	2	2
Total [5]	103	399	1,425

PART 2.—UNLISTED SHARE VOLUME ON THE EXCHANGES—CALENDAR YEAR 1966

Exchanges	Unlisted only [2]	Listed and registered on *another exchange*	
		Admitted prior to Mar. 1, 1934 [3]	Admitted since Mar. 1, 1934 [4]
American	23,033,328	10,539,685	3,843,230
Boston	0	3,686,131	7,697,715
Chicago Board of Trade	0	0	0
Cincinnati	0	0	1,483,617
Detroit	0	676,745	10,380,257
Honolulu	71,765	0	0
Midwest	0	0	24,564,177
Pacific Coast	0	7,046,405	20,769,832
Philadelphia-Baltimore-Washington	0	8,343,998	13,842,366
Pittsburgh	0	258,512	445,202
Salt Lake	900	0	0
Spokane	879,033	26,115	10,085
Total [5]	23,985,026	30,577,591	83,036,481

[1] Refer to text under heading "Unlisted Trading Privileges On Exchanges," in Part V of this Report. Volumes are as reported by the stock exchanges or other reporting agencies and are exclusive of those in short-term rights.

[2] Includes issues admitted under clause 1 of Section 12(f) as in effect prior to the 1964 amendments to the Exchange Act and two stocks on the American Stock Exchange admitted under former Section 12(f), clause 3.

[3] These issues were admitted under former Section 12(f), clause 1.

[4] These figures include issues admitted under former Section 12(f), clauses 2 and 3 (except the two stocks on the American Stock Exchange referred to in n. 2), and under new Section 12(f)(1)(B).

[5] Duplication of issues among exchanges brings the figures to more than the actual number of issues involved.

TABLE 10.—*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 1967 fiscal year	Total caes closed up to end of 1967 fiscal year	Cases pending at end of 1967 fiscal year	Cases pending at end of 1966 fiscal year	Cases instituted during 1967 fiscal year	Total cases pending during 1967 fiscal year	Cases closed during 1967 fiscal year
Actions to enjoin violations of the above Acts	1,555	1,480	75	69	68	137	62
Actions to enforce subpoenas under the Securities Act and the Securities Exchange Act	122	111	11	11	3	14	3
Actions to carry out voluntary plans to comply with Section 11(b) of the Holding Company Act	150	149	1	0	2	2	1
Miscellaneous actions	57	57	0	0	0	0	0
Total	1,884	1,797	87	80	73	153	66

TABLE 11.—*A 34-year summary of all injunction cases instituted by the Commission 1934 to June 30, 1967, 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	163
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	34
1947	20	40	20	47
1948	19	44	15	26
1949	25	59	24	55
1950	27	73	26	71
1951	22	67	17	43
1952	27	103	18	50
1953	20	41	23	68
1954	22	59	22	62
1955	23	54	19	43
1956	53	122	42	89
1957	58	192	32	93
1958	71	408	51	158
1959	58	206	71	179
1960	99	270	84	222
1961	84	368	85	272
1962	99	403	82	229
1963	91	358	98	363
1964	76	276	88	352
1965	72	302	68	271
1966	56	236	50	181
1967 (to June 30)	45	177	33	117
Total	1,555	5,351	[2] 1,414	4,129

SUMMARY

	Cases	Defendants
Actions instituted	1,555	5,351
Injunctions obtained	1,388	4,135
Actions pending	38	[3] 235
Other dispositions [4]	129	981
Total	1,555	5,351

[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 26 cases which were counted twice in this column because injunctions against different defendants in the same cases were granted in different years.

[3] Includes 14 defendants in 8 cases in which injunctions have been obtained as to 23 co-defendants.

[4] Includes (a) actions dismissed (as to 864 defendants); (b) actions discontinued, abated, abandoned, stipulated or settled (as to 71 defendants); (c) actions in which judgment was denied (as to 42 defendants); (d) actions in which prosecution was stayed on stipulation to discontinue misconduct charged (as to 4 defendants).

TABLE 12.—*Summary of cases instituted against the Commission, petitions for review of Commission orders, cases in which the Commission participated as intervenor or amicus curiae, and reorganization cases on appeal under Ch. X in which the Commission participated.*

Types of cases	Total cases instituted up to end of 1967 fiscal year	Total cases closed up to end of 1967 fiscal year	Cases pending at end of 1967 fiscal year	Cases pending at end of 1966 fiscal year	Cases instituted during 1967 fiscal year	Total cases pending during 1967 fiscal year	Cases closed during 1967 fiscal year
Actions to enjoin enforcement of Securities Act, Securities Exchange Act and Public Utility Holding Company Act with the exception of subpoenas issued by the Commission	76	74	2	5	2	7	5
Actions to enjoin enforcement of or compliance with subpoenas issued by the Commission	15	14	1	0	3	3	2
Petitions for review of Commission's orders by courts of appeals under the various Acts administered by the Commission	301	291	10	10	11	21	11
Miscellaneous actions against the Commission or officers of the Commission and cases in which the Commission participated as intervenor or amicus curiae	306	287	19	22	15	37	18
Appellate proceedings under Chapter X in which the Commission participated	214	210	4	6	4	10	6
Total	912	876	36	43	35	78	42

TABLE 13.—*A 34-year summary of criminal cases developed by the Commission—1934 through 1967 by fiscal year* [1]

(See Table 14 for classification of defendants as broker-dealers, etc.)

Fiscal year	Number of cases referred to Dept. of Justice in each year	Number of persons as to whom prosecution was recommended in each year	Number of such cases in which indictments have been obtained	Number of defendants indicted in such cases [2]	Number of these defendants convicted	Number of these defendants acquitted	Number of these defendants as to whom proceedings have been dismissed on motion of United States Attys.	Number of these defendants as to whom cases are pending [3]
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	34	0
1938	40	113	33	134	75	13	46	0
1939	52	245	47	292	199	33	60	0
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	63	0
1943	31	91	28	108	62	10	36	0
1944	27	69	24	79	48	6	25	0
1945	19	47	18	61	36	10	15	0
1946	16	44	14	40	13	8	19	0
1947	20	50	13	34	9	5	20	0
1948	16	32	15	29	20	3	6	0
1949	27	44	25	57	19	13	25	0
1950	18	28	15	27	21	1	5	0
1951	29	42	24	48	37	5	6	0
1952	14	26	13	24	17	4	3	0
1953	18	32	15	33	20	7	6	0
1954	19	44	19	52	29	10	13	0
1955	8	12	8	13	7	0	6	0
1956	17	43	16	44	28	5	11	0
1957	26	132	18	80	35	5	15	25
1958	15	51	14	37	17	5	11	4
1959	45	217	39	234	117	20	34	63
1960	53	281	44	207	113	11	48	35
1961	42	240	42	276	132	22	27	95
1962	60	191	51	152	85	14	50	3
1963	48	168	39	117	72	7	29	9
1964	48	164	37	173	93	10	16	54
1965	49	167	44	155	64	5	19	67
1966	44	118	37	173	66	4	10	93
1967	[4] 44	212	18	111	8	0	0	103
Total	1,129	4,091	[5] 935	4,022	2,083	395	[6] 993	551

[1] The figures given for each year reflect actions taken and the status of cases as of the end of the most recent fiscal year with respect to cases referred to the Department of Justice during the year specified. For example, convictions obtained in fiscal 1967 with respect to cases referred during fiscal 1966 are included under fiscal 1966. While the table shows only 8 convictions under 1967, the total number of convictions for cases referred during that year and prior years was 127, as noted in the text of this report. There were 53 indictments returned in 45 cases during fiscal year 1967.

[2] 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. Also more than one indictment may result from a single reference.

[3] See Table 15 for breakdown of pending cases.

[4] Eighteen of these references involving 51 proposed defendants, and 11 prior references involving 43 proposed defendants, were still being processed by the Department of Justice as of the close of the fiscal year.

[5] Eight hundred and seventeen of these cases have been completed as to 1 or more defendants. Convictions have been obtained in 659 or 81 percent of such cases. Only 158 or 19 percent of such cases have resulted in acquittals or dismissals as to all defendants; this includes numerous cases in which indictments were dismissed without trial because of the death of defendants or for other administrative reasons. See note 6, *infra*. In the 32nd Annual Report, n. 5 should have read: "Eight hundred of these cases have been completed as to 1 or more defendants. Convictions have been obtained in 644 or 80.5 percent of such cases. Only 156 or 19.5 percent of such cases have resulted in acquittals or dismissals as to all defendants; this includes numerous cases in which indictments were dismissed without trial because of the death of defendants or for other administrative reasons. See n. 6, *infra*."

[6] Includes 82 defendants who died after indictment.

TABLE 14.—*A 34-year summary classifying all defendants in criminal cases developed by the Commission—1934 to June 30, 1967*

	Number indicted	Number convicted	Number acquitted	Number as to whom cases were dismissed on motion of United States Attorneys	Number as to whom cases are pending
Registered broker-dealers [1] (including principals of such firms)	638	370	44	147	77
Employees of such registered broker-dealers	367	163	21	70	113
Persons in general securities business but not as registered broker-dealers (includes principals and employees)	861	429	68	304	60
All others [2]	2,156	1,121	262	472	301
Total	4,022	2,083	395	993	551

[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 15.—*Summary of criminal cases developed by the Commission which were pending at June 30, 1967*

Pending, referred to Department of Justice in the 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	Awaiting trial	Awaiting appeal [1]
1957	1	25	0	0	25	0
1958	1	4	0	0	4	0
1959	7	63	0	16	47	1
1960	5	35	0	7	28	0
1961	13	95	0	32	63	6
1962	2	3	0	0	3	1
1963	2	11	2	0	9	3
1964	7	60	6	1	53	7
1965	23	75	8	1	66	7
1966	23	118	25	0	93	9
1967	14	104	1	1	102	0
Total	98	593	42	58	493	[1] 34

SUMMARY

Total cases pending [2]	127
Total defendants [2]	687
Total defendants as to whom cases are pending [2]	645

[1] The figures in this column represent defendants who have been convicted and whose appeals are pending. These defendants are also included in the figures in column 3.
[2] As of the close of the fiscal year, indictments had not yet been returned as to 94 proposed defendants in 29 cases referred to the Department of Justice. These are reflected only in the recapitulation of totals at the bottom of the table. The figure for total cases pending includes 34 cases in a Suspense Category.

U S GOVERNMENT PRINTING OFFICE: 1968