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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON D.C. 20549

THE CHAIRMAN

May 7, 1990

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

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

Gentlemen:

On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the fifty-fifth Annual Report of the Securities and Exchange Commission covering the fiscal year October 1, 1988 to September 30, 1989. The annual report has been prepared 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.

Sincerely,

Richard C. Breeden
Chairman

Enforcement Program

Introduction

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

Key 1989 Results

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

Total Enforcement Actions Initiated

	FY'85	FY'86	FY'87	FY'88	FY'89
Total	269	312	303	252	310
Civil Injunctive Actions	143	162	144	125	140
Administrative Proceedings	122	136	146	109	155
Civil and Criminal Contempt Proceedings	3	14	13	17	15
Reports of Investigation	1	0	0	1	0

In fiscal year 1989, the Commission obtained court orders requiring defendants to return illicit profits amounting to approximately $421 million, either as disgorgement or as restitution to defrauded investors or entities. Disgorgement orders in insider trading cases amounted to approximately $32 million. Civil penalties under the Insider Trading Sanctions Act of 1984 (ITSA) amounted to approximately $29 million.

The Commission granted access to its files to federal and state prosecutorial authorities in 226 cases. An estimated 76 criminal indictments or informations and 72 convictions were obtained by criminal authorities during fiscal year 1989 in Commission-related cases.

In response to the increasing globalization of the securities markets, the Commission has thus far entered into a total of eight bilateral information-sharing agreements with various foreign authorities, including recent agreements entered into with France, Italy, and the Netherlands. In fiscal year 1989, the staff made 101 formal requests to foreign authorities for assistance and received 150 requests from foreign authorities.

Enforcement actions initiated by the Commission generally are preceded by an examination pursuant to the Commission's inspection powers or an

investigation. The Commission is authorized to conduct investigations and examinations of broker-dealers, municipal securities dealers, investment advisers, investment companies, transfer agents, and self-regulatory organizations. Informal investigations are conducted on a voluntary basis, with the Commission requesting persons with relevant information to cooperate by providing documents and testifying before Commission staff. The federal securities laws also empower the Commission to conduct formal investigations, providing the Commission with the authority to issue formal subpoenas compelling the production of books and records and the appearance of witnesses to testify. Both types of investigations are generally conducted on a confidential, nonpublic basis.

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

Several types of administrative proceedings may be instituted by the Commission. For example, Section 8(d) of the Securities Act of 1933 (Securities Act) enables the Commission to institute proceedings to suspend the effectiveness of a registration statement that contains false and misleading statements. Administrative proceedings pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (Exchange Act) may be instituted against any person who fails to comply and any person who is a cause of failure to comply with the reporting, beneficial ownership, proxy, and tender offer provisions. Respondents may be ordered to comply or effect compliance with the relevant provisions. The Commission may also institute administrative proceedings against regulated entities and associated persons. Sanctions include censures, limitations on activities, and the suspension or revocation of the registration of such entities. Additionally, the Commission may impose similar sanctions on persons associated with such entities and persons affiliated with investment companies. Administrative proceedings may be instituted against persons who appear and practice before the agency, such as accountants and attorneys. Sanctions, including suspensions and bars, may be imposed in these proceedings.

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

International Affairs

The increasing internationalization of the world's securities markets has raised new issues that affect the enforcement of the federal securities laws. The Commission has developed mutual information-sharing agreements on a bilateral basis with various foreign authorities. These agreements allow the Commission to obtain evidence located abroad while avoiding the conflicts that may result from differences in legal systems. In addition, the staff coordinates closely with the regulators with whom the Commission has information-sharing agreements in order to develop ways to implement and improve the agreements.

The Commission also cooperates on an informal basis with foreign regulators with whom it does not have explicit agreements by assisting them in obtaining publicly available information on a voluntary basis, and, where appropriate, granting them access to certain nonpublic investigative files. Close consultation is maintained with the Departments of State and Justice concerning the negotiation of Commission agreements and U.S. criminal mutual legal assistance treaties to ensure that such treaties cover securities offenses.

The Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA), which became effective November 19, 1988, amended the Exchange Act to provide, among other things, that the Commission may use the full range of its powers to assist foreign securities authorities. This provision enabled the Commission to enter into recent information-sharing agreements with France and the Netherlands. Other countries are following the U.S. lead in this area by developing similar legislation that will allow the development of additional agreements.

The staff has provided training and education in connection with programs sponsored by the U.S. Department of Justice Securities and Commodities Fraud Working Group, the North American Securities Administrators Association, the American Law Institute/American Bar Association, the International Bar Association, and other professional groups. In October 1988, the Commission sponsored a conference on international market manipulation that was attended by representatives from eleven countries.

The Commission has participated in the following international organizations.

The International Organization of Securities Commissions (IOSCO). The Commission currently chairs the Executive Committee and has been an active participant in several of IOSCO's substantive technical committee meetings and working groups.

The Organization for Economic Cooperation and Development (OECD). The Commission staff has participated in discussions at the OECD regarding the establishment of international standards governing foreign corrupt practices.

The Group of Negotiations on Services (GNS) to the General Agreements on Tariff and Trade (GATT). The GATT involves representatives from 150 countries, including the United States. The Commission is an active participant in

the effort to establish a multilateral framework of principles and rules for trade in services.

The Wilton Park Group. This organization is sponsored by the United Kingdom Department of Trade and Industry. The staff participated in extensive discussions to facilitate methods for enhancing the exchange of information among securities regulators.

Program Areas

During 1989, the Commission maintained an aggressive enforcement presence in each area within its jurisdiction. The Commission established new programs and maintained existing programs to address particular problem areas; these include the creation of the SEC Penny Stock Task Force in October 1988 and the formation, as announced in December 1989, of a new enforcement unit devoted primarily to detecting, investigating, and prosecuting securities fraud in the banking and thrift industries. Principal areas in which enforcement actions were instituted in fiscal year 1989 include insider trading and other violations related to contests for corporate control, securities offering violations, financial fraud, and violations by regulated entities. (See Table 19 for a listing of enforcement actions instituted in fiscal year 1989.) Unless otherwise noted, enforcement actions discussed below were settled upon consent of defendants or respondents without admitting or denying the factual allegations contained in the complaint or order for proceedings.

Penny Stock Cases

The Commission recently has focused increased attention on the problem of fraud in the offer and sale of "penny stocks" (penny stocks are low priced securities, usually offered below $5 per share when initially placed on the market, and generally traded in the over-the-counter market). Penny stock cases may involve various types of violative activities, such as market manipulation and offering violations. Penny stocks have become the subject of numerous manipulative schemes typically involving either newly formed "blank check" companies (companies that conduct registered offerings disclosing that the proposed use of proceeds is to seek generally unspecified business opportunities) or existing companies with no assets or operations, and small trading markets. These shell companies are then merged with private companies purported by the promoters to have great growth potential, and promoted and marketed to the investing public through the use of extreme high pressure tactics. The securities may be manipulated to reach highly inflated prices, at which point the promoters may dump shares they own into the public market and move on.

These schemes have spread nationwide, and the Commission has initiated active programs to deal with them. In October 1988, the Commission established an in-house Penny Stock Task Force to: (1) increase coordination and information-sharing with other federal, state and local regulators and prosecutors; (2) step up enforcement activities, including criminal referrals when appropriate; (3) target regulatory solutions; and (4) educate investors to recognize and avoid penny stock fraud.

In fiscal year 1989, the Commission instituted an administrative proceeding (*In the Matter of the Stuart-James Co., Inc., et al.*[1]) against a broker-dealer specializing in underwriting and trading speculative low priced over-the-counter securities, and against various associated persons of that broker-dealer. The allegations include excessive undisclosed markups on the first day of trading in two new issues underwritten by the broker-dealer, use by the retail sales force of false and misleading scripts predicting price increases in speculative low priced securities, undisclosed policies permitting execution of customer sell orders only if an offsetting buy from another customer could be arranged, and tie-in sales agreements in some offices that conditioned customer receipt of new stock issues on the customer's agreement to either purchase more new issues in the aftermarket or to sell all or some of their new issue on the first day of aftermarket trading. At the close of the fiscal year, the proceeding was pending.

The Commission also filed an action, *SEC v. Arnold Kimmes, et al.*,[2] alleging that Arnold Kimmes, Thomas Quinn, and Michael Wright, among others, were engaged in an international scheme to defraud the public in the registration, trading, and sale of two penny stocks, GSS Venture Capital Corporation ("GSS") and Max, Inc. ("Max"). Both GSS and Max, it is alleged, were sham corporations from their inception. The GSS scheme allegedly included figurehead officers and directors, placement of stock in nominee accounts, and stock price manipulations. The Commission's complaint alleged that over 2,000 U.S. and foreign investors from at least 45 countries lost in excess of $10 million through their investments in GSS securities. The Commission also alleged that Max had its price artificially inflated through a series of alleged manipulations—its price rose from $.15 per unit (which consisted of one share of common stock and eight warrants) to over $4 per share alone, and in Europe to as much as $6.50 per share. Kimmes, Wright, and Quinn consented to the entry of preliminary injunctions against them; permanent injunctions were entered against three other defendants. At year-end, the case remained pending against certain defendants. In related criminal proceedings, Arnold Kimmes and Michael Kimmes (also a defendant in the Commission's action) pled guilty to criminal charges based on the manipulation of penny stocks.

Other penny stock fraud cases include *SEC v. Arthur Tuchinsky, et al.*,[3] in which it is alleged that the defendants disseminated information about mergers and acquisitions involving the issuer that had not in fact occurred. At year-end this case was pending. In a case involving the manipulation of trading in the securities of three blind pool issuers, defendants were enjoined and ordered to disgorge $100,000. The registration of the broker-dealer involved was revoked and its president was barred (*SEC v. Brownstone-Smith Securities Corp., et al.*[4] and *In the Matter of Brownstone-Smith Securities Corp., et al.*[5]). In *SEC v. Habersheir Securities, Inc.*,[6] involving net capital violations by a penny stock broker, the broker-dealer consented to entry of a permanent injunction following issuance of a Temporary Restraining Order against it.

Insider Trading

Insider trading refers generally to the purchase or sale of securities in breach of a fiduciary duty or a relationship of trust or confidence, while in possession of material nonpublic information about an issuer or the trading market for an issuer's securities. The federal securities laws prohibit such trading not only by corporate officers and directors and other persons having a relationship of trust or confidence with the issuer or its shareholders, but also by persons who misappropriate material nonpublic information from the issuer or sources other than the issuer. Tippees of such persons may also be subject to the prohibition. Insider trading in the context of tender offers is also specifically prohibited.

With respect to insider trading cases, the Commission generally seeks permanent injunctions and other equitable relief, including disgorgement of profits gained or losses avoided, and civil penalties under the Insider Trading Sanctions Act of 1984 (ITSA), which authorizes the courts to impose penalties up to three times the profits gained or losses avoided through insider trading. The Commission generally institutes administrative proceedings and seeks suspensions or bars from further association with the securities industry against broker-dealers or investment advisers or persons associated with entities engaged in insider trading violations.

The ITSFEA, effective in November 1988, supplemented the Commission's ability to respond to insider trading violations. The ITSFEA, among other things, (1) expands the scope of civil penalties to include liability of "controlling persons" who fail to take appropriate measures to prevent insider trading by their employees; (2) gives the Commission discretionary authority to award bounty payments to persons who provide information leading to the recovery of civil penalties in insider trading cases; (3) requires brokers, dealers, and investment advisers to establish, maintain, and enforce written policies designed to prevent misuse of material nonpublic information; (4) increases the maximum jail term and fine for those convicted of criminal securities law violations; and (5) codifies a private right of action for contemporaneous traders.

Considerable staff resources are used in insider trading investigations and subsequent litigation. This past fiscal year, the Commission brought 39 enforcement actions based primarily on insider trading violations and four other actions that included insider trading allegations. Cases involving insider trading are only one component of the Commission's comprehensive enforcement program. The magnitude and gravity of the cases recently brought by the Commission and the criminal prosecutions initiated by the U.S. Attorney's Office for the Southern District of New York, however, reflect the continuing importance of this issue.

The Commission brought a number of cases involving insider trading in connection with mergers, acquisitions, leveraged buyouts and other extraordinary corporate developments. For example, in *SEC v. Glenn Golenberg, et al.*,[7] the Commission alleged, among other things, that the principal of an investment banking firm that was the investment adviser to the management

of Revco D.S., Inc., during leveraged buyout negotiations, disclosed material nonpublic information regarding the buyout to three of the other defendants who traded in Revco common stock and options. After the public announcement, this individual continued to disclose material nonpublic information regarding the status, timing, and price of the transaction to other defendants who continued to trade Revco stock and options. The defendants were enjoined and ordered to disgorge a total of $794,780.44 and to pay a total of $1,125,946.62 in ITSA penalties. The investment banker was barred (*In the Matter of Glenn Golenberg*[8]).

The Commission also brought an action, *SEC v. William S. Banowsky*,[9] against a member of the board of directors of a corporation involved in a potential merger. In this action, the Commission alleged that the defendant had tipped information concerning the merger to his secretary and two relatives. As a result of this tipping, 18 persons traded stocks and call options for an aggregate profit of $442,837.54. The defendant consented to the entry of an order enjoining and ordering him to disgorge an amount equal to the profits of those who traded and to pay a civil penalty of $311,613.71.

Other cases involving insider trading while in possession of material nonpublic information regarding extraordinary corporate developments include *SEC v. David Hellberg, et al.*,[10] in which the Commission's complaint alleges that a person traded on information obtained from his son concerning a proposed tender offer by the son's employer. The father allegedly realized a profit of approximately $328,844 on an investment of $15,049.81. An injunction was entered against the son, and at year-end the action was pending against the father. In *SEC v. Kerry A. Hurton, et al.*,[11] the Commission's complaint alleges that a paralegal provided information obtained during the course of her employment with a law firm concerning a proposed merger and leveraged buyout contemplated by a client of the law firm to others who traded on the information. This case was pending at the end of the year.

The Commission instituted actions against an editor of *BusinessWeek* magazine, a salesman for a company that printed the magazine, and others who allegedly traded while in possession of pre-publication information about the content of articles that were to appear in the magazine. In *SEC v. Seymour G. Ruderman*,[12] the Commission's complaint alleged that the defendant, the magazine's editor of broadcast operations, purchased the securities of over 50 companies that he knew were to be the subject of favorable articles. Ruderman consented to entry of an injunction and agreed to disgorge $20,734.89 representing his profits, and to pay an equal amount as a civil penalty.

In *SEC v. Shayne A. Walters*,[13] the Commission's complaint alleged that the salesman obtained copies of *BusinessWeek* from his employer's plant before the magazine was available to the public generally. While in possession of material nonpublic information, Walters allegedly purchased securities of at least thirteen companies that were favorably discussed in the magazine, and communicated this information to his broker. Beginning in May 1987, Walters' broker allegedly gave Walters large cash payments in exchange for nonpublic editions of *BusinessWeek*, purchased securities of more than 40 companies, and communicated information to others who purchased securities of over 60

companies. Walters admitted to the Commission's allegations and consented to the entry of an injunction and an order requiring him to disgorge $31,033.11, representing his profits, and to pay an equal amount as a civil penalty. In *SEC v. William J. Dillon, et al.*,[14] the Commission's complaint charges five defendants, including a former registered representative and a lawyer, with insider trading while in possession of information to be published in the magazine. At the end of the fiscal year, this action was pending (*SEC v. Stephen Sui-Kuan Wang, et al.*[15]).

On August 2, 1989, a settlement was reached with Fred Lee, who the Commission had previously alleged to have made more than $19 million through trading in more than 20 securities based on material nonpublic information, using overseas accounts in more that 30 different names. Lee was enjoined and paid $25,150,000 to the court appointed receiver in the action.

In the first insider trading case tried to a jury, the Commission was successful in obtaining an order requiring the defendant to pay a civil penalty. Previously, civil penalties recovered by the Commission had been paid pursuant to settlements of Commission injunctive actions. In *SEC v. John Naylor Clark III*,[16] a federal jury found the defendant, Clark, liable for insider trading, and the court thereafter ordered him to pay a civil penalty of $75,000. At trial, the jury found that Clark had misappropriated material nonpublic information from his employer regarding the employer's plan to acquire another corporation and had violated Section 10(b) of the Exchange Act and Rule 10b-5 by purchasing stock of the target corporation while in possession of this information. The defendant sold the stock after the public announcement of the acquisition. In addition to the requirement that he pay a civil penalty, Clark was also enjoined and ordered to disgorge $57,025.82, representing profits realized by him, his wife and his broker, and to pay prejudgment interest.

Financial Disclosure

Actions involving false and misleading disclosures concerning the financial condition of companies and the issuance of false financial statements are often complex and require more resources than other types of cases, but their effective prosecution is essential to preserving the integrity of the disclosure system. In fiscal year 1989, the Commission brought 30 cases containing significant allegations of financial disclosure violations against issuers, regulated entities or their employees (including four actions in which financial disclosure violations were alleged in addition to other primary violations). Many of these cases included alleged violations of the accounting provisions of the Foreign Corrupt Practices Act. The Commission also brought 12 cases alleging misconduct by accounting firms or their partners or employees.

The Commission filed an action against the founder and chairman of Crazy Eddie, Inc. and six other officers, directors, and employees of Crazy Eddie. The Commission's complaint alleges that the employees, at the chairman's direction, falsified financial records to overstate the company's pretax income by $2 million in 1986 and to show pretax earnings of $20.6 million instead of a net loss in 1987. Four defendants also allegedly sold over $60 million of Crazy Eddie stock while aware that the price of the stock did not reflect the

actual value of the company. Three defendants (not charged with insider trading) consented to the entry of injunctions against them. At the close of the year the case was pending against the remaining defendants (*SEC v. Eddie Antar, et al.*[17]).

A number of cases involved the improper recognition of revenue or income. In *SEC v. Donald D. Sheelen, et al.*,[18] the Commission's complaint alleged that the former chairman, chief executive officer and president of Regina Company, Inc., and the former chief financial officer of Regina, with the assistance of other corporate employees, devised and implemented a scheme to inflate the revenue and profits of Regina to meet predetermined sales and profit targets and permit Regina to report steadily increasing sales and earnings. Among other things, the alleged scheme involved a failure to record at least $13 million of product returns, the recording of more than $5 million of fictitious revenue from false invoices, and inflation of profits by falsely lowering the costs of goods sold on Regina's books. The two defendants consented to the entry of injunctions against them.

Injunctive and administrative proceedings were also instituted against employees of Matrix Science Corporation who were allegedly engaged in improper accounting practices, including holding quarterly financial records open beyond the last calendar day of the quarter to record additional sales revenue, preprinting invoices for orders that had not been shipped to permit the improper recording of such orders as sales, and delaying the issuance of credit memoranda for orders that had been returned. The company and seven officers and employees consented to the entry of the Commission's order to comply in the future with applicable provisions of the Exchange Act. In addition, the Commission filed and settled a civil action resulting in injunctions against three former officers of the company (*In the Matter of Matrix Science Corp. et al.*[19] and *SEC v. Ronald A. Hammond, et al.*[20]).

In *SEC v. Frederick S. Plotkin, et al.*,[21] the Commission alleged, among other things, that Intex Software Systems International Ltd. failed to disclose the unauthorized use of over $1 million in corporate funds and certain compensation paid to underwriters in connection with an initial public offering, inflated revenue and accounts receivable in its financial statements, and failed to disclose uncertainties surrounding the validity of contracts and orders for Intex products. In *SEC v. Information Solutions, et al.*,[22] the Commission alleged that the issuer overstated its revenue for fiscal years 1985 and 1986 by prematurely recording a total of 20 transactions as sales even though the sales had not been completed. In *SEC v. David N. Hanania, et al.*,[23] the Commission alleged that the defendants failed to disclose properly or account for a material contingent liability. In *SEC v. Wilderness Electronics, Inc., et al.*,[24] the Commission alleged that the issuer failed to disclose the cancellation of a major government contract for radarscopes and demands for reimbursement that had been made under other contracts. Injunctions were entered against all defendants named in these actions.

The Commission alleged that certain corporate officers engaged in conduct that materially overstated a reporting company's 1985 net income and inventories by inflating quantity and cost figures on inventory count sheets

and by arranging for a supplier to send a false confirmation to the auditors. The company, its officers, its supplier, and the supplier's president all consented to the entry of permanent injunctions (*SEC v. Rocky Mount Undergarment Co., Inc., et al.*[25]).

In *SEC v. Timothy L. Sasak, et al.*,[26] the Commission filed and the defendants consented to an injunctive action that alleged inadequate disclosure of related party transactions. Additionally, the company's auditor was suspended from practice before the Commission pursuant to an administrative proceeding brought pursuant to Rule 2(e) in which the Commission alleged that he failed to conduct his 1985 audit of the company in accordance with generally accepted auditing standards (*In the Matter of Richard P. Franke, CPA*[27]).

A number of accountants were suspended from practicing before the Commission in Rule 2(e) proceedings based on allegations of significant audit failures (*In the Matter of Lynne K. Mercer, CPA*;[28] *In the Matter of Jack M. Portney, CPA*;[29] and *In the Matter of Edmon A. Morrison, III*[30]). Accountants enjoined for aiding and abetting violations of the registration and antifraud provisions in connection with securities offerings by their preparation and audit of financial statements were also the subject of suspension orders (*In the Matter of John L. VanHorn*;[31] *In the Matter of Larry A. Dixon*;[32] and *In the Matter of Noemi L. Rodriguez Santos*[33]).

An accountant caught in an FBI sting operation and who pled guilty to a criminal charge in connection with certifying that he had performed an audit when he had not done so consented to a permanent suspension from practicing as an accountant before the Commission (*In the Matter of Marvin D. Haney, CPA*[34]). Additionally, a chief financial officer was suspended from practice before the Commission after consenting to administrative proceedings brought pursuant to Rule 2(e), subsequent to his consent to an injunction from future violations of the federal securities laws (*In the Matter of Sheldon M. Blazar*[35]).

Corporate Control

Sections 13 and 14 of the Exchange Act require, among other things, disclosures in connection with the acquisition of more than five percent of a class of equity securities registered with the Commission, proxy solicitations and tender offers for more than five percent of a class of equity securities registered with the Commission. These requirements are intended to ensure that investors have material information needed to make informed investment or voting decisions concerning potential changes in the control of a corporation. The Commission instituted a number of actions in fiscal year 1989 relating to required disclosures under these provisions.

The Commission filed an action against Paul A. Bilzerian and others alleging, among other things, failure to disclose the acquisition of significant beneficial interests in corporations. Settlements reached with three of the four defendants resulted in disgorgement totalling over $3 million. At the end of the year, the case against Bilzerian remained pending (*SEC v. Paul A. Bilzerian,*

et al.[36]). In a related criminal action, Mr. Bilzerian was sentenced to four years in prison and fined $1.5 million.

The Commission brought cases that involved alleged false statements concerning the investment purposes of persons who made filings under Section 13. The Commission's complaint against a registered broker-dealer and three of its partners alleged that the defendants filed false, misleading and untimely statements concerning the purpose of their investment in Graphic Scanning Corporation, in particular with respect to their plan for a proxy contest to take control of Graphic. In addition to injunctive relief, the Commission's complaint seeks disgorgement of illegal discounts allegedly received as a result of purchasing Graphic stock after the proxy contest was planned but before the plan was disclosed to the public. At the close of the fiscal year, this action was pending (*SEC v. Amster & Co.*[37]). In related administrative proceedings, *In the Matter of William R. Grant*,[38] a partner of Amster & Co. was ordered to comply with Section 13(d) of the Exchange Act. A similar compliance order was entered against Merry Land & Investment Company, Inc., in a proceeding based on allegations that it had failed accurately to disclose its intent to control or influence the management of Bankers First Corporation (*In the Matter of Merry Land & Investment Co., Inc.*[39]).

The Commission also brought actions against persons who made false and misleading statements regarding proposed transactions that they were financially or otherwise incapable of completing. These include *SEC v. Rana Research, Inc., et al.*,[40] a pending case involving a leveraged buyout of Superior Industries International, Inc., and *SEC v. Frederick J. Ball, Jr.*,[41] involving an acquisition offer for Fieldcrest Cannon, Inc. and Kellwood Company. In this case the defendant consented to the entry of an injunction.

Securities Offering Cases

Securities offering cases represent a significant portion of the Commission's enforcement activities. These cases involve the offer and sale of securities in violation of the registration provisions of the Securities Act and may also involve material misrepresentations concerning risks involved, return on investment, and the uses of proceeds of the offering. A number of securities offering cases are filed on an emergency basis. In addition to seeking injunctive relief, the Commission may also seek asset freezes, accountings, disgorgement of profits, and the appointment of receivers.

The Commission filed an action against Louisiana Real Estate Equity, Ltd. and other corporate and individual defendants alleging that the defendants, in the offer and sale of investment contracts totalling approximately $65 million and involving condominiums in several states, misrepresented or omitted material facts concerning, among other matters, the financial condition of the issuer, use of monies, costs of the condominiums, their occupancy rates, profits, and commissions. Injunctions were entered against all defendants (*SEC v. Louisiana Real Estate Equity, Ltd., et al.*[42]).

In *SEC v. Arthur Miller*,[43] the Commission instituted both injunctive and administrative proceedings against a person who, as an associated person of

an investment adviser and a registered representative of a broker-dealer, was alleged to have sold unregistered securities in the form of interests in a mortgage account. This person, who raised $4.3 million through material misrepresentations and omissions concerning the nature of the investment, the use of investor funds, the returns investors would receive, and the risks associated with the investment, was enjoined and barred from the securities industry.

The Commission's complaint in *SEC v. William A. Bartlett, et al.*[44] alleged that the defendants, between 1981 and 1985, raised more than $8 million from more than 200 investors residing in 23 states through the offer and sale of unregistered securities in the form of investment contracts in a dairy cattle leasing program. Among other things, the investors were allegedly told that their investment was safe, with a guaranteed net return of 15.3% per year, when in fact the program was not safe and had experienced substantial losses and severe operational difficulties that were not disclosed to investors. The defendants consented to injunctions.

The Commission also brought actions against securities professionals for their involvement in offering violations. For example, an action was filed against a registered investment adviser who made material misrepresentations and/or omissions in the offer and sale of securities in two funds sold to approximately 50 investors (*SEC v. Frank R. Breitweiser*[45]). The defendant allegedly failed to disclose, among other things, that he borrowed $111,000 from one of the funds to purchase property for use as a business residence, and that the interest rate on the mortgage to be paid to the fund was below market. The defendant was enjoined and ordered to disgorge $151,369.30.

Regulated Entities

A major segment of the Commission's enforcement program involves broker-dealers and investment advisers. Other regulated entities, such as investment companies, transfer agents and securities exchanges, may also be the subject of Commission proceedings. Allegations in broker-dealer cases typically include violations of the financial responsibility and the broker-dealer books and records provisions, or involve fraudulent sales practices. Recent enforcement actions filed against investment advisers include allegations of commingling or appropriation of client assets, misleading performance advertising claims, and non-disclosure of material information to clients.

In April 1989, following extensive negotiations, the Commission entered into a settlement as to defendant Drexel Burnham in *SEC v. Drexel Burnham Lambert Incorporated, et al.*,[46] an injunctive action that alleged that Drexel Burnham, Michael R. Milken, and other named defendants devised and carried out a fraudulent scheme involving insider trading, stock manipulation, fraud on Drexel's own clients, failure to make required disclosures of beneficial ownership of securities, and violations of the books and records and margin rules, as well as other violations. Included in the alleged scheme were transactions based on a secret arrangement with former stock trader Ivan F. Boesky. Drexel Burnham consented to, among other things, a permanent injunction with respect to the alleged violations, including the antifraud

provisions; payment of $350 million into a fund for the benefit of persons injured in the transactions; $300 million in civil and criminal penalties; and compliance with sweeping remedial undertakings. Drexel Burnham also consented to entry of a Commission order placing the firm on administrative probation for three years (*In the Matter of Drexel Burnham Lambert Incorporated*[47]). At the close of the fiscal year, the case against Michael R. Milken and five other defendants remained pending. The related criminal investigation conducted by the U.S. Attorney for the Southern District of New York resulted in, among other things, Drexel Burnham's agreement to plead guilty to six felony counts.

Injunctions were entered against a registered broker-dealer and investment adviser, along with its principals, in an action involving the alleged embezzlement of approximately $2 million from customers. The funds were allegedly used to pay operating costs and to finance unrelated personal investments of the principals of the firm. In addition to entry of the injunctions, the firm's broker-dealer and investment adviser registrations were revoked, and the principals were barred (*SEC v. Waddell Jenmar Securities, Inc., et al.*[48] and *In the Matter of Waddell Jenmar Securities, Inc., et al.*[49]). Bar orders were also entered in other cases involving misappropriation and dissipation of hundreds of thousands of dollars of investor funds (*In the Matter of Gary M. Wozniak* [50] and *In the Matter of William S. Hoglund*[51]).

Bars were entered against two brokers who allegedly engaged in excessive and unsuitable trading in the accounts of their customers, which included several small municipalities and local government agencies. The president and sales supervisor of one of the broker-dealers employing them were suspended (*In the Matter of William E. Parodi, Sr., et al.*[52]). The registration of a broker-dealer was revoked and three principals were barred following a conviction based on a 47-count indictment for failure to file currency transaction reports upon receipt of cash totalling approximately $2.3 million (*In the Matter of American Investors of Pittsburgh, et al.*[53]).

The Commission alleged that a registered broker-dealer specializing in municipal securities engaged in over $1.3 million in invalid closings in municipal bond underwritings as part of an effort to avoid the effects of scheduled changes in the tax laws. The broker-dealer and two of its principals were enjoined; the registration of the broker-dealer was revoked and bar orders were entered against the two principals. At the close of the fiscal year, the proceeding was pending against two remaining defendants (*SEC v. Matthews & Wright Group, Inc., et al.*[54] and *In the Matter of Matthews, Inc.*[55]).

The Commission instituted proceedings involving the trading of approximately $12.5 million in unmarked short-sale transactions during the market break of October 19, 1987. The broker-dealer was censured and ordered to comply with certain remedial undertakings (*In the Matter of Salomon Brothers, Inc.*[56]).

The Commission censured a broker-dealer based on alleged violations of, among other things, the requirements for maintaining possession and control of securities pledged as collateral for "hold in custody" repurchase transactions. The broker-dealer was ordered to comply with undertakings to maintain

additional reserves for such transactions for a two-year period (*In the Matter of Prudential-Bache Securities, Inc.*[57]).

Among the enforcement actions instituted against investment advisers in 1989 was an injunction obtained against an investment adviser alleged to have commingled and diverted approximately $3.5 million in customer funds obtained through the fraudulent sale of securities. The adviser's registration was revoked, and its principals were enjoined and barred (*SEC v. Thomas E. Bernhoft, et al.*[58] and *In the Matter of Forbes Portfolio Management, et al.*[59]). A bar order was entered against an investment adviser for failure to maintain any books and records (*In the Matter of Roberto C. Polo*[60]).

Two investment advisers alleged to have made misleading performance claims in advertisements were the subject of administrative proceedings. Each was censured, subjected to limitations on new business, and ordered to comply with certain remedial undertakings (*In the Matter of Managed Advisory Services, Inc., et al.*,[61] and *In the Matter of Harvest Financial Group, Inc., et al.*[62]).

An investment adviser and its president were enjoined based on allegations that they received "kickbacks" of brokerage commissions paid by clients in exchange for securities transaction business directed through those brokerage firms. The firm was enjoined and its registration with the Commission revoked; the president was both enjoined and barred (*SEC v. Dave Mason, et al.*[63] and *In the Matter of Dave Mason, R.I.A., Inc., et al.*[64]). In a related proceeding, the independent auditor for the investment adviser was suspended from practice before the Commission based on, among other things, his alleged lack of independence from the firm (*In the Matter of Frederick D. Woodside, CPA*[65]).

In proceedings instituted against an investment adviser to three affiliated investment companies, the Commission alleged that the adviser did not fully disclose its receipt of 50 percent of the commissions paid by the client to a broker-dealer with whom the adviser's officers were registered representatives (*In the Matter of Heine Securities Corp.*[66]). The Commission also instituted proceedings against advisers to other investment companies alleging that they had engaged in a variety of internal controls and compliance violations (*In the Matter of United Services Advisors, et al.*[67] and *In the Matter of Sea Investment Management, Inc., et al.*[68]). In each of these proceedings, the investment adviser was censured and ordered to comply with certain remedial undertakings.

Defendants were enjoined in a Commission action against John Peter Galanis and others. The Commission alleged that Galanis, who had been enjoined in two previous Commission actions and was barred from association with investment companies, had, through others, acquired control of a registered investment adviser to three investment companies. Following the acquisition, the adviser executed certain investments in worthless securities that caused losses to the funds totalling $6 million (*SEC v. John Peter Galanis, et al.*[69]).

The Commission instituted administrative proceedings against the Chicago Board Options Exchange (CBOE), a registered national securities exchange, for failure to enforce compliance with its trading rules. The proceeding alleged

that the decision of the CBOE's Business Conduct Committee not to initiate charges against various members and persons associated with members for trading certain multiple-listed over-the-counter options and the S&P 250 Index primarily for the purpose of "creating an appearance of activity" and through pre-arrangement was without reasonable justification or excuse. The CBOE was censured and ordered to comply in all material respects with the Exchange Act provision requiring that each self-regulatory organization, including an exchange, enforce compliance, absent reasonable justification or excuse, with its rules. The CBOE was also ordered to comply with its undertakings to strengthen its market surveillance activities and disciplinary process (*In the Matter of Chicago Board Options Exchange*[70]).

Sources for Further Inquiry

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

Full Disclosure System

Introduction

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

Key 1989 Results

A number of economic and legal developments affected the full disclosure system during fiscal year 1989. The decline in the number of registered public offerings filed with the Commission, beginning in the months immediately following the October 1987 market break, continued throughout 1989. A total of 3,139 registration statements were filed in fiscal year 1989 (exclusive of post-effective amendments and filings that become effective without staff action), representing a 10 percent decrease from fiscal year 1988. The number of initial public offerings (IPOs) also decreased 18 percent in fiscal year 1989, including a 25 percent decline in registration statements filed on Form S–18 (869 in 1988 versus 648 in 1989).

Form S–18 registration statements, including home office filings, were reassigned to the regional offices most closely associated with the business or proposed business of the issuer. This reassignment was done to permit better oversight of blank check and other promotional offerings in order to identify common, potentially abusive practices and to minimize the risk that certain persons involved with such offerings would avoid recognition of the extent of their activities. About 50 percent of the regional Form S–18 filings were blank check offerings, compared to 56 percent of the filings in the prior year. Total regional blank check offerings between fiscal years 1988 and 1989 declined 27 percent (384 versus 280). Regional offices also continued to receive and review substantial numbers of post-effective amendments containing new financial statements and descriptions of properties and businesses acquired with the proceeds of such blank check offerings.

The Division staff continued its special review of registrants' disclosures in the Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A). The first two phases of this special review were completed during 1989. The Division also undertook a study of leveraged buyouts, including management buyouts, and reverse leverage buyouts, in which public companies are taken private and subsequently taken public again.

The implications of the increasing internationalization of the securities markets continued to be a major focus of the program. Securities markets are changing worldwide as an increasing number of issuers offer both debt and

equity across national boundaries and in offerings in several markets at one time. As a result, the lines of demarcation between domestic and international capital markets are beginning to blur, and domestic markets face serious competition from a largely unregulated, international financial market. Internationalization of the markets raises numerous issues under United States securities laws for domestic issuers raising capital offshore and for foreign issuers selling to United States investors, at home or abroad. The Commission took action to address the internationalization of the securities markets, including reproposing Regulation S to govern the transnational scope of the registration requirements of the Securities Act. The Commission also proposed and reproposed Rule 144A, a safe harbor from the registration requirements for resales of securities to institutions, which may afford foreign issuers greater access to United States capital markets. The Commission also proposed rules and forms to permit development of a coordinated registration process for multijurisdictional securities offerings and tender offers with Canada.

In other rulemaking activity, the Commission (1) proposed and reproposed rules comprehensively revising the regulatory scheme governing ownership reporting and trading by officers, directors, and principal security holders, (2) proposed and reproposed rules providing a change in holding period for restricted securities, (3) proposed changes to the manner of registering employee benefit plan securities, and (4) adopted rules addressing changes in fiscal year end and related reporting requirements. In the area of beneficial ownership and change in control transactions, the Commission published two proposals—one would modify the reporting requirements applicable to greater than five percent beneficial owners of securities by permitting passive investors to file short-form Schedule 13G rather than Schedule 13D, and the other would require increased disclosure concerning significant equity participants in change in control transactions. In order to facilitate capital formation by small businesses, the Commission proposed and adopted amendments to Regulation D that revised the definition of accredited investor and provided that an exemption would not be lost for certain deviations from regulatory conditions when there was a good faith and reasonable attempt to comply with the requirements. In addition, the Commission issued two interpretive releases for the guidance of the public—one addresses MD&A and the other commodity pool disclosure.

The staff is heavily involved in planning the transition from paper to electronic filing under the operational Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. The conversion will begin during 1991 and will continue for a period of 36 to 48 months. During the next year, significant resources will be dedicated to EDGAR rulemaking, training, planning, and coordination.

Review of Filings

Accounting expertise is essential to the review process, and the level of issuer and transactional filing reviews is directly related to the number of

accountants in the Division. During fiscal year 1989, the Division continued its efforts to increase the percentage of accountants in the review process to at least 50 percent. However, those efforts fell far short of the goal, as the recruitment and retention of accountants has been extremely difficult due to hiring limitations as well as the competition from public accounting firms, private industry, and other government agencies.

The first two phases of a special review of registrants' MD&A disclosures were completed during the year. The purpose of MD&A is to provide material historical and prospective disclosure enabling investors and other users to assess the registrant's financial condition and results of operations with particular emphasis on the registrant's prospects for the future. A total of 359 registrants in 24 industries were reviewed and, as a result, 126 registrants filed amendments to their reports. More than one-half of these amendments substantially expanded the MD&A discussions. In addition, work began on a third phase of this special review involving 180 registrants in 12 new industries and will be completed in fiscal year 1990.

During fiscal year 1989, the staff reviewed 2,615 reporting issuers' financial statements and related MD&A disclosures. Reporting issuers are registrants who file reports under the Exchange Act. The reporting issuer reviews were accomplished through the full review of 884 registration statements filed under the Securities Act, 1,949 annual and subsequent periodic reports, and 291 merger and going-private proxies. In addition, the staff completed 388 full financial reviews of annual reports. The staff reviewed 1,177 and 136 registration statements filed by new issuers under the Securities Act and the Exchange Act, respectively, proxy material relating to 84 contested proxy solicitations, 176 going-private schedules, and 191 Schedules 14D-1 with respect to third-party tender offers for 175 issuers and a roll-up of three limited partnerships. The table below sets forth the number of selected filings reviewed during the last five fiscal years.

Full Disclosure Reviews					
	FY'85	**FY'86**	**FY'87**	**FY'88**	**FY'89**
Reporting Issuer Reviews *	(Data Not Available)		1,729	2,941	2,615
Total Filings Reviewed	9,571	10,526	10,797	10,985	10,424
Major Filing Reviews					
Securities Act Registrations					
New Issuers	1,171	1,775	1,949	1,444	1,177
Repeat Issuers	597	807	775	640	604
Post-Effective Amendments **	617	695	707	1,045	929

Annual Reports					
Full Reviews ***	2,135	1,741	1,389	2,166	1,949
Full Financial Reviews	(Not Applicable)		60	567	388
Tender Offers (14D-1) ****	148	146	201	254	188
Going-Private Schedules	256	210	230	276	176
Contested Proxy Solicitations	86	68	65	93	84
Proxy Statements					
Merger/Going-Private	255	240	248	314	291
Other *****	792	992	2,563	790	428

* Reporting issuers reviewed includes those issuers filing Exchange Act reports whose financial statements and MD&A disclosures were reviewed in Securities Act and Exchange Act registration statements, annual reports, and merger and going-private proxy statements. It does not include issuers whose financial statements were reviewed in tender offer filings.

** In fiscal years 1987, 1988 and 1989, filings are included only if they contain new financial statements.

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

**** Excludes limited partnership roll-up transactions. In fiscal year 1989, there was one roll-up transaction involving three limited partnerships.

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

Rulemaking, Interpretive, and Legislative Matters

Scope of Registration Requirements

In fiscal year 1988, the Commission published for comment proposed Regulation S, a series of rules intended to clarify the extraterritorial application of the registration provisions of the Securities Act. In light of comments received on the proposal, Regulation S was reproposed for comment during fiscal year 1989.[71] Proposed Regulation S consists of: (1) a general statement that the registration provisions apply to offers and sales that occur within the United States but do not apply to offers and sales that occur outside the United States; and (2) safe harbor provisions designed to protect against an indirect offering in the United States. One safe harbor (the issuer safe harbor) would apply to offers and sales by issuers, securities professionals participating in the distribution process, and their affiliates. The other safe harbor (the resale safe harbor) would apply to resales by other persons. Two general conditions would apply to the safe harbors. First, the sale must be made in an "offshore transaction," and second, no directed selling effort could be made in the United States.

The issuer safe harbor would establish several classes of securities based on

the nationality and reporting status of the issuer and the degree of United States market interest in the issuer's securities. In addition to the general requirements, a class would be subject to specific restrictions on sales, depending on the degree of likelihood that the securities sold would "flow back" to the United States. The resale safe harbor would permit non-dealers not affiliated with either the issuer or professionals involved in the distribution process to resell securities with no restrictions other than those imposed by the general conditions. Specific restrictions would be applied to dealers' resales of certain classes of securities.

Multijurisdictional Disclosure System

The Commission published for comment proposed rules, forms, and schedules intended to facilitate cross-border offerings of securities by specified Canadian issuers.[72] The rules, forms, and schedules would provide a foundation for a multijurisdictional disclosure system that could be expanded to encompass a wider class of issuers and be extended to additional jurisdictions. The Canadian securities regulators in Ontario and Quebec concurrently published proposals that would facilitate offerings by United States issuers in Canada.

The multijurisdictional disclosure system would permit Canadian issuers that, depending on the nature of the offering, met tests of market value, public float, and Canadian reporting history to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Issuers meeting tests of market value and public float also would be able to use such documents to meet United States periodic disclosure requirements. Companies subject to United States proxy requirements could use their Canadian documents for certain solicitations. In addition, insiders of companies subject to Section 16 of the Exchange Act could meet the reporting requirements of that section by filing Canadian forms. The multijurisdictional system further would permit third-party and issuer exchange and cash tender offers for Canadian securities to be made in compliance with the provisions of applicable Canadian tender offer regulation where less than 20 percent of the class of securities subject to the offer were held of record by United States residents.

Resales to Institutional Investors

The Commission published for comment a proposed new Rule 144A that would provide a non-exclusive safe harbor from the registration provisions of the Securities Act for resales to institutions.[73] In light of comments received on the proposal, Rule 144A was reproposed for public comment.[74] As reproposed, Rule 144A would permit unlimited resales of any securities other than those of the same class as securities listed on a United States stock exchange or quoted on the National Association of Securities Dealers' automated quotations system, provided the purchaser was a specified institution with more than $100 million invested in securities. In the case of securities of private issuers that did not report under the Exchange Act and

had not established the exemption from reporting provided by Rule 12g3-2(b) under the Exchange Act, the seller, or a person acting on its behalf, would be required to provide the buyer upon request with limited financial information.

Change in Holding Period for Restricted Securities

In the same releases as the proposal and reproposal for Rule 144A, the Commission proposed amendments to the rules concerning the required holding period for public resale of restricted securities.[75] To sell securities under current Rules 144 and 145, a person must have owned beneficially the securities for at least two years, no matter how long a period has transpired since the issuer or any affiliate thereof originally sold the securities. Requiring the securities to be held for two years by each successive holder before permitting public resales, without regard to the time elapsed from the actual offering by the issuer or affiliate, appears unnecessarily restrictive. Accordingly, the amendments would redefine the two-year holding period to commence on the date the securities were acquired from an issuer or affiliate, and to run continuously from the date of the acquisition. A comparable change would be made in the calculation of the three-year period prescribed by Rule 144(k). As reproposed, the amendments to Rules 144 and 145 would not permit such "tacking" of holding periods for securities of non-reporting foreign private issuers.

Ownership Reports and Trading by Officers, Directors, and Principal Security Holders

The Commission published for comment a proposal to revise the rules and forms regarding the filing of ownership reports by corporate officers, directors, and principal shareholders ("insiders"), and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of Section 16 of the Exchange Act and related provisions of the Investment Company Act and the Holding Company Act.[76] The Commission proposed to revise these rules to achieve greater clarity, enhance consistency with the statutory purposes, rescind unnecessary requirements, streamline mandated procedures, and enhance compliance with the reporting provisions of the rules.

These proposals were revised and republished for comment.[77] The proposals, as revised, include: several definitions to provide greater clarity; a new Form 5 for the annual reporting of transactions that are exempted from short-swing profit recovery; a comprehensive approach to derivative securities such as options and warrants changing the reporting date to the date of acquisition, rather than the date derivative securities become exercisable, and exempting most exercises and conversions of derivative securities from short-swing profit recovery; and an amendment to the proxy rules to require issuers to disclose late reporting by their insiders in the annual proxy statement and annual report on Form 10-K.

Management's Discussion and Analysis

The Commission published an interpretive release that reports the results of

the first two phases of the MD&A review project. The release sets forth the Commission's views regarding several disclosure matters that should be considered by registrants in preparing MD&As.[78] It provides guidance regarding: prospective information required in MD&A; long and short-term liquidity and capital resources analysis; material changes in financial statement line items; required interim period disclosure; MD&A analysis on a segment basis; participation in high yield financing, highly leveraged transactions or non-investment grade loans and investments; the effects of federal financial assistance upon the operations of financial institutions; and preliminary merger negotiations.

Form S-8

The Commission issued a release proposing major revisions to the procedures for registering employee benefit plan securities on Form S-8.[79] Primarily, the proposals are intended to reduce registrant costs by eliminating the need to prepare and file separate documents for federal securities law purposes that duplicate information otherwise provided to plan participants, while assuring timely delivery of information necessary for participants to make informed investment decisions. Under the proposed approach, the plan information (excluding plan financial statements) and a statement of documents available upon request by plan participants would be required to be delivered to participants but would not be included in the Form S-8 and would not be filed with the Commission. Plan information would not have to be in the form of a customary prospectus; rather, it could be provided in one or several documents prepared by registrants in the ordinary course of employee communications. The proposals also would simplify the process of registering and reporting on plan interests that constitute separate securities.

Change in Fiscal Year/Quarterly Reporting

The Commission issued a release adopting amendments that revise the reporting requirements applicable when issuers change their fiscal year-end.[80] The amendments update these requirements and integrate them with other current periodic requirements, codify staff rule interpretations, and clarify issuers' quarterly reporting obligations when they change their fiscal year. The Commission also adopted related amendments to Form 8-K and the accounting and proxy rules relating to financial reporting, as well as to the quarterly reporting rules to modify the timing requirements for a new registrant's first quarterly report.

Beneficial Ownership Reporting

The Commission published for comment amendments to Regulation 13D/G that would allow any person who acquires more than five percent of a class of equity securities with a passive investment purpose to file a short-form Schedule 13G rather than a Schedule 13D.[81] The Schedule 13G would be filed within ten days of acquiring beneficial ownership of more than five percent of a class of equity securities, except that institutional investors

currently permitted to use Schedule 13G would continue to file 45 days after the calendar year's end. Another significant change in the beneficial ownership reporting system would be a limitation of the percentage of ownership that could be reported on a Schedule 13G. The Commission proposed a 20 percent cap for all Schedule 13G filers. The proposed amendments also would revise substantially the cooling-off period currently applicable only to institutional investors; filing persons would be restricted in purchasing or voting the stock after the conditions for filing on Schedule 13G are no longer satisfied.

Disclosure of Significant Equity Participants

The Commission issued a release proposing to amend the instructions to Schedules 13D, 13E-3, 14B, and 14D-1—the principal schedules filed in connection with acquisitions of securities, going-private transactions, proxy contests, and tender offers—to require disclosure concerning the significant participants in those transactions.[82] The revised instructions would require responses to specified items of the schedules relating to the identity, background, funding, and purposes of the filing person with respect to each person who (1) contributes more than ten percent of the equity capital or (2) has the right to receive, in the aggregate, more than ten percent of the profits or assets upon liquidation or dissolution of the filing person. The revised instructions would not apply if the filing person has a class of equity securities registered under Section 12 of the Exchange Act.

Commodity Pool Disclosure

Simultaneously with the issuance of an interpretive statement and request for comments by the Commodity Futures Trading Commission (CFTC), the Commission issued an interpretive statement and request for comments regarding disclosure by issuers of interests in publicly offered commodity pools.[83] The statement sets forth the Commission's views regarding disclosure of the performance history of commodity pool operators and commodity trading advisers, as well as disclosure of fees, commissions and expenses, and also reminds issuers of their disclosure obligations under the antifraud provisions. The companion statements reflect a continuing effort on behalf of the CFTC and the Commission to maintain consistent coordinated requirements for publicly offered commodity pools.

Regulation D Exemptions from Registration Requirements

The Commission adopted several amendments and additions to the rules comprising Regulation D, which had been published for comment earlier in the fiscal year.[84] Regulation D provides certain exemptions for the registration requirements of the Securities Act. The amendments revised the definition of accredited investor to include plans established and maintained by the governments of the states and their political subdivisions, as well as their agencies and instrumentalities, for the benefit of their employees if the plans have total assets in excess of $5 million. Other amendments and the new rules

provide that an exemption from registration requirements will be available for an offer or sale to a particular individual or entity, despite failure to comply with a requirement of Regulation D, if the requirement is not designed to protect specifically the complaining person; the failure to comply is insignificant to the offering as a whole; and there has been a good faith and reasonable attempt to comply with the requirements of the regulation.

Conferences

SEC Government-Business Forum on Small Business Capital Formation

The eighth annual SEC Government-Business Forum on Small Business Capital Formation was held in Washington, D.C. on September 21–22, 1989. Approximately 200 small business executives, accountants, attorneys, government officials, and other small business representatives were in attendance. The format of the forum combined brief panel presentations by experts followed by discussion groups comprised of the panel members and forum attendees. The topics discussed included Seed Capital and Early Stage Financing, Enactment of a Capital Gains Tax Differential for Investments in Small Business, Recent Developments in the Securities Laws Affecting Small Business, and the Use of Leveraged Buyouts by Small Business. A final report setting forth a list of recommendations for legislative and regulatory changes approved by the forum participants will be prepared and provided to interested persons, including Congress and regulatory agencies.

A study by Karen V. Pincus of the University of Southern California entitled *Reporting Requirements under the Securities Exchange Act of 1934 as they Affect Small Businesses: Defining the "Small Public Company"* was distributed at the forum pursuant to the Commission's obligation under Section 502 of the Omnibus Small Business Capital Formation Act of 1980. This section requires the Commission to gather, analyze, and make available to the public information with respect to the problems and costs to small businesses of meeting their capital formation needs. The study was undertaken by Professor Pincus in response to a request made by the Division to the SEC and Financial Reporting Institute in December 1986. The primary goal of the study was to explore alternative possible definitions of "small public companies" for purposes of establishing reporting thresholds or exceptions for small businesses.

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

On April 26, 1989, approximately 40 senior staff officials of the Commission met with approximately 40 representatives of the North American Securities Administrators Association in Washington, D.C. to discuss methods of effecting greater uniformity in federal and state securities matters. After the conference, a final report was prepared and distributed to interested persons describing several resolutions of the participants, summarizing the discussions and identifying the participants.

Accounting and Auditing Matters

Introduction

The Chief Accountant is responsible for all Commission accounting and auditing matters arising from the administration of the various securities laws. Specific responsibilities include: (1) establishing accounting policy to enhance the reliability of financial reporting and to improve the work performed by public company auditors; (2) assisting in the preparation of formal Commission opinions involving accounting and auditing matters; (3) overseeing private sector activities related to accounting and auditing matters; (4) supervising the procedures followed by Commission staff in conducting auditing or accounting investigations; (5) recommending that administrative proceedings be instituted to disqualify accountants from practicing before the Commission; and (6) assisting in such administrative proceedings.

Key 1989 Results

Fiscal year 1989 was highlighted by a number of significant public and private sector initiatives intended to enhance the reliability of financial reporting and to ensure that the accounting profession meets its important public responsibilities imposed under the federal securities laws. For example, the Commission adopted rules to accelerate disclosures concerning changes in independent accountants. In a related private sector effort, the Commission worked with the SEC Practice Section (SECPS) of the American Institute of Certified Public Accountants (AICPA) to establish a reporting mechanism under which SECPS member firms are required to notify the Commission whenever an SEC client relationship has ended. The staff uses these notification letters to ensure that prompt and accurate reporting is made of these changes in accountants. The Commission also issued a concept release seeking comment on the costs and benefits of requiring auditors to review quarterly financial data before it is filed with the Commission. In another private sector initiative, the AICPA requested its members to vote on whether membership in the SECPS (and its related requirement to undergo peer review) should be mandatory for all firms with AICPA members that audit SEC registrants. This requirement was adopted subsequent to year-end.

The Commission has identified differences in disclosure requirements, accounting principles, auditing standards, and auditor independence standards between countries as impediments to multijurisdictional securities offerings. Accordingly, the staff participated in a number of initiatives by international bodies to establish appropriate international accounting and auditing standards that might be considered for use in multinational offerings. The staff also undertook a broad review of the Commission's independence requirements as they relate both to U.S. and to foreign auditors. These actions reflect a comprehensive system of public and private sector initiatives—

Commission rulemaking and oversight activities, private sector standard-setting, peer review programs, state licensing, and judicial and administrative litigation—through which the integrity of financial reporting for public companies is constantly being reviewed, modified, and improved.

The following are the primary Commission activities designed to achieve compliance with the accounting and financial disclosure requirements of the federal securities laws:

- *rulemaking* that supplements private sector accounting standards, implements financial disclosure requirements, and establishes independence criteria for accountants;
- *review and comment process* that results in improving disclosures in filings, identifying emerging accounting issues (which may result in rulemaking or private sector standard-setting), and identifying problems that may warrant enforcement actions;
- *enforcement actions* that impose sanctions and serve to deter improper financial reporting by enhancing the care with which registrants and their accountants analyze accounting issues; and
- *oversight* of private sector efforts, principally by the Financial Accounting Standards Board (FASB) and the AICPA, which establish accounting and auditing standards and improve the quality of audit practice.

The Commission's review and comment process and enforcement actions are discussed elsewhere in this report. The remainder of this section summarizes the Commission's accounting-related rulemaking initiatives and its oversight of private sector activities. In addition, this section comments on several initiatives addressing issues arising out of the continued internationalization of the securities markets.

Accounting-Related Rules and Interpretations

Regulation S-X sets forth requirements as to the form and content of financial statements filed with the Commission. Also, the Commission has adopted various rules that require disclosure of specific financial information in addition to that provided in the financial statements. For example, certain supplementary financial information, selected financial data, and management's discussion and analysis of a company's financial condition and results of operations are required to be disclosed by Regulation S-K. In addition to requiring financial disclosure by registrants, Commission rules also address the qualifications of accountants, including their independence, and accountants' reports on financial statements.

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

In fiscal year 1989, a number of SABs were issued to address various

accounting and financial disclosure issues. Particularly significant bulletins dealt with the appropriateness of gain recognition on the sale of a business or operating assets to a highly leveraged entity and with the appropriate financial reporting of transfers of nonperforming assets by financial institutions.[85] Other SABs addressed topics such as: (a) financial statement requirements for significant acquired businesses; (b) the calculation of earnings per share and stock compensation expense in an initial public offering; (c) accounting for sales of stock by a subsidiary; (d) various oil and gas accounting issues; and (e) accounting issues related to quasi-reorganizations.[86] Subsequent to year-end, a SAB was issued to provide guidance on the appropriate disclosures of loss contingencies related to property and casualty insurance reserves.[87] The staff also sent a letter to the United States Department of the Treasury setting forth its views on the accounting and financial disclosure issues involved in certain foreign loan restructurings involving debt and debt service reduction.[88]

National Commission on Fraudulent Financial Reporting

The Commission continued to pursue various initiatives that were suggested in the report of the National Commission on Fraudulent Financial Reporting.[89]

Changes in Registrants' Independent Accountants. The Commission previously adopted rules to enhance auditor independence by substantially strengthening the requirements for disclosure related to a change in a registrant's independent accountants.[90] During fiscal year 1989, the Commission reduced the timing for these disclosures from a possible 45 calendar day period to a 15 business day period.[91] In a related action, with strong encouragement from the Commission, the SECPS adopted a membership requirement that firms must notify the Commission's Office of the Chief Accountant whenever an audit engagement with a SEC client has ended. The staff uses these notification letters to ensure that prompt and accurate reporting is made of changes in accountants. This system has resulted in the identification of a number of potential violations of registrants' reporting obligations that are being pursued by the staff.

Management Reports. The Commission received over 190 comments on a rule proposal that, if adopted, would require a company's report on Form 10-K and its annual report to shareholders to include a report from management. The proposed report would describe management's responsibilities for preparing the financial statement and for establishing and maintaining a system of internal control directly related to financial reporting. In addition, the report would provide management's assessment of the effectiveness of that internal control system.[92] The staff has analyzed the comments and is preparing its recommendation to the Commission.

Timely Reviews by Auditors of Interim Information. The Commission published a concept release to examine the costs and benefits of requiring auditors to review quarterly financial data before it is filed with the Commission. The release also solicited comments on other initiatives related to interim financial data, such as expanding the number of registrants subject to

Item 302(a) of Regulation S-K,[93] which currently requires larger, more widely traded companies to disclose certain quarterly data in their annual audited financial statements.[94] Under Item 302(a), auditor review of these data may be delayed until the year-end audit. The staff is analyzing the approximately 175 comments received.

Audit Committees. In December 1988, the Commission wrote to the securities exchanges (other than the New York Stock Exchange which already has a requirement for an independent audit committee) and the National Association of Securities Dealers asking them to review their requirements regarding audit committees. These letters have resulted in (1) a petition by the American Stock Exchange to amend its rules to require listed companies to have audit committees with a majority of independent directors,[95] and (2) the initiation of studies by other exchanges to examine their audit committee requirements.

Enforcement Remedies. The Commission reproposed legislation for enhanced enforcement tools, such as the imposition of civil monetary penalties, that may be useful in deterring fraudulent financial reporting.[96]

Oversight of Private Sector Standard-Setting

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

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

Oversight of the process involves reviewing the standards established by the FASB and participating directly in the development of standards. The staff monitors the progress of FASB projects and developments closely, maintains frequent contact with the FASB to discuss topical issues, and participates in meetings, public hearings, and task forces.

The staff continued working closely with the FASB and the Financial Accounting Foundation (FAF) to explore ways to improve the standard-setting process. In this connection, the FASB has taken a number of initiatives to enhance its outreach programs, including task forces and field testing, and has exhibited continued willingness to respond to legitimate requests for fine-tuning new standards as a result of problems identified during the implementation phase. The FAF has formed an oversight committee to monitor operations of the FASB and to suggest improvements on an ongoing basis. The FAF also is considering other possible changes to improve the standard-setting process. The Commission has and will continue to monitor carefully these activities, and continues to believe that the FASB's independence and the openness of its processes are vital to the FASB's ability to serve the public interest and perform its tasks well.

A brief discussion of FASB activities follows.

Post-employment Benefits Other Than Pensions. The FASB held public hearings on its exposure draft of a standard on employers' accounting for

post-employment benefits other than pensions.[97] Presenters at the public hearings, as well as most of the approximately 470 commentators on the exposure draft, have generally agreed that post-retirement health care benefits represent a form of deferred compensation and that an obligation should be recognized as services are rendered. However, key issues affecting the measurement of the obligation remain contentious. The FASB is considering these issues and expects to issue a final standard in late 1990.

Income Taxes. The FASB issued a statement that defers the effective date for two years of its statement on accounting for income taxes. The new effective date applies to fiscal years beginning after December 15, 1991.[98] This action was taken to provide sufficient time to consider requests to (1) change the criteria for recognition and measurement of deferred tax assets to anticipate, under certain circumstances, the tax consequences of future income, and (2) reduce complexity by changing the requirement for scheduling and consideration of tax-planning strategies.

Financial Instruments. The FASB continues to work on its major long-term project to address financial instruments and off-balance sheet financing issues. A final standard is expected to be issued in 1990 that would require certain disclosures about financial instruments not recognized currently in the financial statements. Subsequent parts of the project will include issues related to: (1) accounting for risk-transfer instruments such as guarantees and interest rate hedging instruments; (2) off-balance sheet financing arrangements; (3) the appropriate measurement basis for financial instruments; and (4) accounting for securities with both debt and equity characteristics.

Other Activities. The FASB also issued statements during the fiscal year dealing with (1) accounting for discontinuations of the application of FASB Statement 71 affecting regulated enterprises, and (2) amendments to its cash flow standard to exempt certain enterprises and to address the appropriate reporting of certain securities acquired for resale.[99] The FASB held task force meetings on major projects involving consolidations and the reporting entity, discounting, and impairment of long lived assets.

Timely Financial Reporting Guidance. The FASB's efforts to provide more timely guidance on emerging issues resulted in the issuance of technical bulletins dealing with the right of setoff and accounting for leases.[100]

The FASB's Emerging Issues Task Force (EITF), in which the Commission's Chief Accountant participates, continues to perform an important and useful role in identifying and resolving accounting issues. Since its inception in 1984, the EITF has considered over 200 issues covering a broad range of topics including financial instruments, business combinations, accounting for leveraged buyouts, and income taxes. The EITF addressed a number of financial reporting issues relating to employee stock ownership plans, including questions arising from the recent use of convertible preferred stocks. Registrants are expected to follow the positions agreed upon by the EITF. Those that do not follow these positions will be asked to justify departure from any consensus reached.

AICPA. In addition to oversight of the private sector process for setting accounting standards, the Commission also oversees various activities of the

accounting profession conducted primarily through the AICPA. These include: the Auditing Standards Board (ASB), which establishes generally accepted auditing standards; the Accounting Standards Executive Committee (AcSEC), which provides guidance on specific industry practices through its issuance of statements of position and practice bulletins and prepares issue papers on accounting topics for consideration by the FASB; and the SECPS, which seeks to improve the quality of audit practice by member accounting firms that audit public companies through various requirements, including peer review.

ASB. The Commission's Chief Accountant suggested that the AICPA play a more visible role in focusing auditor attention on high risk areas. The ASB responded by initiating a procedure of issuing Audit Risk Alerts to provide auditors with an overview of recent economic, professional, and regulatory developments that may affect audits they perform. The series was inaugurated in December as an aid in performing 1989 year-end audits and includes guidance both on audits generally and in four specific industries (savings and loans, credit unions, property and liability insurance, and health care).

AcSEC. The AcSEC has a key role in identifying accounting practices, with an emphasis on those in specialized industries. The Commission staff encouraged the AcSEC to initiate a project to develop improved accounting guidance for investments in debt securities with market values that are below cost. In a December 1989 letter to the AcSEC, the staff specified the kind of disclosures that the staff expects pending issuance of such guidance.[101] This is a controversial issue where practice is mixed, and the accounting guidance differs to some extent among industries. The AcSEC has approved the issuance of an exposure draft of a statement of position for public comment that would provide improved guidance in this area.[102] During fiscal year 1989, the AcSEC issued a practice bulletin to provide guidance on accounting for amortization of discounts on certain acquired loans.[103] Finally, at the request of the Commission's Chief Accountant, the AcSEC is working on a project to address accounting issues related to the recognition of interest received in connection with various kinds of lending activities by financial institutions and others.

SECPS. The membership requirements of the SECPS are designed to strengthen the quality control systems of member firms, thus enhancing the consistency and quality of practice before the Commission. According to the 1989 SECPS annual report, 88 percent of public companies are audited by SECPS member firms, and the revenues of those companies constitute 99 percent of the total revenues of all public companies.[104] Member firms are committed to a triennial peer review under the close scrutiny of the Public Oversight Board (POB). The SECPS also reviews and makes inquiries regarding the quality control implications of alleged audit failures involving public clients of SECPS member firms. In January 1990, the AICPA voted to require membership in the SECPS for all firms with AICPA members that audit SEC registrants. The Commission staff is continuing to review the impact of this initiative on the SEC's mandatory peer review proposal.[105]

The Commission exercises oversight of the SECPS through frequent

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

International Accounting and Auditing Standards

Significant differences in accounting and auditing standards currently exist between countries. These differences serve as an impediment to multinational offerings of securities. The Commission, in cooperation with other members of the International Organization of Securities Commissions (IOSCO), has actively participated in initiatives by international bodies of professional accountants to establish appropriate international standards that might be considered for use in multinational offerings. For example, Commission staff has worked with the International Accounting Standards Committee (IASC), a body of accountants with membership in 71 countries, to reduce accounting alternatives as an initial movement toward appropriate international accounting standards.[106] Over 150 comment letters were received, the majority of which expressed support for the initiative. Issues of completeness and lack of specificity in international accounting standards still need to be addressed, and the IASC has undertaken to address them.

Commission staff also continued working with the International Federation of Accountants (IFAC) to revise international auditing guidelines. Auditors in different countries are subject to different independence standards, perform different procedures, gather varying amounts of evidence to support their conclusions, and report the results of their work differently. The Commission staff, as part of an IOSCO working group, worked closely with IFAC to expand and revise international auditing guidelines to narrow these differences.

Independence

Commission staff also is studying the various national and international requirements for auditor independence. In this connection, they have solicited detailed information about the nature and extent of such requirements in a number of major countries and have encouraged the IFAC to enhance international guidelines in this area. The staff has undertaken a broad review of the Commission's own auditor independence requirements. This review was prompted by three factors: (1) the increasing globalization of the capital markets; (2) the changes in the size and structure of certain accounting firms during the past decade; and (3) a petition filed by the largest accounting firms seeking a reconsideration of the Commission's views regarding the ability of accounting firms to engage in prime and subcontractor relationships with registrants that the firms concurrently audit.

The EDGAR Project

Introduction

The primary purpose of the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system is to increase the efficiency and fairness of the securities markets for the benefit of investors, securities issuers, and the economy. Under EDGAR, information currently submitted to the SEC on paper will be transmitted and stored electronically using electronic communication and data management systems. Once the electronic filing is accepted, public information will be available quickly to investors, the media, and others on computer screens via the Commission's public reference rooms and through electronic subscription services. When fully operational, EDGAR will accelerate dramatically the filing, processing, dissemination, and analysis of time-sensitive corporate information filed with the Commission.

Key 1989 Results

The EDGAR pilot system completed its fifth full year of successful operation on September 24, 1989. It has demonstrated clearly the feasibility of receiving, processing, storing and retrieving electronic filings. Since the pilot's beginning, over 63,000 filings have been transmitted electronically to the Commission.

The Commission also proceeded with its plan to develop an operational EDGAR system. On January 3, 1989, the Commission awarded the operational system contract to BDM International (BDM), with Mead Data Central, Inc., Sorg Incorporated, and Bechtel Information Services as subcontractors. The Commission has formed numerous work groups to assist in the detailed design of the operational system. The first draft of the EDGAR Requirements Description Report was completed by BDM in May 1989. The Commission staff and BDM are continuing work on developing both the receipt and acceptance (R&A) subsystem, and the analysis and review (A&R) subsystem.

Pilot System

The EDGAR pilot serves a group of volunteer companies whose filings are processed by staff in the Office of Applications and Reports Services and Divisions of Corporation Finance and Investment Management. At the end of fiscal year 1989, there were 580 registrants fully participating in the pilot. In addition, numerous other registrants participated partially in the pilot by submitting electronically filings of certain forms. This group of partial participants includes:

- 978 investment companies submitting annual and semi-annual reports on Form N-SAR;
- 72 registered public utility holding company systems or subsidiaries

submitting forms required under the Public Utility Holding Company Act; and

- 15 institutional investment managers submitting Form 13F-E to report securities held in their managed accounts.

No enhancements were added to the EDGAR pilot due to the award of the operational system contract and the transfer of the pilot operations to BDM International.

Operational System

The eight-year contract to design and operate the EDGAR system was awarded January 3, 1989, for approximately $52 million, to BDM International, with Mead Data Central, Inc., Sorg Incorporated, and Bechtel Information Services as subcontractors. BDM, a subsidiary of Ford Aerospace Corporation, will develop and operate the EDGAR system. Mead Data Central, provider of the world's largest full-text electronic library of legal, news, business, and general information, will provide the Commission with a LEXIS-like full-text search and retrieval capability for the EDGAR database. Sorg, a leading financial and corporate printer and an active participant in the EDGAR pilot, will provide advice on the design and operation of the receipt and acceptance subsystem. Bechtel, a long-established engineering and construction firm and the Commission's paper and microfiche contractor since 1985, will continue to provide paper and microfiche dissemination of electronic and paper filings as a subcontractor to BDM.

The Commission will share funding of the EDGAR system costs with BDM. The Commission will pay for both the receipt and acceptance, and analysis and review subsystems. The contractor will pay the full cost of the dissemination subsystem in exchange for Commission-regulated sale of electronically filed data and associated services.

In early May 1989, BDM completed the first draft of the EDGAR Requirements Description Report and the corresponding set of system blueprints. After Commission staff reviewed these documents, it was agreed that BDM would accelerate developing all major functions of the receipt and acceptance subsystem as part of the EDGAR Release 1 software. This approach will facilitate a smooth transition from the pilot to the operational system since it enhances filer interface and associated support functions. This software release is now scheduled for the second quarter of fiscal year 1991.

As a result of these changes, a new EDGAR implementation timetable was prepared in consultation with BDM. This timetable calls for the conversion of pilot filers to the operational system in July 1991 but will allow test filings to be submitted beginning in January 1991. Once the pilot filers enter the operational system, the pilot system will be terminated. The first group of non-pilot filers will enter the operational system during November 1991, January 1992, and April 1992. This group will consist of approximately 2,500 filers. It is anticipated that all remaining filers will enter the operational system beginning in late 1992. Provided no major system problems are encountered and the Commission is staffed adequately to phase-in approximately 1,500

filers per quarter, 15,000 filers should be converted to the operational system by mid-1994.

Rulemaking

In order to refine requirements and assist in the detailed design of the operational system, the Commission has formed numerous work groups consisting of representatives from the contractor, subcontractors, and several Commission divisions and offices that will be impacted by EDGAR. The Rulemaking Coordination Work Group has identified issues that require Commission rulemaking. Issues addressed by this work group include: (1) phase-in (including voluntary filings); (2) hardship exemptions; (3) filing date adjustments; (4) receipt and acceptance; (5) data tagging; (6) Williams Act filings; (7) filer identification and password access; (8) preliminary proxy and going-private material; (9) redlining; (10) correspondence filed electronically; (11) exhibit files; (12) modular documents (formerly called reference filings); (13) testing; (14) user manuals; (15) segmented filings; (16) paper printouts; (17) amendments; (18) confidential treatment requests; (19) fee verification; and (20) use of personal identification numbers. These issues will be largely resolved as the EDGAR Release 1 software is finalized during fiscal year 1990. The initial rules and phase-in schedule are expected to be released for comment during the third quarter of fiscal year 1990.

Conclusion

Although the detailed design of the operational EDGAR system has taken approximately eight months longer than anticipated, the Commission remains committed to this project and is convinced of the soundness of its design. Work on the operational system in fiscal year 1990 will include completion of the system design and construction, rulemaking initiatives, and initial training of the filer support staff.

Regulation of the Securities Markets

Introduction

The Division of Market Regulation, together with regional office examination staff, is charged with the responsibility of overseeing the operations of the nation's securities markets and market professionals. In fiscal year 1989, over 11,000 broker-dealers, nine active securities exchanges, as well as the over-the-counter (OTC) markets, and 15 clearing agencies were subject to the Commission's oversight.

Key 1989 Results

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

FY '85	FY '86	FY '87	FY '88	FY '89
$1,147	$1,735	$2,367	$1,907	$2,040

B/D Oversight Examinations

FY '85	FY '86	FY '87	FY '88	FY '89
447	481	452	421	328

B/D Cause Examinations

FY '85	FY '86	FY '87	FY '88	FY '89
145	69	56	89	148

Surveillance and Regulatory Compliance Inspections of SROs

FY '85	FY '86	FY '87	FY '88	FY '89
21	22	23	21	22

SRO Final Disciplinary Actions

FY '85	FY '86	FY '87	FY '88	FY '89
971	845	991	1,336	1,508

In fiscal year 1989, the Commission continued with market reforms addressing the concerns resulting from the 1987 market break; adopted rules and enhanced inspections of broker-dealers to curtail "penny stock" fraud and other broker-dealer sales practice abuses; furthered the goals of internationalization of the securities markets through clearing linkages as well as easing the access of foreign broker-dealers to domestic markets; adopted disclosure rules for new issue municipal securities; approved fundamental reforms concerning arbitration of disputes between broker-dealers and customers; and

proceeded with a phased removal of barriers to the multiple trading of options on all exchanges with the ultimate aim of establishing appropriate market linkage facilities. The Commission also furthered the development of both the national market system and the national systems for transaction clearance and settlement through various technical advancements which, for example, will lead to next-day comparison of exchange and OTC trades.

Securities Markets, Facilities and Trading

Market Reform Initiatives

During fiscal year 1989, the nation's securities markets continued to experience periods of large price and volume volatility. These events demonstrated that the episodes of intense volatility encountered during and shortly after the October 1987 market break were not isolated occurrences. As a result, the Commission continued to pursue many of the market reform initiatives that were first undertaken in 1988 in order to enhance the stability and integrity of the nation's securities markets.

Studies of the October 1987 market break recommended, among other things, the adoption of temporary trading halts, commonly known as "circuit breakers," in order to disseminate information concerning significant price movements and to provide market participants with time to re-establish an equilibrium between buying and selling interest. In order to implement these recommendations, the Commission in 1989 approved rule changes by the American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), Midwest Stock Exchange (MSE), National Association of Securities Dealers, Inc. (NASD), New York Stock Exchange (NYSE), and Philadelphia Stock Exchange (Phlx) that provide for temporary trading halts of one and two hours if the Dow Jones Industrial Average (DJIA) falls more than 250 points or more than 400 points, respectively, on a single day.[107] The Commodity Futures Trading Commission (CFTC) approved analogous rule changes submitted by futures exchanges with respect to halts in the trading of stock index futures and options on those futures. In addition, as discussed in greater detail below,[108] the Commission approved a NYSE proposal to segregate program trading orders on its automated order execution system into a separate file during periods of significant market declines and to give priority on the system to orders of individual investors on days when the DJIA declines more than 25 points.

After the October 1987 market break, the Report of the Presidential Task Force on Market Mechanisms [109] advocated the establishment of cross-margining rules to allow market participants with an investment in index futures to receive credit (for purposes of calculating the necessary margin) for a stock or options position that is hedged by the futures position. The Commission implemented this recommendation by approving proposed rule changes by the Options Clearing Corporation (OCC) that would allow cross-margining with certain futures positions cleared by the Chicago Mercantile Exchange (CME).[110]

The Commission also participated in discussions with the Group of Thirty both prior and subsequent to the release of its report on global clearance and settlement systems.[111] The Group of Thirty is a private sector group of international businessmen, brokers, and others concerned with the international financial system. Among other things, the Group of Thirty recommended that, by 1992, settlement of equity securities transactions occur on the third day after the trade date. The Commission supported this recommendation and has worked with the Group of Thirty and the securities industry to identify the steps that must be taken, such as the further elimination of physical certificates, to implement this recommendation.

In light of the markets' performance during the extreme volatility and volume of October 1987, the Commission staff focused attention during fiscal year 1989 on outlining certain steps it believes the self-regulatory organizations (SROs) should take to ensure that their automated systems have the capacity to accommodate current and reasonably anticipated future trading volume levels and to respond to emergency conditions. In November 1989, the Commission published the Automation Review Policy Statement, which states that the SROs should, on a voluntary basis, establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. Primary objectives of their programs would be to establish capacity estimates, to conduct stress tests, and to contract with independent reviewers to assess their automated systems annually.[112]

In addition, the Commission proposed amendments to its uniform net capital rule, Exchange Act Rule 15c3-1.[113] Among other things, the proposal would require specialists, who are now exempt from the net capital rule, to maintain certain minimum levels of net capital in accordance with the terms of the rule.

During fiscal year 1989, the Commission approved proposed rule changes by seven clearing organizations to establish the Securities Clearing Group (SCG).[114] SCG is a voluntary organization of clearing agencies designed to increase coordination and cooperation between clearing agencies in overseeing the financial and operating condition of their participants.

Finally, the Commission continued to pursue the series of legislative proposals that it first proposed in 1988 to enhance the efficiency and fairness of the United States capital markets and to help avoid precipitous market declines. As introduced in the House and the Senate, the proposed legislation provided for: (1) information reporting by broker-dealer holding companies for purposes of risk assessment; (2) large trader reporting; (3) clarification of the Commission's authority to facilitate development of coordinated clearance and settlement systems; and (4) emergency authority for the Commission.[115] In addition, the Commission devoted considerable resources to the preparation of Congressional testimony concerning these and other market reform initiatives.

The National Market System

In fiscal year 1989, the Commission took action on several national market system (NMS) plans under Section 11A of the Exchange Act. First, the

Commission published for comment a proposed Joint Industry Plan submitted by the NASD, together with the American, Philadelphia, Boston, and Midwest Stock Exchanges, governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NMS OTC securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges.[116]

In addition, the Commission reviewed amendments to the Intermarket Trading System (ITS) plan. The ITS is a communications system designed to facilitate national market system trading among competing markets by providing each market with order routing capabilities based on current quotation information. The amendments to the plan (1) recognized the use of the "Regional Computer Interface" by the Boston Stock Exchange; (2) allowed for the price used in pre-opening procedures to be based on the closing price on the NYSE or the Amex in certain circumstances; (3) clarified the responsibility of a specialist/market maker who has sent a pre-opening response to seek an execution report; and (4) clarified the procedures for resolving third participating market center trade-throughs.[117] The amendments were approved in November 1989.

During fiscal year 1989, the Commission reviewed a number of SRO proposed rule changes intended to enhance or introduce new automated systems. For example, the Commission published for comment a proposed rule change by the NASD to establish a one-year pilot program testing the OTC Bulletin Board Display Service for securities traded OTC that are not included in the NASDAQ System or listed on a national securities exchange.[118] In addition, the Commission permanently approved a Boston Stock Exchange (BSE) proposal establishing the Boston Stock Exchange Automated Communications Order-routing Network (BEACON), an automated order-routing and execution system, and rules governing the system.[119] BEACON routes orders in eligible stocks from member firms to the BSE and guarantees either an automatic or manual execution, depending on the classification of the stock, at the BEACON quotation.

On May 12, 1989, the American Stock Exchange submitted a proposed rule change to implement a pilot program for the use of AUTO-EX (a feature of the Exchange's PER/AMOS order routing system) for the automatic execution of trades in 20 of the exchange's most actively traded equities. The Commission continues to consider this proposal. The Amex also requested that transaction charges for the selected stocks be waived, whether or not executed through AUTO-EX. The Commission granted approval of the proposed transaction fee waiver on October 2, 1989.[120]

In addition, the Commission published for comment a NASD proposal to create the Rules of Practice and Procedures for the Automated Confirmation Transaction Service (ACT).[121] The ACT Service is intended to facilitate the comparison and clearing of interdealer OTC equity trades by requiring input of trade reports within specific time frames, comparing that trade data, and submitting matched, locked-in trades to clearing. In September 1989, the Commission granted partial accelerated approval of the ACT rules as they apply to self-clearing firms only.[122]

In May 1989, the Commission adopted an amendment to its rule governing transaction fees to extend indefinitely the exemption on transactions in OTC/NMS securities from the imposition of Section 31 transaction fees.[123]

National System for Clearance and Settlement

During fiscal year 1989, market events continued to underline the importance of enhancements to all components of the National System for Clearance and Settlement (National System). The Commission continued to work with clearing agencies, banks, broker-dealers and other federal regulators to implement changes recommended in various reports on the October 1987 market break.[124]

During fiscal year 1989, the Commission approved a number of SRO proposals designed to improve intramarket and intermarket clearance and settlement. For example, the Commission approved rule changes which, when fully implemented, will provide for next-day comparison of exchange and OTC trades[125] and will automate the resolution of uncompared trades.[126] As noted earlier, the Commission also approved clearing agency proposals creating the SCG, a voluntary association of clearing agencies designed to improve coordination of clearing agencies' monitoring of common members.[127]

Additionally, the Commission approved proposed rule changes by the OCC that (1) increase initial net capital requirements for clearing members from $150,000 to $1 million and member maintenance net capital requirements from $100,000 to $750,000[128] [OCC's futures clearing subsidiary, the Intermarket Clearing Corporation (ICC), made identical changes to its member net capital requirements];[129] (2) increase minimum required clearing fund contributions to OCC's equity and non-equity option clearing funds from $10,000 and $50,000, respectively, to $75,000;[130] and (3) authorize OCC, in the event of a market emergency, to defer liquidation of a defaulting clearing member's positions and to execute hedge transactions to protect against a decline in value of the open positions.[131]

As noted above, the Commission during fiscal year 1989 also recommended to Congress legislative proposals which, among other things, would authorize the Commission and the CFTC to facilitate development of coordinated clearance and settlement systems, and would authorize the Commission to establish uniform pledge and transfer rules if necessary to the safe and efficient operation of the National System.[132]

The Commission staff also consulted extensively with an American Bar Association (ABA) committee examining possible federal and state legal impediments to efficient and safe clearance and settlement. The committee transmitted a letter, dated April 26, 1989, to Chairman Ruder outlining potential state commercial law problems that the committee will study.

Also during fiscal year 1989, the Commission approved clearing agency proposals that continued expansion of the services and immobilization goals of the National System to mutual fund, mortgage-backed, and U.S. government securities. For example, the Commission approved enhancements to National Securities Clearing Corporation's (NSCC) Automated Customer Account Transfer Service to permit the automated transfer of book share

mutual fund assets in customer accounts that are subject to a customer transfer request (for mutual funds associated with NSCC fund members and mutual fund processors).[133] The Commission also issued an order registering Participants Trust Company (PTC) as a clearing agency on a temporary basis for a period of 12 months.[134] PTC provides depository services for mortgage-backed securities. In addition, the Commission approved a system of the Government Securities Clearing Corporation (GSCC) for netting and settling compared, next-day, government securities trades submitted for clearance and settlement by GSCC members.[135]

The Commission also issued an order registering Delta Government Options Corporation (Delta) as a clearing agency on a temporary basis for a period of 36 months.[136] The Seventh Circuit Court of Appeals vacated the order,[137] effective January 18, 1990, and remanded the matter to the Commission for further consideration of whether Delta has the capacity to comply with the Exchange Act because the Commission had not determined whether the OTC options trading system is an exchange that must be registered as such under the Exchange Act.[138]

Internationalization

In recognition of the accelerated pace of internationalization in securities markets,[139] on July 11, 1989 the Commission adopted Rule 15a-6 under the Exchange Act to provide conditional exemptions from broker-dealer registration for foreign broker-dealers that engage in certain activities involving United States investors and securities markets.[140] These activities include (1) "nondirect contacts" by foreign broker-dealers with U.S. investors and markets, through execution of unsolicited securities transactions and provision of research to certain U.S. institutional investors; and (2) "direct contacts," involving the execution of certain transactions through a registered broker-dealer intermediary with or for certain U.S. institutional investors, and transactions with or for registered broker-dealers, banks acting in a broker or dealer capacity, certain institutional organizations, foreign persons temporarily present in the U.S., U.S. citizens resident abroad, and foreign branches and agencies of U.S. persons. By adopting Rule 15a-6, the Commission sought to facilitate access to foreign markets by U.S. institutional investors through foreign broker-dealers and the research that they provide, consistent with maintaining the safeguards afforded by broker-dealer registration, and to provide clear guidance to foreign broker-dealers seeking to operate in compliance with U.S. broker-dealer registration requirements.

Concurrent with the adoption of Rule 15a-6, the Commission issued a release discussing the concept of an exemption from broker-dealer registration based on recognition of foreign regulation.[141] Recognizing foreign regulation as a substitute, in certain circumstances, for U.S. registration would allow certain foreign broker-dealers to deal with U.S. institutional investors without incurring the expense of U.S. registration and thereby substantially increase the access of U.S. investors to the valuable services that foreign broker-dealers provide relative to foreign markets. In seeking comment on its concept release, the Commission stressed that any approach to regulation of

foreign broker-dealers must not compromise the essential protections for customers and the market system as a whole provided by the U.S. regulatory regime.

Also during fiscal year 1989, the Commission took several actions with respect to the application of Rules 10b-6, 10b-7, 10b-8, and 10b-13 under the Exchange Act to transactions involving concurrent U.S. and foreign distributions or tender offers. Rule 10b-6 proscribes certain conduct by persons participating in a distribution to prevent such persons from artificially conditioning the market for a security to facilitate the distribution. Rule 10b-7 governs market stabilization activities during offerings. Rule 10b-8 governs the market activities of participants in a rights offering. Rule 10b-13 prohibits purchases otherwise than pursuant to a tender offer or exchange offer from the time such offer is publicly announced until the offer expires. The Commission's actions permitted non-U.S. persons to continue certain customary market activities in foreign jurisdictions during multinational transactions, subject to certain conditions designed to prevent a manipulative impact on the U.S. market.

For example, an exemption was granted to permit the U.K. market maker affiliates of the dealer managers of concurrent U.S. and U.K. tender offers to continue market making activities during the tender offers.[142] In addition, U.K. market makers [143] and Canadian exchange specialists [144] affiliated with distribution participants were permitted to continue their market making activities during multinational rights offerings involving U.K. and Canadian issuers, respectively. In connection with offerings in the U.S. by Australian,[145] British,[146] Dutch,[147] French,[148] Italian,[149] and Spanish [150] issuers, relief from the application of Rule 10b-7 permitted the underwriter to initiate a stabilizing bid based on the price of the security on a foreign exchange.

During fiscal year 1989, the Commission continued to promote the development of international linkages between clearing agencies and to foster foreign participation in the National Clearance and Settlement System. For example, the Commission registered the International Securities Clearing Corporation (ISCC) as a clearing agency on a temporary basis for a period of 18 months.[151] ISCC was formed to develop linkages with clearing organizations in other countries. The Commission also approved Depository Trust Company's (DTC) International Institutional Delivery System, which automates the confirmation and affirmation process for institutional trades that include non-U.S. entities and institutional trades in foreign securities.[152]

In fiscal year 1988, the NASD submitted a rule proposal to establish the PORTAL system, which is a screen-based system designed to facilitate the placement, distribution, and secondary market trading of securities, including certain foreign securities, that would be exempt from registration pursuant to proposed Rule 144A under the Securities Act of 1933. During fiscal year 1989, the Commission published for comment a NASD amendment to the proposed rule change which was in the nature of a substitute proposal.[153]

In addition to these regulatory actions, the staff participated in several international securities working groups. The Technical Committee of the International Organization of Securities Commissions (IOSCO) is comprised

of representatives of securities regulators of 12 countries.[154] It held its first meeting in July 1987. At that meeting, six working groups were established to study various aspects of the international securities markets. One group, Working Group Number 3, includes representatives from France, Japan, the United Kingdom, and the United States (represented by Commission staff), and was established to study the issues related to capital adequacy for securities firms from a worldwide perspective.

The capital adequacy working group produced a report concluding that: (1) there is a need for a common worldwide conceptual framework regarding the capital requirements for non-bank securities firms; (2) requirements should include risk-based elements covering all the risks to which a firm is exposed; and (3) minimum capital requirements should be based on type of business and that firms wishing to enter the securities business should demonstrate an appropriate level of commitment, but standards should not be so high as to adversely affect competition. The report was approved by the IOSCO Technical Committee on June 20–21, 1989 and was endorsed by IOSCO at its annual meeting in Venice, Italy on September 18–21, 1989. At its Venice meeting, IOSCO asked the working group to continue and expand its efforts.

Options and Other Derivative Products

During fiscal year 1989, the Commission reviewed a large number of rule changes that were intended to address market volatility concerns that have arisen in connection with the markets for options and futures instruments. First, in response to recommendations resulting from the October 1987 market break studies, the Commission and the CFTC approved SRO proposals establishing coordinated circuit breaker procedures to be used in periods of severe market stress. These procedures are outlined in the subsection above entitled "Market Reform Initiatives." Second, the Commission approved an NYSE proposal imposing certain trading restrictions on orders entered into the NYSE's automated order-routing system, the Designated Order Turnaround (DOT) System, during periods of significant market declines (the "sidecar" rule).[155] The rule applies when the price of the S&P 500 futures contract traded on the CME falls 12 points below the previous trading day's closing value (approximately equivalent to a 96-point fall in the DJIA). Once activated, program trading-related market orders entered into DOT are routed into a separate file. The purpose of channelling program trades into a separate file, or "sidecar," during times of market volatility is to isolate one potential cause of market volatility, program trading, from other market activity. The "sidecar" rule replaced the 50-point "collar" rule that had prohibited index arbitrage-related stock transactions through DOT on days when the DJIA had moved 50 or more points from the previous day's close.

Third, the Commission approved an NYSE proposal that grants individual investors' market orders of up to 2,099 shares entered into the DOT system priority in delivery to the specialist's post for execution.[156] The feature, known as the Individual Investor Express Delivery Service (IIEDS), is activated when the DJIA rises or falls 25 points from the previous trading day's close and

remains in effect for the remainder of the trading day that it is activated. IIEDS is designed to facilitate implementation of the "sidecar" rule.

Fourth, the Commission approved identical proposals filed by the Amex, CBOE, Phlx and Pacific Stock Exchange (PSE) to extend current margin requirements for equity and stock index options.[157] The margin requirement for broad-based index options is 100 percent of the option premium plus 15 percent of the underlying aggregate index value, less any out-of-the-money amount, with a minimum of premium plus 10 percent of the underlying aggregate index value. For equity options, the margin requirement is premium plus 20 percent of the underlying stock value, less any out-of-the-money amount, with a minimum requirement of premium plus 10 percent of the underlying stock value.

During fiscal year 1989, the Commission also adopted Rule 19c-5 under the Exchange Act.[158] In adopting Rule 19c-5, the Commission found that the reasonably anticipated benefits from options multiple trading (*i.e.*, increased price competition, enhanced market making requirements, and improvements in exchange services) outweighed the possible adverse consequences of an expansion of multiple trading—namely, market fragmentation, domination by one market, and harm to the financial integrity of particular exchanges. The rule provides that, as of January 22, 1990, no rule, stated policy, practice or interpretation of an options exchange shall restrict the listing of any new stock options class to a single exchange. In addition, effective January 21, 1991, but not before, Rule 19c-5 amends exchange rules to prohibit any exchange from limiting by any means its ability to list any stock options class because that options class is listed on another exchange. The rule also contains a phased-in implementation schedule. Moreover, in order to increase the anticipated benefits from options multiple trading, the Chairman requested that the options exchanges work together to develop a joint plan for a market linkage facility.[159]

In conjunction with the adoption of Rule 19c-5, the Commission separately released for comment a white paper, prepared by the staff of the Commission's Division of Market Regulation, that discusses the market structure issues associated with multiple trading of options on exchange-listed stocks and outlines several possible market structure enhancements.[160] In particular, the white paper describes three possible measures to integrate the options markets: an intermarket order routing linkage, a mechanism for order-by-order routing to the market with the best price, and a central limit order file.

During fiscal year 1989, the Commission reviewed several new derivative product proposals. First, the Commission approved proposals submitted by the Amex, CBOE, and Phlx to list for trading market basket products designated as index participations (IPs).[161] An IP is a present interest in the current value of a portfolio of stocks, is of indefinite duration, and entitles holders to receive cash payments equivalent to a proportionate share of any regular cash dividends paid on the component stocks in the underlying stock portfolio. The United States Court of Appeals for the Seventh Circuit, responding to a challenge by the CME and the Investment Company Institute, set aside the Commission's orders. The Court, in *Chicago Mercantile*

Exchange v. SEC, found that the SEC had no jurisdictional basis to approve the trading of IPs contracts on a national securities exchange.[162]

Second, the Commission approved a CBOE proposal to list options on two interest rate measures: a short-term interest rate measure based on the most recently auctioned 13-week Treasury bill and a long-term interest rate measure based on the most recently auctioned seven- and ten-year Treasury notes and 30-year Treasury bonds.[163] The options are designed to provide investors with hedging and risk-shifting vehicles that reflect the overall movement of short- and long-term interest rates.

Third, CBOE and the Chicago Board of Trade (CBT) entered into a joint venture (JV) agreement which provided for the concurrent trading on the CBOE floor of index option and futures contracts.[164] Pursuant to the JV agreement, CBT commenced trading CBOE 250 Stock Index futures contracts in November 1988. To accommodate the trading of the new futures products on CBOE, the Commission approved rule changes submitted by CBOE that defined the individuals and organizations that are permitted to execute transactions in JV contracts, specified certain CBOE rules applicable to non-CBOE member JV participants, and established trading rules for JV and JV-related products.

Fourth, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, the Commission sent to the CFTC two comment letters concerning proposed new stock index futures contracts. The Commission sent a comment letter not objecting to the CME's proposed futures on the European, Australia, and Far East Index (EAFE).[165] The EAFE is a capitalization-weighted index designed to be a barometer of the securities markets of Europe, Australia, and the Far East. In addition, the Commission sent a comment letter not objecting to designation of the CME as a contract market to trade options on its Nikkei futures contract.[166] The Nikkei is a price-weighted stock index based on the prices of 225 stocks traded in the first section of the Tokyo Stock Exchange.

Fifth, the Commission submitted a letter to the CFTC commenting on the CFTC's proposed rule and statutory interpretation regarding the regulation of hybrid instruments, such as debt securities with principal or interest payments pegged to stock market movements.[167] The letter suggests that, rather than adopt the proposed rule and interpretation, the CFTC continue discussions with representatives of the Commission and other interested regulatory bodies to address perceived concerns relating to hybrid instruments.

The Commission also approved several other important rule changes relating to derivative instruments. First, the Commission approved a NYSE/CME policy and circular prohibiting a member or person associated with a member or member organization from engaging in frontrunning involving securities and stock index futures or options on stock index futures.[168] Frontrunning generally is defined as trading on the basis of nonpublic market information regarding imminent, material market transactions.

Second, the Commission approved proposals submitted by Amex, CBOE, MSE, NYSE, NASD, Phlx, and the PSE requiring members to develop, implement, and maintain specific written standards for approving customer accounts seeking to establish uncovered short options positions, and to

establish a minimum net equity requirement for approving and maintaining such customer accounts.[169]

Finally, the Commission approved a CBOE proposal to require each CBOE market maker clearing firm to file with the CBOE's Department of Financial Compliance written procedures for assessing and monitoring the risk to the clearing firm's capital from positions in its own market maker accounts and from positions of independent market makers for whom it clears trades.[170] These procedures will enable clearing firms, as well as the CBOE, to better assess and monitor the potential risk of loss from options market maker accounts over a specified range of possible market movements.

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

Penny Stock Task Force

In response to the Commission's growing concerns with the widespread incidence of broker-dealer fraud and other misconduct in connection with certain low-priced, or "penny," stocks traded in the OTC market, the Penny Stock Task Force was created to coordinate the Commission's enforcement, regulatory, and educational efforts.[171] To this end, in fiscal year 1989, rulemaking and inspection programs focused on specific aspects of these concerns.

On August 22, 1989, the Commission adopted Rule 15c2-6 under the Exchange Act, which imposes sales practice requirements on broker-dealers who recommend purchases of these securities to persons who are not established customers.[172] As a means reasonably designed to prevent fraud, the rule makes it unlawful for a broker-dealer to sell to, or to effect the purchase by, any person of a security subject to the rule (in general, a non-NASDAQ, OTC equity security of an issuer with less than $2 million in net tangible assets) unless (a) the transaction is exempt under the rule or (b) prior to the transaction, the broker-dealer has (1) approved the purchaser's account for transactions in those securities and (2) received written agreement to the transaction from the purchaser. Exemptions are provided for (a) transactions in which the price of the security is five dollars or more; (b) transactions in which the purchaser is, as defined in the rule, an accredited investor or an established customer of the broker-dealer; (c) transactions that are not recommended by the broker-dealer; and (d) transactions by a broker-dealer who is not a market maker in the particular security and whose sales-related revenue from transactions in securities subject to the rule does not exceed five percent of its total sales-related revenue from transactions in securities.

Also, as part of its effort to curb penny stock market abuses, the Commission published for comment amendments to Rule 15c2-11 under the Exchange Act.[173] Rule 15c2-11 governs the submission and publication of quotations by brokers or dealers for certain non-NASDAQ, OTC securities. Among other things, the proposals would revise that rule by specifically requiring a broker-dealer to review the information the rule requires the firm

to have before initiating or resuming a quotation in a quotation medium, and to have a reasonable basis to believe that the information is true and accurate and obtained from reliable sources. The proposed amendments also would require a broker-dealer initiating or resuming quotations for a security to have in its records a copy of any trading suspension order, or Exchange Act release announcing a trading suspension, issued by the Commission with respect to any of the issuer's securities during the preceding year, and to review the other required information in its records in light of the information contained in that order or release. The Commission also solicited comment on whether to modify or eliminate the rule's "piggyback" provisions that allow broker-dealers to enter quotations without having the information specified by the rule where there has been a specified amount of recent market activity in the security.

Furthermore, the Commission's regional offices completed 165 examinations of penny stock broker-dealers. A large number of these examinations uncovered evidence of serious violations involving excessive retail markups, market manipulation, high-pressure "boiler-room" sales practices, and misrepresentations to investors concerning the business activity and financial condition of corporate issuers. Enforcement referrals have been made in 82 (50 percent) of the completed examinations, and an additional 14 examinations (9 percent) have been referred to the NASD for its enforcement consideration. The penny stock program will continue in fiscal year 1990, with particular focus on compliance by firms with new Rule 15c2-6, which became effective on January 1, 1990.

Broker-Dealer Examination Program

The broker-dealer examination program seeks to evaluate the examination programs of the SROs through the conduct of oversight examinations of SRO members. In addition, the Commission conducts cause examinations when it is aware of circumstances that may warrant direct Commission rather than SRO action. In fiscal year 1989, the regional offices completed 328 oversight examinations and 148 cause examinations. These completed examinations resulted in a record high number of matters referred for Commission enforcement consideration (106, or 22.3 percent) and of referrals to SROs (46, or 10 percent).

As discussed above, during fiscal year 1989, the examination program placed heavy emphasis on examining firms engaged in a penny stock business. In addition, the examination staff continued to review for broker-dealer compliance with the currency transaction reporting obligations of the Bank Secrecy Act. As a result, the Commission referred a number of matters to the Department of the Treasury. The Commission also provided "talking points" for the U.S. delegation to the International Financial Transactions Task Force, which is addressing money laundering problems. Further, Commission staff developed examination procedures to review firm compliance with the Insider Trading and Securities Fraud Enforcement Act of 1988.[174] Finally, procedures were developed to monitor and assess risks taken by firms

that concentrate a substantial amount of their capital in complex trading strategies.

Municipal Securities Disclosure

On June 28, 1989, the Commission adopted Rule 15c2-12 under the Exchange Act, which requires underwriters participating in primary offerings of municipal securities of $1 million or more to obtain, review, and distribute to investors copies of the issuer's disclosure documents.[175] The rule grew out of the Commission's previous issuance of a release soliciting public comment on several initiatives designed to improve the quality, timing, and dissemination of disclosure in the municipal securities markets.

The release addressed the concerns identified by the Commission in its investigation of the Washington Public Power Supply System default by detailing the disclosure and due diligence obligations of municipal securities underwriters.[176] Rule 15c2-12, which became effective on January 1, 1990, establishes standards for the procurement and dissemination by underwriters of disclosure documents as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities. The Commission also issued an interpretation concerning the responsibilities of underwriters of municipal securities under the general antifraud provisions of the federal securities laws. The interpretation stated, among other things, that, at a minimum, the Commission expects that in all offerings of municipal securities underwriters will review the issuer's disclosure documents in a professional manner for possible inaccuracies and omissions.

Commission Dollar Practices

A variety of issues regularly arise in connection with the use by money managers of commission dollars of their advised accounts to obtain investment research and brokerage services. Section 28(e) of the Exchange Act provides a safe harbor for these so-called "soft dollar" arrangements.[177] In connection with an ongoing staff review of these arrangements and their market implications, the Commission sponsored a roundtable on commission dollar practices in July 1989.[178] Some of the issues addressed at this conference included the relationship between soft dollar arrangements and market liquidity, the use of these payments in the context of directed brokerage accounts, the definition of the term "research" as used in Section 28(e), and disclosure issues implicated by soft dollar payments. The roundtable also focused on issues surrounding broker-dealer payment for order flow in exchange and OTC transactions. Participants in the roundtable included representatives from the NYSE, NASD, the United States Department of Labor, the United Kingdom Securities and Investments Board, and the broker-dealer, investment advisory, and banking communities.

Exemption of Certain Securities Issued by the Resolution Funding Corporation

The Financial Institutions Reform, Recovery and Enforcement Act of

1989[179] authorized the newly-created Resolution Funding Corporation (RFC) to provide financing for the resolution of matters relating to insolvent savings and loan associations in part from the public offering of debt securities to be issued by RFC. Unless otherwise exempted, these securities would be subject to a variety of regulatory restrictions imposed by the Exchange Act. In order to avoid delays in these financings or increases in the interest costs of the debt securities issued by RFC resulting from the application of the statutory restrictions, which was not deemed necessary for the protection of investors, the Commission adopted on an emergency basis Rule 3a12-10 under the Exchange Act.[180] The rule, which was adopted pursuant to Section 3(a)(12)(A)(v) of the Exchange Act,[181] defines the debt securities issued by RFC as "exempted securities" for purposes of those provisions of the Act that by their terms do not apply to such securities. Concurrent with the adoption of Rule 3a12-10, the Commission issued an order exempting these securities from the registration requirements of the Securities Act of 1933.[182]

Financial Responsibility Rules

The Commission published for comment a proposal to amend Rule 15c3-1 under the Exchange Act by raising the minimum net capital required of certain registered broker-dealers.[183] Broker-dealers that hold customer funds or securities would be required to maintain at least $250,000 in net capital. Those firms that clear customer transactions but do not hold customer funds or securities would need to maintain at least $100,000. Broker-dealers that introduce customer accounts would be required to maintain $50,000 or $100,000, depending on whether they occasionally or routinely receive customer funds and securities.

The Commission also issued a release proposing to amend the net capital rule to make the rule applicable to certain exchange specialists that are now exempt from the rule.[184] As proposed, the amendments would allow those specialists a grace period during which they could either bring in additional capital or reduce the size of their positions in specialty securities in order to satisfy the value reductions ("haircuts") on those positions called for by the rule. Under the proposal, options market makers would continue to be exempt under specified conditions.

The Commission issued a release proposing to amend its customer protection rule, Exchange Act Rule 15c3-3.[185] The amendment would expand the categories of instruments that broker-dealers may deliver as collateral to customers from whom they borrow fully paid or excess margin government securities. In addition to the instruments currently permitted under the rule, the amendment would allow broker-dealers to deliver as collateral "government securities" as defined by Sections 3(a)(42)(A) and 3(a)(42)(B) of the Exchange Act, and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation. The proposed amendment excludes zero coupon bonds and "stripped" securities not issued by the Department of the Treasury. Pending final action on the proposed amendment, the Commission authorized issu-

ance of a no-action letter allowing broker-dealers to expand, in accordance with the proposed amendment, the categories of instruments they may deliver as collateral to customers in government securities borrowings.[186]

Lost and Stolen Securities

Rule 17f–1 sets forth participation, reporting, and inquiry requirements for the Lost and Stolen Securities Program (Program). As of December 31, 1989, 21,858 institutions were registered in the Program. Statistics for the calendar year 1988 (the most recent year available) reflect the Program's continuing effectiveness. During the year, registered institutions reported as lost, stolen, missing or counterfeit 626,829 certificates valued at $2,877,883,729. Those institutions also reported the recovery of 122,627 certificates valued at $636,405,051. At the end of 1988, the aggregate value of securities contained in the Program's database was $15,079,115,776. Registered institutions made inquiry concerning 2,577,303 certificates. Inquiries concerning 2,178 certificates valued at $10,679,142 matched reports of lost, stolen or missing securities on file in the database.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 1989, nine active exchanges were registered with the Commission as national securities exchanges. During the fiscal year, the Commission granted exchange applications to delist 84 debt and equity issues and nine options issues and granted applications by issuers requesting withdrawal from listing and registration for 26 issues. In addition, during the fiscal year, the Commission granted 339 applications by exchanges for unlisted trading privileges.

During fiscal year 1989, the Commission received 194 proposed rule changes from the stock exchanges. The Commission approved several significant rule filings, including an NYSE proposal consisting of two policy agreements in regard to intermarket trading restrictions between the NYSE and the CME and between the NYSE and the New York Futures Exchange (NYFE). While not affecting legitimate trading activities, the joint policy prohibits a member or person associated with a member or member organization from engaging in intermarket frontrunning involving securities and stock index futures or options on stock index futures.[187]

A NYSE proposal to prohibit the use of portable telephones on the floor of the exchange was approved by the Commission during fiscal year 1988.[188] During fiscal year 1989, the United States Court of Appeals for the Second Circuit, responding to a challenge by a NYSE member, upheld the Commission's decision to approve the rule. The Court, in *Higgins v. SEC*, found that the SEC decision was supported by substantial evidence because it evaluated "several harmful consequences" that it could foresee from the use of portable telephones on the floor.[189] The Court found these consequences to be "sufficiently substantial" to sustain the SEC action. The Court concluded that

the Commission decision was not arbitrary, capricious, or an abuse of discretion because the Commission adequately considered and responded to comments received on the proposal and adequately weighed the competing interests.

During fiscal year 1989, the Commission approved NYSE proposals that revised certain requirements for specialists. The Commission approved a proposal to revise, restate, and consolidate the Exchange's Specialist Job Description and Code of Acceptable Business Practices.[190] The revisions replace the former specialist job description with one that provides more specificity regarding the performance expected of specialists.

A NYSE proposal to establish certain minimum issuer and member contact requirements for specialists was also approved by the Commission.[191] Under the rule, specialist units are required to make quarterly contacts, at least one of which is an in-person meeting, with a senior official at each of the specialist unit's listed companies. The specialist units are also required to establish semi-annual contacts, off the Exchange floor, with the 15 largest NYSE member organizations, other member organizations that are significant customers of the specialist unit, and any other member organizations that request such contact.

NYSE and Phlx proposals to impose allocation restrictions on a specialist unit that loses its registration in a specialty security were also approved by the Commission.[192] The rules prohibit a specialist unit from applying for new listings for a six-month period immediately following the reallocation of any of the unit's specialty stocks as a result of informal corrective action or a disciplinary proceeding.

In addition, the Commission approved modifications to the NYSE shareholder approval policy for listed domestic companies, as set forth in the NYSE Listed Company Manual.[193] The modified policy continues to require shareholder approval as a prerequisite to listing securities issued in certain significant corporate transactions. However, the circumstances triggering a shareholder vote were revised to clarify and make more realistic the exchange's standards and to simplify its administration of the policy. For example, the threshold amount for requiring shareholder approval for issuances of stock in connection with acquisitions was increased from 18-1/2 percent to 20 percent, and the policy was amended to take into account total voting power in addition to the shares outstanding at the time of the issuance to determine when the threshold would be exceeded.

National Association of Securities Dealers, Inc.

The NASD, the only national securities association registered with the Commission, is the largest self-regulatory organization in the securities industry in terms of membership, with over 6,300 member firms. It is the operator of NASDAQ, the second largest stock market system in the United States, and the third largest in the world (after the Tokyo Stock Exchange and the NYSE). In fiscal year 1989, the NASD reported a total of 869 final disciplinary actions.

Additionally, the Commission received 54 filings of proposed rule changes

from the NASD and approved 64 proposed rules changes in fiscal year 1989. Among the significant rule changes approved by the Commission [194] were those involving the registration of associated persons of member firms. Rule changes were approved to specifically prohibit member firms from maintaining inactive registrations [195] and to require member firms to provide associated persons who resign or are dismissed a copy of the form U-5 (the Uniform Termination Form filed with the NASD) and to obtain, before hiring, past U-5 forms relating to each new associated person.[196] Also, Schedule C of the NASD By-Laws was amended to establish a new category of registration for persons who function as securities order takers (Assistant Representative-Order Processing).[197]

The Commission also approved an extension through December 1, 1990 of the quotation linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.[198] The Commission published for comment NASD proposals that would prevent a firm that has been removed as a market maker on NASDAQ from making a market in that security outside that system during the prohibited period.[199]

Clearing Agencies

During fiscal year 1989, the Commission received 114 proposed rule changes from registered clearing agencies and approved 100 rule changes. For example, the Commission approved a DTC filing concerning the Automated Tender Offer Program (ATOP), which allows DTC participants to transmit electronically to DTC instructions regarding securities on deposit at DTC that are subject to a tender or exchange offer.[200] The Commission also approved a DTC filing concerning a system permitting DTC participants with a short position at DTC to request DTC to use its Participant Terminal System to invite tenders, from participants who are long in the particular security, to eliminate the short positions.[201] In addition, the Commission approved an OCC proposal to clear and settle a new CBOE market basket product through physical delivery of shares at each clearing member's designated clearing corporation.[202] Other clearing agency oversight activities of the Commission during the fiscal year are discussed above in the section entitled "Securities Markets, Facilities and Trading."

Municipal Securities Rulemaking Board

In fiscal year 1989, the Commission received eight proposed rule changes from the Municipal Securities Rulemaking Board (MSRB), and approved five MSRB rule filings. Of particular note was the partial Commission approval of amendments to the MSRB's Arbitration Code concerning the fairness and efficiency of the MSRB's arbitration process, and the use of predispute arbitration clauses in customer agreements. The amendments bring the code in line with the procedures of the exchanges and the NASD as recommended by the Securities Industry Conference on Arbitration, as discussed in the following subsection. The remaining issue to be resolved relates to the MSRB's proposed definition of "public arbitrator" and whether persons with strong industry ties should be eliminated from the arbitrator pool.

SRO Sponsored Arbitration

During the fiscal year, the Commission and staff placed special emphasis on oversight of the securities arbitration programs of the SROs. Those oversight efforts culminated in the Commission's approval on May 10, 1989 of major reforms to the arbitration rules of most of the SROs that administer arbitration programs, including all of the forums with significant caseloads. The NASD, NYSE, Amex,[203] CBOE,[204] and MSE [205] have adopted the new rules. As discussed above, the MSRB has adopted the new rules with one exception concerning the classification of arbitrators.[206]

The new arbitration rules improve virtually all significant aspects of the arbitration process. Key issues such as who may serve as arbitrators, public availability of the results of arbitrators, prehearing discovery of information, and other issues important to investor confidence in arbitration as a means for resolving disputes with the brokerage community have been addressed in the new rules. In addition, the new rules prescribe specific disclosure requirements for customer account agreements that include predispute arbitration clauses and prohibit the use of such clauses to curtail substantive rights that would otherwise be available in a judicial forum.

Inspections of SRO Surveillance and Regulatory Compliance

During fiscal year 1989, the staff conducted an inspection of the Amex options, equity and financial surveillance programs, and of its investigatory and disciplinary programs. While the inspections staff found that, overall, the Amex programs functioned adequately, the division recommended improvements in a number of specific areas, including the use of summary fines for its members with data submission deficiencies and a review of present staffing levels in its Compliance Department. Further, the staff recommended that Amex strive to generate its daily specialist capital report either prior to the start of trading or as shortly thereafter as feasible (enhanced by electronic submission of input for the report), develop formal procedures to monitor specialist capital on an intra-day basis following instances of extreme intra-day price volatility (augmented by changes to its "early warning" signals), and require reports on financial arrangements available to specialists on a quarterly rather than annual basis.

In a special purpose inspection, the staff reviewed the programs at the NYSE and Amex for monitoring affiliations between large, diversified broker-dealers and specialist operations pursuant to NYSE Rule 98 and Amex Rule 193, respectively. The inspection staff found that both exchange programs appeared to be operating effectively. However, the staff made a number of recommendations for improvements in each exchange's procedures. The staff also recommended that the NYSE and Amex improve the coordination of their very similar programs, consider the feasibility of joint examinations for dual-member firms, and meet regularly to compare findings about dual-member firms and to discuss means of further enhancing the exchanges' monitoring programs.

In fiscal year 1989, the inspections staff conducted a comprehensive

inspection of the NYSE surveillance, investigatory, and disciplinary programs for "upstairs" member firms' trading violations. The inspections staff found that while the surveillance and investigatory programs were functioning adequately, timeliness of investigation completion needed improvement. Accordingly, the staff recommended that the exchange focus on having all member firms prepared to transmit requested trade data electronically, commit to greater use of its disciplinary authority to encourage prompt transmissions, develop an automated case tracking system, and continue to improve the efficiency of its automated surveillance systems. As to the exchange's disciplinary program, the inspection revealed continuing deficiencies concerning timeliness and case management and documentation. As a result, the staff recommended that the exchange implement procedures to achieve case resolution within 12 months from the time of referral from its surveillance division, and implement a case tracking system and the use of internal control procedures, such as the maintenance of docket sheets.

In fiscal year 1989, the staff conducted an inspection of the Phlx regulatory programs relating to options and equities trading violations. The purpose of the inspection was to ascertain the status of the exchange's implementation of the staff's recommendations made following a comprehensive 1987 inspection. The 1989 inspection found that the Phlx had responded satisfactorily to the staff's prior findings and recommendations. The staff did recommend, however, that the exchange devote additional resources to identifying those surveillance procedures that could be performed more efficiently with additional automation. In addition, the inspection revealed deficiencies in the timeliness of the exchange's disciplinary process. Accordingly, the staff recommended that the exchange improve file documentation, establish a 60-day time limit between the authorization of formal charges and the subsequent issuance of charges to its members, and consider increasing the staff of its enforcement division.

In April 1989, the staff began a special purpose inspection of broker-dealer policies and procedures designed to prevent, pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988, the misuse of material nonpublic information. In this regard, the inspections staff reviewed the surveillance and documentation procedures and interviewed key compliance, legal, and investment banking personnel at 23 firms nationwide.

The staff conducted an inspection of the NASD's programs for review of members' communications with the public. Specifically, the inspection focused on the pre-use review and spot-checks of advertising and sales literature conducted by the Advertising Department and the on-site review of such material conducted during routine broker-dealer examinations. Although a few technical deficiencies were noted, the inspection disclosed that, overall, the NASD was conducting an effective review of members' communications with the public.

As a result of findings from a series of inspections of SRO reviews of members' communications with the public, including the NASD inspection, the staff sent a letter to the Options Self-Regulatory Council, which is composed of representatives of those SROs that engage in options trading,

recommending improved guidelines and better coordination among SROs in the review of options advertising, educational material, and sales literature. The Council, through its Advertising Subcommittee, has proposed a number of initiatives to respond to the concerns expressed in the staff's letter.

In a related action, the staff conducted a survey of the Amex, CBOE, NASD, and NYSE to determine whether those SROs, in their reviews of members' communications with the public, found any communications that they believed were in violation of any "good taste" standard adopted by the SROs. Overall, the SROs reported finding few violations, with one SRO, the NASD, having no specific requirement of that kind in its rule. Although the Commission had, in the past, approved amendments to SRO advertising rules that established "good taste" requirements, the SROs were advised that these requirements are now disfavored by the Commission and that the staff would consider future amendments by SROs to remove them.

The staff conducted an inspection of the NYSE's programs for monitoring transfers of customer accounts between member firms, together with a separate inquiry into specific prolonged failures to transfer customer accounts by and between certain NYSE members. The inspections disclosed significant deficiencies in the NYSE's ability to effectively monitor transfers, as well as a failure to impose meaningful sanctions against members unable to consistently complete transfers within time periods prescribed by NYSE rules.

The staff conducted an inspection of the NASD's broker-dealer examination program focusing specifically on the NASD's effectiveness in computing retail markups on equity securities traded in OTC markets. The inspection disclosed systemic weaknesses in the NASD's ability to compute markups in a manner consistent with NASD guidelines and Commission decisions. Since the inspection, the NASD has implemented a number of initiatives designed to ensure proper markup computations, including improved examiner training and supervision.

The staff conducted an inspection of the NYSE Division of Enforcement, focusing on the NYSE's recommendations to close a number of outstanding enforcement cases as part of an initiative aimed at effectively managing the growing caseload within the NYSE's enforcement program. Although the staff did not object to the NYSE's disposition of any of the cases reviewed, the inspection raised concerns with some of the rationales used by the NYSE to support its decisions to close specific cases. The staff recommended that, in future cases, the NYSE should consistently consider and resolve all attendant issues (such as the adequacy of the firm's supervision of respondents) and should take additional steps to ensure that enforcement cases are begun in the most timely manner possible.

The Commission's nine regional offices conducted routine oversight inspections of regulatory programs administered by ten of the NASD's 14 district offices. These inspections included evaluations of the districts' broker-dealer examinations and their financial surveillance and formal disciplinary programs, as well as investigations of customer complaints, terminations of registered representatives for cause, and members' notices of disciplinary action. Although these inspections disclosed several deficiencies involving a

variety of issues, most were characterized as less serious in degree and magnitude. Overall, these inspections revealed that the NASD was effectively meeting its regulatory responsibilities.

On occasion, the inspections staff's oversight of SRO programs indicates a need for formal remedial action with respect to an SRO's performance. During the past fiscal year, and for the third time in the past ten years, the Commission instituted an administrative proceeding against an exchange based on circumstances revealed in the course of the staff's oversight. On May 11, 1989, the Commission issued an order censuring the CBOE for failing to enforce compliance with its trading rules.[207] Simultaneously with the institution of these proceedings, the Commission accepted CBOE's offer of settlement. CBOE, without admitting or denying any of the matters set forth in the Commission's order, consented to the issuance of the order, the findings contained therein, and the sanction imposed by the Commission. The Commission also directed CBOE to comply with undertakings designed to improve its disciplinary procedures and to strengthen its market surveillance program.

In the order, the Commission concluded that CBOE failed to enforce compliance with certain of its rules when CBOE's Business Conduct Committee (BCC) determined not to initiate charges against 12 market makers (including a former vice chairman of the CBOE) and seven affiliated firms. The Commission found that, in 1986, the CBOE staff presented compelling circumstantial evidence to the BCC that certain trades, entered into during the introduction of new multiply-traded options, were effected primarily for the purpose of creating an artificial appearance of activity, a practice known as "chumming." Nevertheless, the BCC determined that no probable cause existed for finding violations and did not cause a formal disciplinary hearing to be held. Under these circumstances, the Commission found that the CBOE violated Section 19(g)(1) of the Exchange Act by failing, without reasonable justification or excuse, to enforce its own rules. Subsequent inspections of the CBOE surveillance, investigatory and disciplinary programs for trading violations, including one conducted in 1989, found that the CBOE programs functioned effectively. In the 1989 inspection, however, the staff recommended that the CBOE complete its automated Market Surveillance System, improve its audit trail accuracy rates, and enhance its file documentation. The staff also recommended the development of guidelines for the timely and thorough resolution of all investigations.

During the fiscal year, the inspections staff also conducted a review of program trading strategies utilized in early 1989 and submitted a report, dated June 30, 1989, to Congressional oversight committees on these strategies and their effects on market volatility.

Routine oversight inspections of the BSE and the Spokane Stock Exchange, and special purpose inspections of the audit trail procedures at the NYSE, Amex, and the NASD, also were commenced in fiscal year 1989.

Applications for Re-entry

During fiscal year 1989, the Commission received 75 SRO applications to

permit persons subject to statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, to become or remain associated with broker-dealers. The distribution of filings among SROs was the following: NASD (50); NYSE (24); and MSE (1). Of the total filings processed in 1989, including those received but not completed in 1988, six were subsequently withdrawn, 76 were completed and four were pending at year-end. One re-entry application was denied.[208]

SRO Final Disciplinary Actions

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

A Rule 19d-1 filing reports the facts about a completed action that may have been initiated at any time during the current or previous years. The duration of an SRO disciplinary action frequently reflects the severity of the violations charged, the number of respondents involved, and the complexity of the underlying facts. SROs generally conclude cases involving minor or technical violations and a single respondent in less than a year. Cases involving serious trading violations (*e.g.*, price manipulation, insider trading, frontrunning, *etc.*) often require more time to complete because of the necessity for demonstrating specific intent to the disciplinary panel that acts as trier of fact. Consequently, the absolute volume of Rule 19d-1 notices submitted by an SRO in a given year is not a precise measure of its proficiency in market surveillance and compliance. Nevertheless, the number of actions reported can be useful in assessing the regulatory effectiveness of different SROs over similar time periods, and this information has proved useful in focusing inspections of SRO regulatory programs.

In fiscal year 1989, the Amex filed 49 Rule 19d-1 reports; the CBOE filed 188; the NYSE filed 127; the Phlx filed 166; the PSE filed 107; the MSE filed two; the registered clearing agencies, the Cincinnati Stock Exchange and the BSE filed none; and the NASD filed 869.[209]

SRO Final Disciplinary Actions

	1985	1986	1987	1988	1989
Exchanges	530	419	382	624	639
NASD:					
District Committees	348	252	415	542	794
NASDAQ and Market Surveillance Committees	93	174	194	170	75
TOTALS	971	845	991	1336	1508

Securities Investor Protection Corporation (SIPC)

The SIPC Fund amounted to $450.3 million on September 30, 1989, an increase of $59.8 million from September 30, 1988. Further financial support

for the SIPC program is available through a $500 million confirmed line of credit established by SIPC with a consortium of banks. In addition, SIPC may borrow up to $1 billion from the United States Treasury Department, through the Commission.

On January 1, 1989, following Commission approval,[210] SIPC reimposed revenue-based assessments on member broker-dealers at the rate of 3/16 of one percent of each member's annual gross revenues from the securities business, with minimum assessments of $150 per year for each member.

Investment Companies and Advisers

Introduction

The Division of Investment Management oversees the regulation of investment companies and investment advisers under two companion statutes, the Investment Company Act of 1940 (Investment Company Act) and the Investment Advisers Act of 1940 (Investment Advisers Act), and administers the Public Utility Holding Company Act of 1935 (Holding Company Act). The tables below show the number and size in terms of assets of registered investment companies and investment advisers and the number of examinations of those registrants performed over the last five years.

Number of Active Registered Investment Companies and Investment Advisers

	FY'85	FY'86	FY'87	FY'88	FY'89	85–89 % Increase
Investment Companies	2,458	2,912	3,305	3,490	3,544	44.18
Investment Advisers	10,908	11,707	12,690	14,120	16,239	48.87

Investment Company and Adviser Assets Under Management
(in billions)

	FY'85	FY'86	FY'87	FY'88	FY'89	85–89 % Increase
Investment Companies	$525	$742	$1,205	$1,125	$1,200	132.38
Investment Advisers	$1,170	$1,400	$2,500	$3,400	$4,400	276.06

Inspections/Examinations of Investment Companies and Advisers

	FY'85	FY'86	FY'87	FY'88	FY'89	85–89 % Increase
Investment Companies	567	643	739	799	786	38.62
Investment Advisers	1,039	1,337	1,294	1,374	1,150	10.68
Total Examinations	1,606	1,980	2,033	2,173	1,936	20.55

The number of registered investment companies increased by only 1.5 percent during fiscal year 1989. An important factor in the recent slowing of growth in the number of registered investment companies is the number of investment companies that now combine several separate portfolios or investment series in one investment company registration. The Division of Investment Management estimates that counting the separate portfolios or series of these companies would equate to a registrant population of 16,000 investment companies at the end of fiscal year 1989. Registered investment companies added 590 new portfolios or series during fiscal year 1989. The

number of registered investment advisers grew by 10 percent and the assets they manage increased by 19.5 percent.

Investment company and investment adviser examinations completed decreased by 11 percent during the fiscal year. This decrease was due to a decision to devote greater staff resources to the examination of high risk investment companies and advisers.

Key 1989 Results

Significant Legislative Developments

In June 1989, the Commission proposed legislation to amend the Investment Advisers Act to authorize the creation of one or more self-regulatory organizations (SROs) for investment advisers. The SROs would generally be patterned after SROs for broker-dealers created under the Securities Exchange Act, providing for Commission oversight of the activities of any investment adviser SRO. All registered investment advisers would be required to join an adviser SRO, which would regulate all advisory activities except those involving investment companies registered under the Investment Company Act. The Commission would retain oversight responsibilities for investment companies.

Disclosure Requirements

The Commission revised registration Forms N-3 and N-4 used by insurance companies that issue variable annuity contracts under the Investment Company Act and the Securities Act.[211] The revisions consolidate expense-related data in a table near the front of the prospectus in order to improve the quality of expense disclosure in variable annuity prospectuses.

Rule 30b1-3 under the Investment Company Act was adopted by the Commission in March 1989. The rule requires companies changing their fiscal year to file a report on Form N-SAR within 60 days after the close of the transition period or the date of the determination to change the fiscal year, whichever is later; the transition period can be no longer than six months.[212]

Amendments to the registration form for closed-end investment companies (Form N-2) were proposed that would extend the two-part disclosure format to closed-end funds, update current disclosure requirements, and shorten and simplify the per share table. The Commission also proposed an amendment to Rule 8b-16 under the Investment Company Act to exempt closed-end funds from the requirement that their Investment Company Act registration statements be updated annually, provided certain disclosures are made to fund shareholders.[213]

The Commission adopted three new forms (N-17f-1, N-17f-2, and ADV-E) to be filed by accountants with their certificates for examinations in those cases in which investment companies (or members of a national securities exchange) or investment advisers have custody of securities. The forms are to be filed in accordance with Rules 17f-1 and 17f-2 under the Investment Company Act and Rule 206(4)-2 under the Investment Advisers

Act. The new forms are intended to facilitate proper filing of examination certificates.[214]

The Commission published for comment a release proposing revisions to Form N-1A, the registration statement used by open-end investment companies. The Commission proposed two alternative amendments designed to provide investors with new, easily understood information about mutual fund performance. The first alternative would require management to discuss and analyze the mutual fund's performance during its previous fiscal year and the techniques used to achieve that performance in light of the fund's objective. The second alternative would require a comparison of fund performance over certain time periods to the performance of an appropriate securities index over the same periods. In addition, the Commission proposed amendments that would (1) revise the per share table contained in the prospectus to shorten and simplify it, while providing investors with the fund's total return and (2) require disclosure about persons who significantly contribute to the investment advice relied on by funds. The revised disclosure requirements are intended to provide investors with more information about the performance of the fund and the individuals who may be primarily responsible for that performance.[215]

EDGAR Filings

In July 1985, the Office of Public Utility Regulation began accepting electronic filings from registered public utility holding company systems and their member companies. An EDGAR Pilot Branch was formed in October 1985, which began processing electronic filings for a volunteer group of investment company registrants. The volunteers include a representative group of 214 management investment companies and 78 unit investment trusts with over 3,659 separate series. Electronic filings of semi-annual reports on Form N-SAR have also been made by 999 registered management investment companies that are not full-scale participants in the EDGAR Pilot. As of September 30, 1989, the Commission had received 42,980 investment company filings through the EDGAR pilot system.

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

Regulatory Policy

Significant Investment Company Act Developments. During fiscal year 1989, the Commission proposed [216] and adopted [217] Rule 32a-3 under the Invest-

ment Company Act to provide an exemption, under certain conditions, from the requirement that an independent public accountant be selected at a board of directors meeting held within 30 days before or after the beginning of the company's fiscal year or before the annual meeting of stockholders. Companies eligible to rely on the rule are given an expanded time period during which to select an accountant.

Rule 12d1-1 under the Investment Company Act was proposed during fiscal year 1989 to ease restrictions on registered investment companies' acquisitions of the securities of foreign banks and foreign insurance companies.[218] Rule 12d-1 is intended to provide registered investment companies a broader range of investment policies and more flexibility in acquiring the securities of foreign banks and foreign insurance companies. The rule has now been adopted.[219]

Rule 11a-3 under the Investment Company Act was adopted to permit a registered open-end investment company (other than a registered separate account) or its principal underwriter (collectively, the offering company) to make certain exchange offers to the company's shareholders or to shareholders of another open-end investment company in the same group of investment companies.[220] Since exchange offers permit shareholders to move easily from one fund to another, such offers are popular with investors. Absent the rule, such exchange offers would be prohibited without prior Commission approval.

The Commission proposed amendments to Rule 12d3-1 under the Investment Company Act which would allow registered investment companies to acquire the equity securities of foreign securities firms, provided such securities conform to certain criteria.[221]

Significant Public Utility Holding Company Developments. There were 13 registered public utility holding company systems with aggregate assets of $92.2 billion as of June 30, 1989, an increase of $2.9 billion or 3.2 percent over June 30, 1988. Total operating revenues for the 12 months ended June 30, 1989 were $34.2 billion, a $1.5 billion increase from the 12 months ended June 30, 1988. There are 69 electric or gas utility subsidiaries, 76 nonutility subsidiaries, and 29 inactive companies in the 13 registered systems, a total of 187 companies operating in 24 states (excluding seven power supply subsidiary companies).

During fiscal year 1989, the Commission authorized the issuance of nearly $4.9 billion of senior securities and common stock financing for the 13 registered systems: $4.0 billion in long-term debt financing and $871 million in common and preferred stock. Long-term debt financing decreased by 13.0 percent from fiscal year 1988 primarily due to the volume of refinancing undertaken in prior years. In addition, $169 million in pollution control financing and $7.8 billion in short-term debt financing were approved. Pollution control financing decreased 72.9 percent from amounts authorized in fiscal year 1988. Short-term debt increased 59.2 percent from the previous fiscal year. The Commission authorized $2.6 billion of financing for the sale and leaseback of nuclear and coal-fired generating plants owned by the registered holding company systems and $340 million of investments in qualified cogeneration and small power production facilities and energy

management and audit systems. Total financing authorizations increased 34.8 percent over 1988, from $11.5 billion to $15.5 billion. Finally, the Commission authorized $584 million for nuclear fuel and $80 million for oil and gas development and exploration.

The Commission reviews holding company fuel procurement activities, accounting policies, audits of service companies, as well as annual reports of holding company subsidiary service companies and fuel procurement subsidiaries and quarterly reports by holding company nonutility subsidiaries. Electric utility subsidiaries of registered public utility holding companies were required to reduce the cost of fuel billed to customers by the amount of revenues gained from (1) the sale of excess oil and gas to nonassociated companies and (2) subleasing and transloading of coal and oil barges. Approximately $16.7 million in savings to consumers was realized as a result of this requirement.

The Commission proposed two rules during fiscal year 1989. Rule 17 specifies circumstances in which nonutility diversification by an intrastate public utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers.[222] Rule 52 would allow routine issuance and sale of securities by public utility subsidiary companies of registered holding companies to proceed without filing an application, provided certain conditions are met.[223] The Commission adopted Rule 52 essentially as proposed so as to permit the immediate realization of the rule's benefits.[224] However, the Commission is seeking comment on the need to revise Rule 52 to eliminate or modify certain of the conditions that are now part of the rule.[225]

Significant Institutional Disclosure Program Developments. Securities Exchange Act Section 13(f)(1) and Rule 13f-1 require specified "institutional investment managers" to file quarterly reports on Form 13F. Under Rule 13f-2(T), these managers may file the report on Form 13F-E through magnetic tape by using the Commission's pilot electronic disclosure system, EDGAR. Managers filing these reports disclose specified equity holdings of the accounts over which they exercise investment discretion. For the year ended September 30, 1989, Form 13F reports had been filed by 940 managers for total holdings of $1.5 trillion. Sixty managers electronically filed Form 13F-E reports for the quarter ended September 30, 1989 and reported nearly 11,000 securities holdings totaling over $83 billion.

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

Significant Applications and Interpretations

Investment Company Matters. A Canadian closed-end fund holding com-

pany was exempted from Section 12(d)(1)(A) of the Investment Company Act and permitted to invest more than ten percent of its assets in the securities of United States closed-end investment companies.[226] The Canadian fund must still comply with all provisions of Section 12(d)(1)(F) except registering under the Investment Company Act, and the fund may not offer, sell, or permit the transfer of its securities in the United States or to its citizens.

An administrative hearing involving the application of The College Retirement Equities Fund (CREF), a non-profit corporation providing retirement benefits to employees of colleges and universities, was concluded in August 1989. Exemptive relief had been requested under the Investment Company Act to restrict redemptions and limit the voting rights of its participants. The Commission approved the terms of the settlement under which CREF agreed to permit transfers and lump sum distributions if an employer consents. The settlement also provides for the election of CREF's Board of Trustees by fund participants.[227]

The Commission exempted the open-end management investment companies for which Fidelity Management and Research Company or an affiliate acts as investment adviser from Sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Investment Company Act and Rule 17d-1 thereunder, and approved certain joint transactions under Rule 17d-1.[228] The relief permits the funds to borrow from and lend to each other through a proposed credit facility at interest rates that, because of the elimination of intermediaries, would be both higher for the lender and lower for the borrower than would otherwise be available. The relief is subject to several conditions.

The Commission allowed the T. Rowe Price Spectrum Fund, a "fund of funds," to invest 100 percent of its assets in Price funds so long as no more than 15 percent of its assets are invested in any one underlying Price fund.[229] The Spectrum Fund is designed to offer small and retirement-oriented investors the benefits of a diversified portfolio of mutual fund investments at less cost than separately purchasing shares of each underlying fund.

The staff declined to grant no-action relief to an entity that wanted to distribute non-English language sales materials and advertisements within the United States to persons who use English as a second language because only an English language prospectus was available for the funds.[230] The staff stated that if the entity distributed sales literature or advertisements in a language other than English, a prospectus in the same language should be readily available.

The staff stated that it would not recommend enforcement action to the Commission for a fund that did not include performance results achieved prior to the date that a new investment adviser managed the fund.[231] However, as a condition to this no-action position, the fund must clearly state in any advertisement or sales literature that it previously operated under different management, and no person affiliated with the new adviser had any affiliation with the previous adviser; per share income and capital changes for the last ten fiscal years must be disclosed in the fund's prospectus.

In June 1989, the staff stated that if the information required to be disclosed in the fee table of a fund's prospectus does not, because of unique circum-

stances, reflect anticipated future expenses, a fund may describe the nature of those circumstances in the narrative following the table or elsewhere in the prospectus.[232] Because funds have the ability to explain fully any unique circumstances and because the staff would have difficulty making the kind of factual determinations necessary to grant a no-action request, the staff stated that, as a matter of policy, it would not grant no-action relief in this area.

On October 20, 1989, the staff concluded that Resolution Funding Corporation (Refcorp) is wholly owned, directly or indirectly, by the United States or an agency or instrumentality of the United States for purposes of the Investment Company Act; therefore, that Act does not apply to Refcorp.[233] In reaching its conclusion, the staff noted that Refcorp is authorized to issue only one class of equity securities (non-voting capital stock) to be held by Federal Home Loan Banks. The Directorate, its governing body, will be comprised of the director of the Office of Finance, Federal Home Loan Banks, and two members selected by the Oversight Board from among the presidents of the Federal Home Loan Banks. Members of the Oversight Board, having general oversight over Refcorp, will consist of officials of the United States government and two persons appointed by the President, with the advice and consent of the Senate.

Insurance Products Matters. The staff issued a letter stating that Rule 6e–3(T) under the Investment Company Act applies only to contracts for which there is a reasonable expectation that unscheduled payments will be made by contract holders.[234] No-action relief was denied because the contracts under consideration would not have allowed a purchaser to increase the death benefit beyond its initial level and the initial premium was already the maximum permitted by the Internal Revenue Code.

Investment Advisers Act Matters. The Commission issued an order that exempted Smith Breeden Associates, Inc. from Section 205(a)(1) of the Investment Advisers Act. Smith Breeden Associates was permitted to receive an incentive fee for the disposition of assets of a failed thrift which were held in the securities portfolio of a federally-insured thrift institution.[235]

Holding Company Act Matters. The Commission authorized a plan submitted by Northeast Utilities, a registered holding company, under Section 11(e) of the Holding Company Act to organize a new gas holding company system, Yankee Energy System Inc. Northeast Utilities proposed to transfer and sell its gas utility business to Yankee Energy and to divest its gas utility business by means of a *pro rata* distribution of Yankee Energy common stock to its common shareholders.[236]

The Commission released jurisdiction over the issuances, sales, and acquisitions of certain securities after May 14, 1989, which was reserved in the Commission's Memorandum Opinion and Order dated May 12, 1988 (HCAR No. 24641), and authorized a proposal by EUA Power Corporation (EUA Power), an electric public utility subsidiary company of Eastern Utilities Associates (EUA), a registered holding company. By this action, the Commission authorized EUA Power to issue 17-1/2 percent Series C Secured Notes (Series C Notes) on May 15, 1989 in the amount of $26,107,102 and on November 15, 1989 in the amount of $29,145,316. These two issues were in

lieu of the semi-annual cash interest payments due on those dates on EUA Power's outstanding 17-1/2 percent Series B Secured Notes and Series C Notes.[237] EUA Power was further authorized to issue and sell, and EUA was authorized to acquire, through May 14, 1990, up to an additional $15.6 million of Class A 25 percent Cumulative Convertible Preferred Stock (Preferred Stock). This issue will fund EUA Power's share of costs associated with its joint ownership interest in the Seabrook Nuclear Power Project and to maintain EUA Power's debt/equity ratio. In connection therewith, EUA was authorized to finance its acquisition of EUA Power's Preferred Stock through the issuance, through December 31, 1989, of up to an additional $15.6 million of short-term notes to banks under its existing lines of credit.

The Commission authorized Indiana and Michigan Power Company and AEP Generating Company, subsidiaries of American Electric Power Company, a registered holding company, to sell and leaseback their respective 50 percent ownership interests in the Rockport 2 coal-fired generating station for an amount not to exceed $1.7 billion.[238] The Commission authorized Louisiana Power and Light Company, a subsidiary of Energy Corporation (formerly, Middle South Utilities), a registered holding company, to sell and leaseback a 9.3 percent undivided interest in the Waterford 3 nuclear plant for approximately $354 million.[239]

After an administrative hearing, an administrative law judge rendered an Initial Decision on February 23, 1989 approving an application by CSW Credit, Inc., a captive finance subsidiary company of Central and South West Corporation.[240] The application sought the removal of a limitation the Commission had previously imposed, by order, on the ability of CSW to factor receivables of nonassociated utility companies. The division sought review of the Initial Decision by the Commission. The petition for review was granted on March 15, 1989. Oral argument will be scheduled.

A notice of the filing of two applications by Noverco of Montreal, Canada was issued.[241] No requests for a hearing were filed, but written comments were received. The Commission, on December 1, 1988, issued a notice of and order for hearing on Noverco's two applications.[242] The parties waived an evidentiary hearing and an initial decision by the administrative law judge. Briefs have been filed. The two applications request (a) approval under Sections 9(a)(2) and 10 of the Act to acquire all of the common stock of Northern New England Gas Corporation, a Vermont corporation and an exempt holding company which owns all of the common stock of Vermont Gas System, Inc., a Vermont corporation that provides retail gas service in Vermont, and (b) an exemption under Section 3(a)(5) of the Act. There are two issues presented, namely, whether the proposed acquisition by a foreign public utility holding company of the common stock of a United States public utility company should be authorized and, if so, whether the foreign holding company should thereupon be exempted from the Act given the size of the United States public utility company.

On November 28, 1988, ALLTEL and CP National Corporation (CPN) jointly filed an application under Section 3(a)(3) of the Holding Company Act requesting an exemption for ALLTEL from all of the provisions of the Act

except Section 9(a)(2) thereof. The application for exemption was filed in anticipation of ALLTEL's acquisition of all of the common stock of CPN, which is, among other things, a gas utility company. The acquisition of CPN was effected on December 30, 1988, and ALLTEL thereupon became a public utility holding company. The application was amended on February 6, 1989 to reflect the completed acquisition and to remove CPN as a co-applicant. Under Section 3(c) of the Act, ALLTEL is exempt "until the Commission has acted upon such application." On October 5, 1989 the Commission issued a Notice of and Order for Hearing to determine whether ALLTEL, which is engaged primarily in the telecommunications business, may be deemed to be "only incidentally a holding company" under Section 3(a)(3) of the Act and to determine whether an exemption is appropriate given the size and location of its gas utility operations.[243]

Other Litigation and Legal Activities

Introduction

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

Key 1989 Results

The General Counsel represented the Commission in 350 litigation matters in fiscal year 1989, compared to 314 such matters in fiscal year 1988. During the year, 43 court of appeals and Supreme Court cases were concluded, all but eight favorably to the Commission. There were 27 appeals in Commission injunctive actions, four of which were concluded, with no outcomes unfavorable to the Commission.

In fiscal year 1989, there were 27 appellate and district court actions seeking to overturn Commission orders in administrative proceedings or affirming self-regulatory organization (SRO) disciplinary proceedings against securities professionals. Of these appeals, 13 were concluded, with only two adverse results. In fiscal year 1988, six such actions were concluded, with one adverse result.

	FY'85			FY'86			FY'87			FY'88			FY'89		
	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*	Win	Loss	Other*
Supreme Court and Appellate Courts	36	4	5	32	3	2	31	3	2	24	3	0	30	8	5
District Court	23	3	2	21	0	1	14	3	0	16	2	5	16	2	2
Bankruptcy Court	20	5	0	13	3	1	4	7	1	8	3	1	4	0	2
Other**	7	0	0	4	1	0	3	0	0	2	1	1	5	0	3

* Issue not reached, split decision, etc.

** State Courts and Administrative Tribunals.

The federal securities laws provide for private remedies as well as government enforcement actions. Because decisions in private cases may have precedential effect on SEC regulatory activities and private remedies provide added deterrence to violations, the Commission's participation in such cases is an important supplement to its enforcement program. The Commission participated as *amicus curiae* (friend of the court) in 45 cases during the year, compared to 50 cases in fiscal year 1988. It participated in 13 private cases that were decided, only three of which resulted in decisions adverse to the Commission.

The General Counsel also handled more than 251 other proceedings before the Commission or in the federal district courts. These included 58 suits brought against the Commission or its staff and 102 suits seeking access to Commission documents—including actions under various public information statutes. Of the latter, 96 suits involved discovery subpoenas in private actions where the Commission is not a party. In fiscal year 1988, there were 61 suits brought against the Commission or its staff and 95 suits (including 89 third-party subpoenas) under the various public information statutes.

In addition to litigation, the General Counsel is involved in significant legislative, regulatory, and adjudicative work. For example, the office assisted the Chairman and the Commissioners in preparing testimony on issues such as the globalization of the securities markets, the impact of leveraged buyouts, and the need for additional enforcement remedies. The office also assisted the Commission in preparing legislative proposals concerning, among other things, the sanctions and remedies available to the Commission, market reform, and statutory changes to improve the Commission's ability to enforce the securities laws in increasingly global markets. In addition, the office assisted the Commission in preparing its decisions in administrative proceedings on appeals from adjudicative actions taken by self-regulatory organizations and administrative law judges and on motions presented to it in connection with such matters.

During fiscal year 1989, 125 debtors with publicly-held securities registered under the Securities Exchange Act of 1934 (Exchange Act) commenced Chapter 11 reorganizations. The Commission appeared in 53 of these cases, which, together with one non-registered company, involved assets of about $8.7 billion and about 200,000 public investors. A list of pending Chapter 11 cases in which the Commission has filed a notice of appearance is set forth in Table 23 of the Appendix to this report.

Litigation

Illegal Trading and Disgorgement. In *SEC v. First City Financial Corp.*,[244] the Commission successfully urged the United States Court of Appeals for the District of Columbia Circuit to affirm a district court order enjoining the defendants from violating the disclosure provisions of Exchange Act Section 13(d) and requiring them to disgorge approximately $2.7 million of illegal trading profits. The district court found that the defendants had entered into an informal understanding with a broker that enabled them to conceal the fact

that they had purchased stock in excess of the Section 13(d) five percent reporting threshold. The District of Columbia Circuit agreed with the Commission that injunctive relief was proper because of the seriousness of the reporting violation, which had the effect of depriving the market of valuable information and allowing the defendants to buy stock at bargain prices. The Court also agreed with the Commission that disgorgement was an appropriate remedy for such reporting violations because buying stock while failing to make the disclosures required by statute is, in effect, trading by an insider who fails to disclose material information that he is under a duty to disclose.

The Commission assisted the United States Attorney for the Southern District of New York in *United States v. Chestman*,[245] an appeal of insider trading convictions. Chestman argued that there was insufficient evidence to support his convictions. The government contended that Chestman violated Exchange Act Section 10(b) and Rule 10b-5 when he traded on material nonpublic information about an upcoming tender offer that had been tipped to him by the husband of a member of the family that owned a majority of the target company's stock. In addition, Chestman challenged the validity of Exchange Act Rule 14e-3, which prohibits trading while in possession of material nonpublic information about a tender offer. The government argued that promulgation of the rule, which furthers the goal of encouraging full disclosure in connection with tender offers, was well within the Commission's rulemaking authority.

In the insider trading cases of *SEC v. Levine* and *SEC v. Wilkis*,[246] the Commission urged the United States Court of Appeals for the Second Circuit to affirm a district court order awarding the defendants' illegal insider trading profits to the victims of their fraud, as beneficiaries of a constructive trust, rather than to satisfy the claims of the Internal Revenue Service (IRS) and other tax authorities. The Court of Appeals, however, reversed this portion of the district court's decision, holding that a requisite element of a constructive trust—a wrongful act—had been neither proven nor conceded. In addition, the Court held that, even if wrongdoing had been established, the district court erred in concluding that the defendants did not have property rights in the illegal profits to which an IRS lien could attach. The Court reasoned that transactions that violate the federal securities laws are merely voidable, not void, and that under applicable New York law, voidable title is sufficient to enable a wrongdoer to pass good title. As a result of the Second Circuit's decision, a substantial portion of the illegal trading profits disgorged from defendant Levine will be paid to the IRS to satisfy a tax lien. Litigation continues with respect to the remainder of the disgorgement fund.

Self-Regulatory Organizations. During fiscal year 1989, the Commission responded to several important petitions for review of Commission actions involving SROs. In *The Business Roundtable v. SEC*,[247] the petitioners challenged the Commission's authority to promulgate Rule 19c-4, which requires SROs to adopt rules denying listing (or requiring delisting) of the equity securities of any company that nullifies, restricts, or reduces the per share voting rights of any outstanding class of common stock. The rule was adopted in response to a New York Stock Exchange proposal to change its

listing requirements to permit disproportionate voting rights. In its brief to the United States Court of Appeals for the District of Columbia Circuit, the Commission disputed the contention that it lacks the authority to amend SRO listing standards that relate to internal corporate governance. Such authority, the Commission argued, exists under the 1975 Amendments to the Exchange Act, which expanded the Commission's authority to include all SRO rules, regardless of the subject matter. The Commission also urged that Rule 19c-4 furthers the purposes of a number of Exchange Act sections, in particular Section 14's proxy provisions, by promoting fair corporate suffrage. Finally, the Commission argued that Rule 19c-4 is not an impermissible infringement upon the states' traditional authority to charter and regulate corporations.

In *Chicago Mercantile Exchange v. SEC*,[248] the United States Court of Appeals for the Seventh Circuit set aside Commission orders that allowed three securities exchanges and the Options Clearing Corporation to issue, trade, and clear index participations (IPs). The Commission had determined that IPs fall within the Exchange Act's definition of security and are not futures contracts. The Court did not disagree with the Commission's determination that IPs are securities. The Court, however, deferred to the view of the Commodity Futures Trading Commission (CFTC), expressed in an *amicus curiae* brief, that IPs also are futures contracts, and thus held that IPs are subject to regulation only by the CFTC under the Commodity Exchange Act.

Definition of a Security. The Supreme Court, as urged by the Commission, granted certiorari in *Arthur Young & Co. v. Reves* [249] to address the question whether certain interest-bearing promissory notes that were widely offered and sold to the public by an Arkansas farmers' cooperative are securities. The United States Court of Appeals for the Eighth Circuit held that the notes were not securities because they were payable on demand and because the interest paid on the notes did not constitute "profit" under the test established by the Supreme Court in *SEC v. W.J. Howey Co.*[250] for an "investment contract."

The Commission argued in an *amicus curiae* brief to the Supreme Court that the instruments are "notes" within the statutory definition of "security" in both the Securities Act of 1933 (Securities Act) and the Exchange Act. The Commission argued that the Eighth Circuit failed to take into account the substance of the transactions—that the notes were sold to the public in small denominations as part of a broad offering and were marketed as investments. In addition, the Commission's brief discussed the three tests used by the courts of appeals to determine when an instrument is a "note" within the definition of "security" and urged the Supreme Court to adopt the Second Circuit's "family resemblance" test. The Commission further argued that the fact that the notes were payable on demand does not disqualify them from being securities, since it is a note's character, not its maturity date, that determines whether the note is covered by the federal securities laws. Finally, the brief took the position that an investor's expectation of receiving interest on a debt instrument qualifies as "profit" under *Howey*.

In *Holloway v. Peat, Marwick, Mitchell & Co.*,[251] the United States Court of Appeals for the Tenth Circuit, agreeing with the position urged by the Commission as *amicus curiae*, held that certificates issued by two Oklahoma

financial institutions were securities. The certificates at issue generally had maturity dates of six months or less and some were payable on demand. Applying the Tenth Circuit's "commercial/investment" test for determining when an instrument is a "note" within the definition of "security," the Court held that the certificates were covered by the securities laws because they had been offered to the general public, purchased by more than 10,000 investors, and advertised to the public as investments. The Court rejected the argument that, under the Supreme Court's decision in *Marine Bank v. Weaver*,[252] the federal securities laws should not apply, since the financial institutions involved were subsidiaries of a bank holding company that had been subject to regulation under the federal Bank Holding Company Act at the time the certificates were issued. The Court held that the *Marine Bank* exclusion was not applicable in this case because the protections of the two statutes were not comparable—the Bank Holding Company Act's purpose is to protect depositors in banks owned by holding companies, not investors in the nonbank subsidiaries of holding companies. The Court also held that state regulation of financial institutions is not sufficient to invoke the *Marine Bank* exclusion.

Finally, in *Foremost Guaranty Corp. v. Meritor Savings Bank*,[253] the Commission filed an *amicus curiae* brief that addressed the question of whether certain mortgage backed pass-through certificates are securities. The Commission urged the United States Court of Appeals for the Fourth Circuit to overturn a district court decision holding that the certificates are not securities. The Commission took the position that the certificates satisfy the investment contract test set forth in *SEC v. W.J. Howey Co.* The Commission also took the position that the certificates fall within the category "certificate of interest . . . in any profit-sharing agreement" included in the definition of a security in both the Securities Act and the Exchange Act. In addition, the Commission pointed out that such mortgage backed certificates have been universally viewed as securities by Congress, by the Commission, by commentators, and by the legal and financial communities. Thus, the Commission argued that the certificates fall within the category "instrument commonly known as a 'security' " included in the Securities Act and Exchange Act definitions of security.

Broker-Dealers and Market Professionals. The Commission filed an *amicus curiae* brief at the request of the United States Court of Appeals for the Ninth Circuit in *Hollinger v. Titan Capital Corp.*,[254] expressing the Commission's views on important issues concerning the liability of brokerage firms and urging the Court to hear the case *en banc*. First, the Commission urged the Court of Appeals to overrule its earlier decisions holding that respondeat superior (the doctrine that a principal is responsible, under certain circumstances, for the conduct of the principal's agent) is unavailable in actions under Section 10(b). The Commission took the position that respondeat superior is applicable to the federal securities laws just as it is in actions for common law fraud. In addition, the Commission urged the Ninth Circuit to hold that recklessness as defined at common law—a conscious indifference to the truth, falsity, or misleading nature of a representation—satisfies the scienter requirement of Section 10(b) and Rule 10b-5.

Liability in Private Actions. In *Wilson v. Ruffa & Hanover, P.C.*,[255] the United States Court of Appeals for the Second Circuit held that a law firm that participates in a securities offering can only be found liable under Securities Act Section 12(2) if its participation was "the legal equivalent of solicitation of a sale." The Second Circuit's decision reflected the position of the Commission, which had filed an *amicus curiae* brief at the Court's invitation. The Court of Appeals, applying the principles governing liability articulated by the Supreme Court in *Pinter v. Dahl*[256] for actions under Securities Act Section 12(1) to actions under Section 12(2), held that a law firm could not be found liable when its participation in an offering consisted only of preparing offering materials and sending them to investors at the issuer's request. In addition, the Court of Appeals agreed with the Commission that aiding and abetting liability is inappropriate under Section 12(2).

The Commission participated in two recent cases raising the issue of the appropriate statute of limitations for private actions under Exchange Act Section 10(b) in the absence of an express statutory limitations period for such actions. In response to the Supreme Court's request for the government's views, the Solicitor General filed an *amicus curiae* brief, in accord with the Commission's position, in *Lebman v. Aktiebolaget Electrolux*.[257] The United States Court of Appeals for the Fifth Circuit had affirmed the district court's dismissal of the petitioners' action under Exchange Act Section 10(b) as time-barred, finding that the applicable statute of limitations was the two-year limitations period governing actions under the Texas general fraud statute.

The government's brief in the Supreme Court expressed the view that applying state law has yielded inconsistent results and recommended that this approach should be abandoned in favor of a uniform limitations period drawn from federal law. The brief urged that the Court adopt the five-year limitations period of Exchange Act Section 20A, which establishes an express private cause of action against persons who trade while in possession of material inside information. Congress, in adopting Section 20A as part of the Insider Trading and Securities Fraud Enforcement Act of 1988, for the first time provided a statutory federal limitations period applicable to certain private actions brought under Section 10(b) (*i.e.*, actions for insider trading). The brief noted that, in selecting the five-year period, Congress established a limitations period attuned to what it perceived to be the appropriate balance between affording a remedy for investors injured by fraud and providing repose for potential defendants in private antifraud actions. Despite advancing a view contrary to the Fifth Circuit's decision, the brief recommended that the Supreme Court deny review because the Fifth Circuit's decision predated the adoption of Section 20A and since other courts had not had the opportunity to consider whether Section 20A provides a suitable analogy to other actions under Section 10(b) and Rule 10b-5. The Supreme Court denied review.

In *Ceres Partners v. GEL Associates*,[258] the Commission asserted the same position as to the applicability of the five-year limitations period in an *amicus curiae* brief filed in the United States Court of Appeals for the Second Circuit.

Finally, in *Deutschman v. Beneficial Corp.*,[259] another case involving private rights of action under Section 10(b), the Supreme Court declined to review a

decision by the United States Court of Appeals for the Third Circuit, holding that purchasers of call options have standing to assert a cause of action for affirmative misrepresentations against the non-trading issuer of the underlying securities. In response to the Supreme Court's request for the government's views, the Solicitor General filed an *amicus curiae* brief, in accord with the Commission's position, urging that the Court deny review. The government's brief took the position that it is appropriate that options traders have standing in the circumstances presented. The brief observed that options traders are purchasers and sellers of securities, and that the complaint in this case alleged a fraud "in connection with" purchases and sales. The brief also argued that, in a case alleging affirmative misrepresentations, no fiduciary relationship need exist between the options traders and the corporation making the misstatement. Finally, the brief argued that there are no policy reasons that would support denying standing to options traders. In particular, the brief noted that not allowing options traders to sue would leave unremedied economic harm flowing from fraud, and that assertions that allowing options traders to sue would impose enormous potential liability on issuers are unsubstantiated.

International Application of the Securities Laws. In *Consolidated Gold Fields, PLC v. Minorco, S.A.*,[260] the United States Court of Appeals for the Second Circuit held that a tender offer involving two foreign corporations had a "substantial effect" within the United States. Thus, even though most of the shareholders resided outside of the United States and the tender offeror sought to exclude United States shareholders from the offer, the presence of "substantial effect" was sufficient to allow subject matter jurisdiction under the antifraud provisions of the federal securities laws. The district court had dismissed securities fraud claims brought against the acquiring company on the ground of "insignificant" United States effects. The Second Circuit, agreeing with the position urged by the Commission in an *amicus curiae* brief, held that the district court should have asserted jurisdiction, since the acquiring company had sent the tender offer documents to British nominees of the target company's American shareholders and those nominees were required by law to forward the offering materials to the American shareholders. Nevertheless, the Appellate Court, consistent with the position urged by the Commission, remanded the proceeding to the district court to determine whether the extraterritorial effect of the particular remedy sought (an injunction against the tender offer worldwide) was disproportionate to the harm in the United States for which redress was sought.

Actions Under the Public Utility Holding Company Act of 1935 (Holding Company Act). In *Wisconsin's Environmental Decade v. SEC*,[261] the petitioners challenged a Commission order approving a corporate restructuring that separated the utility and nonutility business of an existing intrastate public utility holding company under a new holding company in order to facilitate diversification into nonutility businesses. The United States Court of Appeals for the District of Columbia Circuit rejected the petitioners' argument that the proposed diversification was detrimental to the public interest and that the Commission was precluded from granting the new company an intrastate

exemption from the Holding Company Act. The Court of Appeals determined that the Commission, in granting the exemption, had properly relied on state limitations imposed on the holding company's diversification activities, as well as the Commission's continuing jurisdiction to monitor such activities and, if necessary, to revoke the exemption. In addition, the Court found that the Commission properly concluded that the transaction would not "unduly or unnecessarily complicate the structure" of the holding company system, as required by Holding Company Act Section 10(c)(1). The Court of Appeals, however, agreed with the petitioners that the Commission had failed to demonstrate, as required by Holding Company Act Section 10(c)(2), how the restructuring would "tend toward the economical and efficient development of an integrated public-utility system." The Court therefore vacated the order approving the restructuring and remanded the case to the Commission for further proceedings.

Motions to Vacate Injunctions. During fiscal year 1989, the Commission opposed several motions to vacate injunctions entered in Commission enforcement actions. In *SEC v. Zale*,[262] the United States Court of Appeals for the Fifth Circuit affirmed a district court's denial of a motion to vacate a consent injunction obtained in a Commission enforcement action. The Court agreed with the Commission that the defendants' contention that they were "stigmatized" because of the injunction did not constitute grievous wrong resulting from unforeseen circumstances that would justify vacation of the injunction under *United States v. Swift & Co.*[263]

The United States Court of Appeals for the Eleventh Circuit refused to overturn a district court order freezing a company's assets, pending disgorgement, in *SEC v. Goldcor, Inc.*[264] The Commission had filed an enforcement action against Goldcor and its affiliates, alleging that they were engaging in antifraud violations by selling stock in a sham gold mining operation in Costa Rica. In its brief to the Court of Appeals, the Commission argued that the district court had not abused its discretion in denying Goldcor's request to have the freeze order dissolved because without such an order there was a serious risk that Goldcor's managers would conceal or dissipate the company's assets.

Actions Involving Other Agencies. The Commission filed an *amicus curiae* brief in *Federal Deposit Insurance Corporation v. Jenkins*.[265] In this case, the United States Court of Appeals for the Eleventh Circuit, consistent with the Commission's brief, reversed a district court decision enjoining shareholders from litigating their Section 10(b) and Rule 10b-5 claims against officers and directors of a failed bank and its holding company until the claims of the Federal Deposit Insurance Corporation (FDIC) against the officers and directors were satisfied. In its brief the Commission argued that the FDIC improperly invoked the absolute priority rule, which provides that, in certain contexts in bankruptcy and receivership proceedings, creditors' claims against a corporation receive priority over the claims of shareholders. The Commission pointed out that neither the rule, by its terms, nor its rationale applies when claims are asserted against parties other than the bankrupt or insolvent corporation. In addition, the Commission's brief noted that Bankruptcy Code

Section 510(b), which expressly subordinates certain shareholder security fraud claims against an issuer in a bankruptcy proceeding, suggests that the FDIC's position on priority with respect to claims against third parties is unwarranted. The Commission argued that neither the legislative history nor the case law and legal commentary leading to the enactment of Section 510(b) contemplates the application of a similar priority rule to shareholder fraud claims against third parties.

Discovery Actions in Commission Enforcement Actions. In *SEC v. Carl N. Karcher, et al.*,[266] the Commission defeated an attempt to depose two Commissioners in connection with a pending injunctive action.[267] The Commission argued that depositions of such high ranking government officials are permissible only on a preliminary showing of extraordinary circumstances, and that the defendants should not be allowed to depose Commissioners about the Commission's deliberations. After briefing, the Court issued a protective order prohibiting the depositions.

Litigation Involving Requests for Access to Commission Records. Although the Commission received more than 5,143 Freedom of Information Act (FOIA) and confidential treatment requests in fiscal year 1989, only one of these resulted in the filing of court action against the Commission. The court action was dismissed by stipulation. The Commission received 2,147 requests under the FOIA for access to Commission records and 2,974 requests for confidential treatment from persons who submitted information. In fiscal year 1989, there were 73 appeals of denials of FOIA requests to the Commission's General Counsel and 22 appeals of denials of confidential treatment requests.

In *Occidental Petroleum Corp. v. SEC*,[268] the Court of Appeals for the District of Columbia Circuit affirmed the district court's decision to remand a reverse-FOIA case to the Commission for further proceedings to develop a more complete administrative record.[269] The Court of Appeals held that the record and the Commission's decision were insufficient to permit effective judicial review, and that the procedural requirements that the district court imposed on the Commission were within the district court's authority and were necessary to produce a reviewable record. For example, the district court remand order required a document-by-document explanation of the Commission's denial of confidential treatment and concluded that, where a denial of confidential treatment was based on public availability of information, the agency record was not reviewable unless it included the public sources on which the Commission relied. The Court of Appeals also held that the imposition of such requirements in the remand order did not exceed the district court's authority because it stopped short of requiring the Commission to adopt specific procedures, where other procedures might achieve the standard of reviewability mandated by the Administrative Procedure Act. The Court indicated that any procedure producing a record capable of judicial review must be accepted by the Court after remand.

In *Safecard v. SEC*,[270] plaintiff sought review of the Commission's decision to withhold certain documents under FOIA Exemption 7(A) in response to Safecard's FOIA request for access to 32 Commission investigative files. The Commission successfully protected the interests of witnesses who provided

information during these investigations and prevented the disclosure of the majority of Commission internal memoranda and handwritten staff notes. After review of the parties' cross-motions for summary judgment, the district court granted, with limited exceptions, the Commission's motion for partial summary judgment. The plaintiff's appeal to the District of Columbia Circuit is pending.

Actions Against the Commission. In *Suter v. Ruder*,[271] the United States District Court for the Northern District of Illinois granted the Commission's motion to dismiss in a case alleging that present and former Commissioners and staff participated in a conspiracy to violate the First Amendment rights of an investment newsletter publisher. The Court also imposed monetary sanctions against the plaintiff pursuant to Rule 11 of the Federal Rules of Civil Procedure and enjoined him from filing any civil action without first obtaining leave of the court in which he seeks to file his action. The Commission's motion to dismiss Suter's appeal from this order is pending before the Seventh Circuit.[272]

In *Lin v. SEC*,[273] the United States District Court for the Northern District of California dismissed a complaint against the Commission, a former Chairman of the Commission, and present and former attorneys in its Division of Enforcement, alleging misconduct in connection with a Commission law enforcement investigation. In the first decision of its kind, the Court recognized that Commission enforcement attorneys were absolutely immune from suit as long as they were exercising a discretionary prosecutorial function within the limits of their authority. The suit also sought damages against the Commission arising out of a temporary cancellation of the plaintiff's registration as an investment adviser. The Court ruled that the doctrine of sovereign immunity barred damage claims against the Commission arising out of cancellation of a registration as an investment adviser; the exclusive remedy was appellate review under the provisions of the Investment Advisers Act of 1940 (Investment Advisers Act).

Actions Against Professionals Under Commission Rule 2(e). The staff is litigating against a number of professionals under Commission Rule 2(e). During fiscal year 1989, a number of such actions were concluded. In *In re Checkosky and Aldrich*,[274] Administrative Law Judge Brenda P. Murray found, following a five-week hearing, that two audit partners of the firm of Coopers & Lybrand had engaged in improper professional conduct by violating generally accepted auditing standards during five consecutive audits of Savin Corporation. Judge Murray found that Checkosky and Aldrich had failed to exercise due care and obtain sufficient evidence to support their positions. Instead, according to the Court's findings, they had given paramount consideration to pleasing the client, while showing little concern for the truthfulness of the client's financial statements. Judge Murray found that because of the respondents' misconduct, the public had received five sets of financial statements that were materially incorrect and that overstated the company's financial position. Based on her findings, Judge Murray suspended Checkosky and Aldrich from appearing and practicing before the Commission for five years.[275]

In *In re Clark*,[276] after two weeks of trial, a partner in the national accounting firm of Peat, Marwick, Mitchell & Co. consented to a Commission order that censured him and ordered him not to practice before the Commission for nine months. The staff had alleged that the partner engaged in improper professional conduct by signing an "unqualified" audit report when he had information indicating that the bulk of the revenues of the company were improperly recorded and should not have been recognized.

Actions Under the Right to Financial Privacy Act. District courts dismissed four actions filed pursuant to the Right to Financial Privacy Act seeking to quash Commission subpoenas for customer financial information from financial institutions.[277] In each of these cases, the courts held that the Commission was seeking the bank records for a legitimate law enforcement purpose, and that the records sought were relevant to the investigation. The courts therefore ordered compliance with the Commission's subpoena.[278]

Significant Administrative Decisions

Broker-Dealers and Market Professionals. In *Hamilton Bohner, Inc., John R. McKowen and John E. Sherman*,[279] the Commission affirmed the disciplinary action taken by the NASD against the NASD member firm of Hamilton Bohner, Mr. McKowen, its former president, and Mr. Sherman, its former vice president. The Commission found, as had the NASD, that respondents charged excessive compensation for selling securities for a customer, and that the firm and McKowen sent the customer confirmations that misrepresented the capacity in which the firm was acting and did not disclose the actual compensation it was charging. In ten transactions, Hamilton Bohner, which was not a market maker, purchased shares sold by its customer and simultaneously resold the shares to market makers. Based on the prices Hamilton Bohner received from those market makers, the prices paid the customer for its securities represented markdowns of 5.3 percent to 10.2 percent below the prevailing market price. Pointing to the "well established industry practice pursuant to which markdowns by broker-dealers on purchases from customers are substantially lower than markups on sales to customers," the Commission found the markdowns of 5.3 percent to 10.2 percent charged by respondents to be "far in excess of permissible levels."

In *Robert J. Check*,[280] the Commission sanctioned Mr. Check, who was manager of a brokerage firm's mutual funds department, for failing to exercise reasonable supervision over the firm's salesmen with a view to preventing their failure to apprise mutual fund customers of the sales commission discounts to which the customers were entitled. The Commission was not persuaded by Mr. Check's arguments that he did not have supervisory responsibility over the salesmen, that branch managers were responsible for ensuring their salesmen's compliance with applicable requirements, and that neither salesmen nor branch managers reported directly to him. The Commission found that Mr. Check "failed to carry out his responsibilities and to exercise his authority to take effective action," and that he was not relieved of his supervisory obligations because other officials of the firm shared responsibility for

supervising its salesmen. The Commission pointed out that Mr. Check was "uniquely positioned to exercise effective supervisory control in the specialized area of mutual fund sales."

Significant Legislative Developments

Enforcement Remedies. In January 1989, the Commission submitted to Congress the proposed Securities Law Enforcement Remedies Act of 1989. The proposal, which was similar to a proposal made by the Commission the previous year, was introduced in the Senate as S. 647 and in the House of Representatives as H.R. 975.

The proposal would amend the securities laws to authorize the Commission to impose civil money penalties in administrative proceedings and would expand the power of the courts to impose such penalties in civil actions brought by the Commission. The Act also would enable the Commission to bar or suspend persons from service as officers and directors of companies that are required by the Exchange Act to file periodic reports with the Commission. The authority of the courts to impose such sanctions would be clarified. In addition, the scope of Section 15(c)(4) of the Exchange Act would be broadened to permit the Commission to bring administrative proceedings against persons for violating the securities ownership reporting provisions of Section 16(a) of that Act.

Former Chairman Ruder testified in support of the proposals before the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs on April 18, 1989 and before the Telecommunications and Finance Subcommittee of the House Energy and Commerce Committee on July 19. No further action was taken by the 101st Congress during its first session.[281]

International Enforcement. The accelerating internationalization of the world's securities markets has made it necessary for the Commission to develop additional means of conducting investigations and bringing enforcement actions with respect to violative conduct that occurs in part or entirely outside the territorial borders of the United States. In particular, the Commission has sought to negotiate bilateral assistance agreements with foreign governments, known as Memoranda of Understanding. These agreements enable the Commission to obtain evidence located abroad through the cooperation of foreign officials. In order to enhance its ability to enter into such cooperative arrangements, the Commission asked Congress for the authority to conduct investigations requested by foreign authorities even when there is no indication that a violation of the United States securities laws has occurred. The Insider Trading and Securities Fraud Enforcement Act, which was passed by Congress and enacted into law on November 19, 1988, amended the Exchange Act to permit the Commission to conduct such investigations.

In January 1989, the Commission submitted legislation to Congress that would further strengthen its international enforcement capabilities. The International Securities Enforcement Cooperation Act of 1989, introduced in

the Senate as S. 646 and in the House of Representatives as H.R. 1396, would authorize the Commission to accept reimbursement for expenses incurred in providing assistance to a foreign securities authority. It also would permit the Commission and the SROs to impose sanctions on a securities professional who is found by a foreign court or securities authority to have engaged in improper or illegal conduct. SROs would also be given the authority, subject to Commission oversight, to prohibit any person who has been convicted of a felony from becoming a member of that organization, or associated with a member, or to place conditions on such membership or association.

The Act also would amend the Exchange Act to enable the Commission to preserve the confidentiality of certain evidence obtained from foreign authorities that otherwise might have to be disclosed pursuant to the FOIA. The disclosure provisions of that Act would not be applicable to such evidence if the foreign authority represented in good faith that disclosure would violate the laws of that country. By carving out a narrow exception to the FOIA, the proposed legislation would facilitate the sharing of information relevant to Commission investigations. In addition, the bill would clarify the Commission's rulemaking authority to provide domestic and foreign enforcement officials with certain nonpublic information.

Hearings were held in both Houses of Congress. H.R. 1396 was passed by the House on September 25, 1989. In the Senate, the Commission's proposal became part of a comprehensive bill entitled the Securities Acts Amendments of 1989, passed by the Senate at the close of the first session as H.R. 1396. The House did not act on the comprehensive proposal before the end of the session.

Internationalization. On June 15, 1989, former Chairman Ruder testified before the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs concerning the globalization of the securities markets. Former Chairman Ruder described for Congress the degree of internationalization that has taken place in recent years and outlined the numerous initiatives undertaken by the Commission to deal with this phenomenon. Among the measures discussed was the Commission's Policy Statement on the Regulation of the International Securities Markets, which was issued in November 1988. That statement urges cooperation among the world's securities regulators while recognizing the need to take account of cultural differences and national sovereignty concerns. The Commission's statement suggests that an effective regulatory structure for an international securities market system would include efficient mechanisms for quotation, price and volume information dissemination, order routing, order execution, clearance, settlement and payment, and strong capital adequacy standards; sound disclosure systems that protect investors while balancing costs and benefits for market participants; and fair and honest markets achieved through regulation of abusive sales practices, prohibitions on fraud, and high levels of enforcement cooperation.

Market Reform Legislation. The Commission's legislative package to address certain issues raised by the October 1987 market break was re-introduced in the 101st Congress as S. 648 and H.R. 1609, the Stock Market Reform Act of

1989. As amended by the House Telecommunications and Finance Subcommittee and by the Senate Committee on Banking, Housing, and Urban Affairs, the bill would permit the Commission to close the markets in the event of an emergency so long as the President does not object, require that information concerning the identity and transactions of large securities traders be made available to the Commission, enable the Commission to gain access to information concerning the financial and operational condition of entities associated with broker-dealers, and facilitate improved clearance and settlement. The House Finance Subcommittee also added a provision dealing with program trading.

Although the Commission's original proposal would have given the agency unilateral authority to impose a halt in securities trading on an exchange or otherwise for up to 24 hours (and for additional periods with the approval of the President), Chairman Breeden explained in testimony before the House Telecommunications and Finance Subcommittee on October 25, 1989 that nondiscretionary circuit breakers implemented since the market break have lessened the need for such authority. The subcommittee voted on November 14, 1989 to report a version of the bill, which was subsequently introduced as H.R. 3657, that provides that a Commission decision to close the markets will not take effect unless the Commission notifies the President and the President does not object. The Senate Committee on Banking, Housing, and Urban Affairs voted to report substantially similar language.

With respect to a proposal to require reports to the Commission by any person effecting large securities transactions for that person's own account, concerns were raised by the SROs and members of the securities industry that the original bill, which required that such information be provided to the Commission on an ongoing basis, would be expensive and cumbersome. The revised bill would require large traders to provide information to the Commission concerning their identity and the accounts through which they trade and would require broker-dealers to retain records relating to large securities transactions by large traders.

Similarly, changes were made to the proposals relating to holding company risk assessment to reflect discussions among Commission staff, members of the securities industry, and the Department of the Treasury. Rather than requiring such companies to report risk assessments to the Commission on an ongoing and comprehensive basis, the revised proposal would require record-keeping and quarterly reports to the Commission. In this instance, the Commission would have the ability to obtain an immediate and detailed risk assessment when conditions warranted. In addition, certain status exemptions for regulated entities (*e.g.*, banks and insurance companies) would be replaced with augmented exemptive authority for the Commission.

The revised proposal also directs the Commission to establish an advisory committee, under the Federal Advisory Committee Act, to assess the current adequacy of state commercial laws with respect to the clearance and settlement of securities. The proposal also would require the Commission to consult with the Federal Reserve Board and the Department of the Treasury in

connection with rulemaking concerning the transfer and pledge of securities.[282]

Although the Commission's original proposal did not deal with program trading, the House subcommittee reported language that would authorize the Commission to adopt rules prohibiting certain manipulative or abusive practices that contribute to market volatility and to enforce these rules through cease and desist authority and civil fines. The Senate committee did not agree to the proposal but did approve a provision directing the Commission to conduct a study of program trading.

Leveraged Buyouts (LBOs). During fiscal year 1989, the Commission submitted extensive testimony to a number of Senate and House Committees on issues concerning leveraged buyouts. Although LBOs take many forms, all involve using the assets of a company as collateral for a loan that is obtained to pay for all or part of the purchase or restructuring of the company. The Commission's testimony focused on the disclosure obligations and antifraud concerns surrounding such transactions. In particular, the Commission discussed the problems inherent in management-led buyouts and the workings of Rule 13e–3, which generally applies to going-private transactions. In promulgating that rule, the Commission determined that substantive fairness requirements should be left to state law. Rule 13e–3 seeks to provide shareholders with the information they need to assess the fairness of a "going-private" transaction and to pursue the remedies provided under state law. Former Chairman Ruder's testimony on behalf of the Commission was given to the Senate Committee on Finance on January 25, 1989 and to the House Ways and Means Committee on January 31, 1989. He had previously given similar testimony—in a private capacity—to the House Subcommittee on Telecommunications and Finance.

Investment Adviser Self-Regulation. The Commission submitted proposed legislation to amend the Investment Advisers Act of 1940 to permit the registration of one or more national investment adviser organizations as self-regulatory organizations subject to Commission oversight. These SROs would establish qualification and business practice standards, perform inspections, and enforce compliance with the securities laws. Membership would be mandatory for all investment advisers required to register with the Commission except those whose only clients are registered investment companies. The Commission's proposal was introduced in the Senate as S. 1410 and in the House as H.R. 3054.

Shareholder Communications. A Commission proposal to extend the benefits of its shareholder communication rules to mutual fund and other investment company shareholders was introduced in the Senate as S. 649 and the House as H.R. 2780 during the first session of the 101st Congress. The shareholder communication rules generally require entities that hold securities in nominee name to deliver proxy materials and annual reports to beneficial owners and to supply issuers with information concerning beneficial owners. The proposal also would require that the information statements provided by registrants in the event of a shareholder vote—for which the registrant does not solicit proxies—must be transmitted to beneficial owners.

Mutual funds and other investment companies would be required to provide information statements when a shareholder vote is held but proxies are not solicited. This proposal was passed by the Senate at the end of the first session as part of the Securities Acts Amendments of 1989, H.R. 1396. That Act was not passed before the end of the session.

Debt Financing. Hearings were held on the Commission's comprehensive proposal to modernize the Trust Indenture Act of 1939 (Trust Indenture Act) before both the Senate and House oversight subcommittees. The proposal is designed to accommodate the legal requirements relating to modern financing and institutional trust practices without undermining the protection of investors in debt securities provided by the Act. Among the changes proposed are provisions to incorporate certain sections of the Act into trust indentures qualified under the Act by operation of law. The Commission's exemptive power would be broadened and certain technical conflicts of interest for indenture trustees would not affect a trustee's eligibility to serve prior to default. To promote the internationalization of public securities markets, the Act would be amended to allow foreign trustees under specified circumstances. The Senate bill was incorporated into the comprehensive Securities Acts Amendments of 1989, which was not enacted during the first session.

RICO Reform. The Commission supported certain portions of H.R. 1046, the Racketeer Influenced Corrupt Organizations (RICO) Reform Act of 1989, which was designed to limit the use of the civil liability provisions of RICO in cases involving the securities laws.[283] In testimony before the Subcommittee on Crime of the House Judiciary Committee, General Counsel Daniel L. Goelzer stated that, while the Commission has long supported both judicial and legislative steps to ensure that persons injured by violations of the securities laws have meaningful relief, the Commission also is concerned that securities law claims can, in many cases, be converted into civil RICO cases. Successful plaintiffs in such cases are entitled to treble damages, despite the recovery limitation of actual damages under the securities laws. Moreover, plaintiffs may be able to use RICO to bypass the carefully crafted liability provisions of the securities laws, thus placing increased and unwarranted financial burdens on defendants, including members of the securities industry. Accordingly, the Commission supported those provisions of the Act designed to eliminate the overlap between private remedies under RICO and those under the federal securities laws.

Corporate Reorganizations

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

In fiscal year 1989, the Commission authorized a review of its Section 1109(a) general statutory advisory role in Chapter 11 cases and of the adequacy of public investor protections under Chapter 11 of the Bankruptcy Code. The goal of this review is to provide an informed basis upon which to determine whether that role should be modified and whether legislation is needed. In connection with the review, the Commission issued a release [284] inviting comments from the bench, bar, and others and will hold a roundtable where participants can discuss their comments. The project also includes the assessment of active participation by the Commission staff in six reorganization cases that have been paired with six other cases in which the Commission is not actively participating. In addition, the Commission's Office of Economic Analysis is studying the impact of Commission participation in Chapter 11 cases between 1979 and 1989 and other investor protections under Chapter 11.

In its capacity as a special advisor, the Commission may raise or present its views on any issue in a Chapter 11 case. Although the Commission may not initiate an appeal, it frequently participates in appeals taken by others. While Chapter 11 relief is available to businesses of all sizes, the Commission generally limits its participation to cases involving debtors that have publicly traded securities registered under the Exchange Act. In fiscal year 1989, the Commission participated in Chapter 11 cases on a variety of issues.

Committees. Official committees are empowered to negotiate with a debtor in possession on the administration of a case and to participate in all aspects of the case, including formulation of a reorganization plan. With court approval, an official committee is permitted to employ, as a cost of administration, one or more attorneys, accountants, or other professionals to assist the committee in performing its duties. In addition to a committee representing creditors holding unsecured claims, the code allows the court or a United States Trustee to appoint additional committees for stockholders and others where necessary to assure adequate representation of their interests. During fiscal year 1989, the Commission moved or supported motions for the appointment of committees to represent investors in two Chapter 11 cases.[285]

In *In re Continental Information Systems Corp., et al.*,[286] the Commission supported the motion by certain individual shareholders to appoint an official committee to represent the interests of Continental's shareholders. The creditors' committee, the United States Trustee, and a secured creditor opposed the motion, arguing that the debtor was hopelessly insolvent. The Commission argued that the record provided no evidence of "hopeless insolvency" but rather tended to show that the debtor was in fact solvent. Further, the Commission argued that it was premature, at this early stage in the case, to address the issue of insolvency.

The bankruptcy court agreed with the Commission's position that "hopeless insolvency" could not be demonstrated. The court directed the United States Trustee to appoint expeditiously an equity security holders' committee.

Estate Administration. The Commission acts to protect the interests of public investors in reorganization cases by participating on selected issues involving

administration of the debtor's estate that have a significant impact upon the rights of public investors.

In *In re Angicor Ltd.*,[287] the Commission filed a brief addressing the scope of the bankruptcy court's authority to supplant state law corporate governance with respect to altering the composition of the debtor's board of directors. In this case, a group of investors filed a motion, without notice to shareholders, requesting that the bankruptcy court remove the debtor's board of directors and appoint a board of directors favorable to the movants' interests. The movants argued that the debtor's management had been ineffective in proceeding toward a plan of reorganization and that a bankruptcy court has equitable powers to alter shareholder corporate governance rights in bankruptcy. The Commission argued, consistent with the position urged by the Commission and adopted by the Second Circuit in *In re Johns-Manville Corp.*,[288] that shareholders of debtor corporations do not ordinarily lose their corporate governance rights under state law. The Commission pointed out that the Bankruptcy Code provides specific alternative means for remedying any problems with current management, including the appointment of a trustee. Prior to a hearing on the motion, a settlement was reached whereby the members of the existing board of directors agreed to appoint additional directors to the board, designated by the movants, in accordance with the debtor's bylaws and to notify shareholders of the appointment of the new directors.

In *In re Sahlen & Associates, Inc.*,[289] the Commission, relying on *In re Baldwin-United*, 43 B.R. 443 (S.D. Ohio 1984), filed a brief urging that indemnification of the legal defense costs may be authorized as an administrative expense of the estate under Section 503(b)(1)(A) of the Code if the court finds that the continued service of the officers and directors is beneficial to the estate and that the benefits to be derived from their continued service justify the amount advanced for legal fees. In this case, because no adequate showing was made, the Commission urged on appeal that the matter should be remanded to the bankruptcy court for further proceedings. The appeal is pending.

During fiscal year 1989, the Commission reiterated in several cases its position (54th Annual Report at 96 and 53rd Annual Report at 73) that class claims are permissible in bankruptcy. The Commission believes that, under principles of statutory construction, the well-recognized right to file class claims outside of bankruptcy is equally available in bankruptcy cases.

The Commission won a major victory in *In re The Charter Co.*,[290] when the Eleventh Circuit ruled that class proofs of claim are permissible in bankruptcy and that a class representative's request for application of class action procedures is timely when made within a reasonable time after the debtor's objection to the class proof of claim. The Eleventh Circuit thus joins the Seventh Circuit, which had agreed with the Commission's argument in *In re American Reserve*[291] in permitting class claims. The only other circuit to consider the issue, the Tenth Circuit, held, in a case of uncertain precedential value,[292] that class claims are not allowable in bankruptcy.

The Commission has participated in several other cases urging the permis-

sibility of class claims. In *In re LTV Corp.*,[293] the district court, relying on the *American Reserve* and *The Charter Co.* decisions, concluded that permitting class proofs of claim is consistent with the broad goals of the Bankruptcy Code. The court reversed the bankruptcy judge, rejecting the rationale of a much-cited 1985 decision to the contrary in *In re Johns-Manville*.[294] The district court decision is currently on appeal in the Second Circuit. Appeals are also pending before the district courts in *In re Texas International Co.*[295] (class claim allowed) and *In re Allegheny International, Inc. et al.*[296] (class claim denied).

In *In re Kaiser Steel Resources*,[297] a case of major significance to the brokerage industry, a Commission appeal to the district court addressed the question of whether brokerage firms and other entities may be liable for payments made to customers in connection with a leveraged buyout under state fraudulent conveyance law through use of the Bankruptcy Code avoidance powers. Using a discount brokerage firm defendant as a test case, the bankruptcy court found, among other things, that the brokerage firm acted as an agent for undisclosed or partially disclosed principals (*i.e.*, its customers) in the transaction because the defendant effected the Kaiser stock transfers in "nominee name" for the customers. Under this finding, the brokerage firm could be liable to Kaiser for the LBO payments as an "initial transferee" under Section 550(a)(1) of the Bankruptcy Code.

The Commission argued on appeal that the bankruptcy court's decision was contrary to settled case law holding that financial intermediaries such as brokerage firms that function as mere conduits in a transaction should not be subject to liability as "initial transferees" under the Bankruptcy Code. Moreover, the Commission contended that by imposing potential liability on securities brokers for transactions executed in "nominee" or "street" name, the bankruptcy court's decision could adversely affect the depository book-entry system—a critical element of the national clearance and settlement system mandated by Congress in Section 17A of the Exchange Act. The district court agreed with the Commission's position and reversed the decision of the bankruptcy court.[298]

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

During fiscal year 1989, the Commission received approximately 6,000 disclosure statements filed in Chapter 11 cases involving both privately-held and publicly-held corporations. The staff limits its review to those disclosure

statements filed in cases involving a publicly-held company or a company likely to be publicly traded as a consequence of the reorganization. During fiscal year 1989, the staff reviewed 179 disclosure statements.

In its review of disclosure statements, the staff seeks to determine whether the issuance of securities under a plan is consistent with the exemption from registration in the Bankruptcy Code and otherwise in compliance with the federal securities laws. The Commission also reviews statements to determine whether there is adequate disclosure concerning the proposed plan. Generally, the Commission seeks to resolve questions concerning bankruptcy disclosure through staff comments to the plan proponent. If questions cannot be resolved through this process, the Commission may object to the disclosure statement in the bankruptcy court.

During fiscal year 1989, the Commission commented on disclosure statements in 95 cases, the vast majority of which were adopted by debtors. The Commission was compelled to object to disclosure statements in one case. In *In re Texas International Co.*,[299] the Commission filed an objection to the proposed plan, arguing, as it has on several other occasions,[300] that the provisions of the plan that purported to discharge and release non-debtor liability should be stricken or revised because such provisions are beyond the confines of the Bankruptcy Code discharge of liability. The plan was subsequently withdrawn by the debtor and an alternative plan, which did not include a provision releasing or discharging non-debtor liability, was filed.

Compliance with the Registration Requirements of the Securities Act. Section 1145 of the Bankruptcy Code contains a limited exemption from registration under the Securities Act for the distribution of securities by a debtor, or an affiliate or successor to the debtor, pursuant to a plan of reorganization and in exchange for claims against or securities of the debtor or such affiliate. The issuance of securities pursuant to a plan is deemed to be a "public offering," which means that there is no restriction on resale of such securities unless the seller is an "underwriter" as specifically defined in Section 1145(b). During fiscal year 1989, the staff had no occasion to file formal objections to a reorganization plan on the basis of violations of Section 1145 of the Bankruptcy Code.

Economic Research and Analysis

Introduction

The Office of Economic Analysis provides technical support and analysis designed to aid in the evaluation of the economic aspects of the Commission's regulatory program and the impact of that program on the rapidly changing global capital market. The economics staff provides the Commission with research and advice on rule proposals, policy initiatives, and the capital markets. The staff assists the Commission in making decisions affecting the fairness, efficiency, and structure of our nation's securities industry. In addition, the program monitors developments in capital markets around the world and major program initiatives impacting the United States financial services industry, markets, and investors.

Key 1989 Results

Application of new technology within the securities industry, increased complexity of new financial products, and development of new trading strategies have resulted in a more dynamic domestic securities market environment. The United States securities industry has been a leader in financial innovation for many years. The securities markets continue to benefit from a regulatory structure that fosters both competition and the protection of investors and, thereby, promotes both public confidence and operational efficiency in the markets. The need to keep abreast of economic, regulatory, and institutional changes in foreign securities markets that could have an effect on the operation and competitiveness of the United States securities markets will become increasingly important in the 1990s.

Internationalization presents challenges to both the United States and foreign regulators. The world's securities markets have already become highly interdependent. Further growth and integration of international securities markets is anticipated in the years ahead, presenting numerous regulatory and economic issues. This integration and growth of global markets will require the development of a global regulatory perspective that preserves the efficiencies associated with international capital mobility, while maintaining the integrity and fairness of the United States market. The challenge in the 1990s will be to assure that this balance is achieved in the evolving global capital market. An efficient global market facilitates the free flow of capital across national borders, encourages competition in financial services, and provides for a regulatory framework that builds investor confidence. The economics staff expects to develop capital market briefing reports and policy papers that will assess the economic, institutional, and regulatory developments impacting the competitiveness of the domestic securities market and the Commission's regulatory program.

During fiscal year 1989, the economics staff reviewed rule proposals encompassing the full range of the Commission's regulatory program. The

staff provided advice, technical assistance, and empirical analyses of issues of concern to the Commission and its operating divisions. Monitoring programs were developed and maintained to study the impact of major rules, new trading facilities, and market developments. Key accomplishments of the economics program include:

- periodic reports on the outlook for domestic and international financial markets;
- a follow-up study to the staff report to Congress on the internationalization of the securities markets;
- an analysis of the liquidity provided by exchange specialists and the depletion of their buying power during the 1987 market break;
- a report on the financial condition and performance of exchange specialists during 1975–1987 as background for Commission consideration of a proposal to bring all exchange specialists under the net capital rule;
- forecasts of the effects on broker-dealers of a proposal to raise the minimum net capital requirements of firms that deal directly with the investing public;
- a study of the connection between index options and the volatility of stocks in the S&P 500 index;
- an analysis of trading volume during the twentieth century on the New York Stock Exchange on an hourly and daily basis;
- an analysis of the aftermarket price performance of initial public offerings of closed-end funds;
- an assessment of the impact of Rule 12b–1 fees on mutual fund expenses and growth in net asset value and total assets;
- a study of the relationship between the quality of a firm's acquisitions and the likelihood that the acquiring firm will itself become a future takeover target; and
- a study of the relationship between pension fund terminations and corporate takeovers.

In addition to preparing economic studies, the staff provided technical advice and assistance to the Commission's operating divisions on a wide variety of issues. In the accounting area, for example, the staff helped determine the fair value of non-traded warrants, evaluated mergers where assets were pooled, and assisted in the development of appropriate accounting principles for reporting earnings per share in unbundled stock units. The staff also assisted in the establishment of rules for publishing "yield" in unit investment trusts and provided input on proposed proxy disclosure requirements for closed-end funds. Technical support was provided to the Commission's enforcement program in such areas as penny stocks and the suitability of trading strategies recommended to customers of broker-dealers. The staff provided economic assistance to the Division of Investment Management in developing disclosure guidelines for quoted rates of return in unit investment trusts and to the Division of Market Regulation in the areas of broker-dealer capital adequacy and specialists activities.

Management and Program Support

Introduction

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

Key 1989 Results

Policy Management

A major component of program direction is management, coordination, and support of Commission regulatory policies. In carrying out its regulatory mission, the Commission has actively sought to consider the diverse viewpoints of investors, the securities industry in general, and other interested parties. During fiscal year 1989, the Commission considered a wide range of issues, including penny stock fraud; a wide variety of enforcement actions, including those involving insider trading by Wall Street professionals; and market reform, financial services reform, and other legislation affecting the Commission. The Commission became a leading participant in the globalization of securities markets, analyzing such issues as international clearance, settlement, and payment mechanisms; international enforcement of securities laws; the exchange of information with foreign regulators; and access to foreign markets. The Commission was also an active participant in the International Organization of Securities Commissions (IOSCO) and hosted numerous visits by foreign officials to the Commission's headquarters in Washington, D.C.

The Commission held 78 meetings in fiscal year 1989, during which it considered 419 matters including rule proposals, enforcement actions, and other matters that significantly affect the stability of the markets and the nation's economy. Significant rules proposed or adopted by the Commission included:

- proposal of Rule 144A to establish a non-exclusive safe harbor from registration requirements for resales of restricted securities under the Securities Act of 1933 to a specified class of institutional investors;
- proposal of Regulation S to clarify the extraterritorial application of the registration requirements of the Securities Act of 1933;
- amendments to Form S-8 to reduce burdens in registering securities issued pursuant to employee benefit plans;

- revisions of Regulations 13D and 13G to permit filing of Schedules 13D and 13G based upon the purpose of the share acquisitions;
- amendments to Schedules 13D, 13E-3, 14B, and 14D-1 to require disclosure concerning significant equity participants in control transactions; and
- proposed rules to allow acquisition of foreign broker-dealer equity securities by investment companies, to permit investment companies to acquire securities of foreign banks and insurance companies, and to allow investment companies to organize as limited partnerships.

The Commission's management staff maintained a comprehensive program of financial oversight of the agency's resources, initiated special projects, justified the agency budget request to the Office of Management and Budget (OMB) and Congress, and completed the agency's budget authorization request for fiscal years 1990 to 1992. In January 1989, the staff's Self-Funding Study was submitted to the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs. The study described the personnel and funding difficulties facing the SEC and presented alternative solutions. Other major projects conducted during fiscal year 1989 included modifications to the Commission's Public Reference Room rules, initiation of automation projects aimed at developing both a local area network (LAN) and a wide area network (WAN), and installation of a pilot automation system in the Boston Regional Office. In addition, the Commission's management staff has begun coordination of the agency's internal control and audit follow-up responsibilities pursuant to the Inspector General Act Amendments of 1988.

Consumer Affairs and Information Services

The Office of Consumer Affairs and Information Services supports the Commission's efforts to prevent fraud in the nation's financial markets. The office researches and responds to investor complaints and inquiries, collects and analyzes complaint information and trends to help target regulatory and enforcement activities, and prepares educational materials to assist investors in protecting their interests. In addition to its complaint processing and tracking role, the office serves as the agency's receipt and processing point for requests for information under various statutes such as the Freedom of Information Act (FOIA) and the Privacy Act.

During fiscal year 1989, the Commission's consumer affairs staff responded to a total of 44,987 complaints and inquiries from investors. Of this total, 29,368 were complaints and 15,619 were inquiries. Of the complaints, over 17,100 (59 percent of all complaints) were directed at broker-dealers. Complaints against penny stock broker-dealers numbered 3,776—representing approximately 22 percent of all broker-dealer complaints in fiscal year 1989. In other complaint areas, issuers of securities accounted for 17 percent of total complaints, while the remainder of complaints were divided among mutual funds, transfer agents, banks, and investment advisers.

The complaints and inquiries received during fiscal year 1989 were marked

by their increased complexity. Thus, the time necessary to process and research them has increased. To meet the demands of the large influx of complex complaints and inquiries, the office initiated a multi-year project to redesign the Commission's computerized complaint tracking system. The new system will permit thorough analysis of complaint information and trends and increase the timeliness of Commission responses to investors and other members of the public. The new system is targeted for implementation during the second quarter of fiscal year 1991.

The office also supported special Commission initiatives in a number of ways. In addition to designating "penny stock fraud" as the focus of its National Consumer's Week observance in fiscal year 1989, Consumer Affairs staff supported the activities of the Commission's Penny Stock Task Force. Specifically, support in the form of supplemental tracking and retrieval of complaints against individual penny stock brokers was provided. The office also participated in the compilation and distribution of several penny stock educational brochures.

The Office of Consumer Affairs and Information Services also responds to a variety of information requests. During fiscal year 1989, the office processed 1,989 FOIA requests, 52 Privacy Act requests, 97 Government in the Sunshine Act requests, 23 government referrals, and 3,127 requests for confidential treatment. In addition, the staff coordinated 1,199 requests for Commission records from members of Congress.

Public Reference

The Commission maintains public reference rooms in the Washington, D.C., New York, and Chicago offices. As part of a reorganization during fiscal year 1989, the headquarters' Public Reference Room implemented procedures designed to expedite the identification, location, and retrieval of documents and microfiche for public users. Throughout the year, the staff answered questions and completed requests for documents from over 69,000 visitors to the headquarters' Public Reference Room. Over the same period, approximately 309,000 paper documents and 371,000 microfiche were added to the existing library of publicly available information. In addition, the staff processed over 500 formal requests for certifications of Commission filings, 49,700 requests for microfiche records, 13,000 requests for paper filings, and over 90,000 telephone inquiries regarding filings.

Equal Employment Opportunity

During fiscal year 1989, an independent study of the Commission's Equal Employment Opportunity (EEO) program was conducted. The study provided a series of recommendations designed to improve the effectiveness and administration of EEO operations, as well as to improve employee awareness of the EEO Office and its programs. By the close of fiscal year 1989, the Commission had implemented approximately one-third of the study's recommendations. The recommendations acted upon included:

- improving and expanding the EEO counseling and Federal Women's Programs (FWP);
- providing additional Office of Personnel Management (OPM) training for EEO counselors and FWP personnel;
- recruiting more attorneys and accountants as EEO counselors;
- revising the agency's affirmative employment plan;
- using new forms to streamline the EEO process;
- developing EEO reference books for use by collateral duty personnel;
- acquiring EEO investigators through the General Services Administration's (GSA) blanket contract with a national professional investigative firm;
- revising the agency's EEO fact sheet by highlighting EEO procedures and policies; and
- publishing an EEO bulletin as a vehicle to communicate information about EEO matters to all employees.

The Commission actively recruited and employed minority groups and women during fiscal year 1989. At the close of the year, women accounted for almost one-half of the total SEC workforce. Blacks made up 28 percent of the workforce. Hispanics accounted for approximately three percent of all SEC employees. Asian Americans made up 2.36 percent of the agency's employees and American Indians/Alaskan natives made up 1.0 percent of the Commission's workforce.

Public Affairs

The Office of Public Affairs communicates information on Commission activities to those interested in or affected by Commission actions, including the press, the general public, regulated entities, and employees of the Commission. Special projects, such as support for activities related to penny stock fraud and efforts regarding the internationalization of securities markets, were undertaken by the office in support of the Commission's mission. In addition to special projects, workload increased substantially in the office's ongoing activities as well in fiscal year 1989. These increases will continue in future fiscal years.

The Office of Public Affairs' primary function is the collection and dissemination of information to the public, Commission staff, and the regulated population. The *SEC News Digest*—a daily publication that provides information on rule changes, enforcement actions against individuals or corporate entities, acquisition reports, releases, decisions on requests for exemptions, upcoming Commission meetings, and other events of interest—was prepared by office staff in fiscal year 1989. The *SEC News Digest* is available in the Commission's Public Reference Room. Information on Commission activity is also disseminated through notices of administrative actions, litigation releases, and other materials.

Another important function is the coordination of the Commission's interaction with the press. Press releases issued prior to Commission meetings and press briefings conducted after these meetings provide insight into proposed and adopted changes in policies and regulations and can have a

significant impact on financial markets. Public Affairs staff also issues press releases on upcoming events, Commission programs, and special projects. In all, 102 news releases were issued during fiscal year 1989. Many Commission actions are of nationwide and, increasingly, international interest. When appropriate, these actions are drawn to the attention of regional, national, and international press. Special projects such as studies and reports on emerging issues in the financial markets are also publicized.

In addition to the above functions, the office responded to approximately 82,000 requests for specific information on the Commission or its activities. Staff is also responsible for coordinating the visits of national and foreign officials to the Commission. In total, programs for 355 foreign visitors were coordinated in fiscal year 1989.

Administrative Support

In addition to policy management, program direction encompasses administrative support. The administrative support function provides Commission programs with the necessary financial, facilities, data processing, and personnel support necessary to carry out their missions. Under the direction of the Office of the Executive Director, these support services are provided by the Commission's Offices of the Comptroller, Administrative Services, Information Systems Management, and Personnel.

Financial Management

During fiscal year 1989, the Commission completed its first year of operation on its new accounting system, the Federal Financial System (FFS). Under FFS, time, error correction, and processing delays are avoided through the electronic input of voucher and payment data into the accounting system—a significant improvement over the old system. A further benefit of FFS is the ready availability of management data, which allows for tighter control over the agency's accounting system. FFS data input, limited to selected organizations within the Commission's headquarters in fiscal year 1989, will be implemented in the remaining headquarters organizations and the regional offices over the next two years.

Throughout fiscal year 1989, the Commission continued to improve its fee collection processes. During the year, the Commission adopted a proposal to accept credit card charges for the payment of filing fees in 1991. In addition, the Commission has begun design of a new automated fee tracking, reporting, and accounts receivable system. Once operational, this new system will generate daily deposit tickets, electronically record and match filings and fees within "corporate accounts," maintain accounts receivable records, produce required billing notices, and perform periodic reconciliations.

Facilities Management

Fiscal year 1989 continued to present numerous space and logistical challenges for the Office of Administrative Services. Office space was acquired for the forced relocation of the New York and Philadelphia Regional Offices. In

addition, the office acquired needed space for the Commission's Washington, D.C. headquarters.

During 1989, Delegated Lease Management Authority (DLMA) was obtained from GSA for application at the Commission's offices in Philadelphia and New York. As a result, the Commission's DLMA program now applies to six field offices, in addition to the headquarters office.

In support of the Commission's efforts to automate its information systems, the Office of Administrative Services obtained a Delegated Procurement Authority (DPA) from GSA. This authority allowed the Commission to install horizontal cabling in preparation for the implementation of a local area network in the headquarters building.

The Office of Administrative Services exercised increased responsibility in contracting activities in fiscal year 1989. The office awarded contracts in excess of $18 million during the year—an increase of approximately $5 million over fiscal year 1988. A significant portion of this increase in contract award value is attributable to the extensive procurement of ADP equipment in fiscal year 1989.

Information Systems Management

During fiscal year 1989, the Office of Information Systems Management (ISM) continued its efforts to modernize the Commission's computer systems and to support the Commission's mission through advanced automation. These efforts included:

- development of an electronic "blue sheet" tracking system—a PC-based document tracking system for major enforcement cases;
- design of a pilot Central Registrations Depository (CRD) system in cooperation with the National Association of Securities Dealers that will allow for the automated receipt, processing, and assimilation of broker-dealer filings; and
- technical support for the development of the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

Beyond program-related support, ISM continued to assist in the improvement of Commission administrative and management systems in fiscal year 1989. In response to Public Law 100-235, an ADP security plan was developed that outlined sensitive computer applications and the means necessary to protect them. Also, in order to assist the agency in complying with OMB Circular A-127, ISM worked with the Offices of the Comptroller and Administrative Services in the effective implementation of the Federal Financial System. Finally, efforts were undertaken throughout fiscal year 1989 to develop local and wide area network capabilities within the agency.

Personnel Management

During fiscal year 1989, the Office of Personnel (OPM) revised regulations on training, performance appraisals, and employee grievances in accordance with government-wide changes. In addition, the office implemented a leave transfer program to benefit employees affected by medical emergencies.

In response to continued Commission emphasis on information systems automation, approximately 800 employees were trained on computer systems and applications. In addition to computer training, the office provided requested training to 700 staff members in order to improve their on-the-job performance.

Recognizing that a significant portion of the Commission's staff will be eligible to retire in the next few years, retirement counseling was provided to approximately five percent of the agency's staff in fiscal year 1989. As a supplement to counseling, the office developed and issued an individual retirement benefits brochure to each permanent Commission employee.

While staff retention and turnover improved in fiscal year 1989, the Commission continued to face severe challenges in recruiting and retaining qualified staff. Continued emphasis was placed on the recruitment of professionals, such as attorneys, accountants, and securities compliance examiners. Through attendance at numerous OPM job fairs, fiscal year 1989 proved to be the Commission's most successful year for recruiting computer specialists and secretaries. In addition, labor market conditions and special pay rates allowed the Commission to exceed its expected level of securities compliance examiner recruitment in New York and Los Angeles.

The Commission completed its first self-evaluation as required under Section 504 of the Rehabilitation Act of 1973 during fiscal year 1989. The Act requires each agency to make its programs and activities accessible to handicapped persons. Upon conclusion of the review, the Commission was praised by the Department of Justice for its implementation of this statute.

During fiscal year 1989, the Commission administered a balanced personnel management program through appropriate recognition of employee performance. In fiscal year 1989, the SEC awarded more than $900,000 in incentive and performance awards.

Commission Operations

In fiscal year 1989, for the seventh consecutive year, the SEC collected revenue for the U.S. Treasury in excess of its appropriation. The SEC collected fee revenue of $214 million compared to a congressional appropriation of $143 million—a net gain to the U.S. Treasury of $71 million. Fee revenue is collected from four basic sources: registrations under the Securities Act of 1933 (comprising 51 percent of total fiscal year 1989 fee revenue); transactions on securities exchanges (27 percent); tender offer and merger filings (19 percent); and miscellaneous filings (3 percent).

Commissioners and Principal Staff Officers

Richard C. Breeden was sworn in as Chairman on October 11, 1989 for the term expiring June 5, 1993.

Commissioners As of September 30, 1989	Term Expires
David S. Ruder, *Chairman**	1991
Charles C. Cox**	1993 (renominated)
Joseph A. Grundfest***	1990
Edward H. Fleischman	1992
Mary L. Schapiro****	1994

Executive Assistant to the Chairman: **Linda D. Fienberg**

Principal Staff Officers As of September 30, 1989

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

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

VACANT, *Director, Division of Enforcement* *****
- **John H. Sturc,** *Associate Director*
- **William R. McLucas,** *Associate Director*
- **Joseph I. Goldstein,** *Associate Director*
- **Michael D. Mann,** *Associate Director*
- **Thomas A. Ferrigno,** *Chief Counsel*

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*David S. Ruder resigned from the Commission on September 30, 1989. Philip R. Lochner, Jr. was sworn in on March 12, 1990 for the term expiring June 5, 1991.

**Charles C. Cox resigned from the Commission on September 30, 1989.

***Joseph A. Grundfest resigned from the Commission on January 18, 1990.

****Mary L. Schapiro was nominated on December 22, 1988 in a recess appointment. She was renominated on November 8, 1989 and confirmed by the Senate on November 18, 1989.

*****William R. McLucas was appointed Director of the Division of Enforcement on December 26, 1989.

Thomas C. Newkirk, *Chief Litigation Counsel*
Richard G. Ketchum, *Director, Division of Market Regulation*
Mark D. Fitterman, *Associate Director*
Brandon C. Becker, *Associate Director*
Larry E. Bergmann, *Associate Director*
Kathryn B. McGrath, *Director, Division of Investment Management*
Marianne K. Smythe, *Associate Director*
Gene A. Gohlke, *Associate Director*
Mary S. Podesta, *Associate Director*
William C. Weeden, *Assistant Director, Office of Public Utility Regulation*
Daniel L. Goelzer, *General Counsel*
Paul Gonson, *Solicitor*
Jacob H. Stillman, *Associate General Counsel*
Benjamin Greenspoon, *Associate General Counsel*
Phillip D. Parker, *Associate General Counsel*
William S. Stern, *Associate General Counsel*
Edmund Coulson, *Chief Accountant*
Glen L. Davison, *Deputy Chief Accountant*
Kenneth Lehn, *Chief Economist, Office of Economic Analysis*
Jeffry L. Davis, *Deputy Chief Economist*
Terry M. Chuppe, *Associate Chief Economist*
David H. Malmquist, *Associate Chief Economist*
Jonathan G. Katz, *Secretary*
Mary M. McCue, *Director, Office of Public Affairs*
John D. Heine, *Deputy Director*
Warren E. Blair, *Chief Administrative Law Judge*
Lawrence H. Haynes, *Comptroller*
Henry I. Hoffman, *Assistant Comptroller*
Richard J. Kanyan, *Director, Office of Administrative Services*
David L. Coman, *Deputy Director*
VACANT, *Director, Office of Personnel*
William E. Ford, II, *Assistant Director*
Wilson Butler, *Director, Office of Applications and Reports Services*
Bonnie Westbrook, *Director, Office of Consumer Affairs and Information Services*
Gregory Jones, Sr., *Director, Office of Information Systems Management*
VACANT, *Deputy Director*
Nina G. Gross, *Director of Legislative Affairs*******
James A. Clarkson, III, *Director of Regional Office Operations*
VACANT, *Manager, Equal Employment Opportunity*
John O. Penhollow, *Director, Office of EDGAR Management*

*******Nina G. Gross resigned from the Commission on March 30, 1990. R. Mitchell Delk was appointed Director of Legislative Affairs on April 3, 1990.

Biographies of Commissioners

Richard C. Breeden

Richard C. Breeden was nominated to be a Member of the Securities and Exchange Commission by President George Bush on September 7, 1989. Following his confirmation by the United States Senate, Mr. Breeden was named Chairman of the Commission by President Bush. Mr. Breeden was sworn in as the 24th Chairman of the Commission on October 11, 1989. As Chairman, Mr. Breeden is responsible for leading the Commission in the development of policy, and for overall direction of the Commission. Mr. Breeden also represents the Commission to the Congress, the Administration, the financial community, and the public at large.

Mr. Breeden also currently serves as Chairman of the Executive Committee of the International Organization of Securities Commissions ("IOSCO"). In this capacity, Mr. Breeden works with the leadership of securities regulatory agencies worldwide in developing stronger international cooperation to achieve a more stable global market.

Prior to assuming the chairmanship, Mr. Breeden served in the White House as Assistant to the President for Issues Analysis. In this capacity, Mr. Breeden was responsible for in-depth analyses of major issues and policy problems. Among these was the President's critical plan to restructure the savings and loan industry. As one of the major architects of the plan, Mr. Breeden helped to shepherd this through Congress to final passage.

From 1982–1985, Mr. Breeden served as Deputy Counsel to then-Vice President Bush. In this position he worked on regulatory problems in a variety of areas. In addition, he served as Staff Director of the President's Task Group on Regulation of Financial Services, a cabinet level group established to recommend improvements in federal financial regulatory programs. *Blueprint for Reform*, the Task Group's final report authored by Mr. Breeden, was issued in November 1984. From 1981–1982, Mr. Breeden served as Executive Assistant to the Undersecretary of Labor.

Mr. Breeden is a lawyer by training. From 1985–1989, he was a partner of one of the nation's leading law firms. His legal practice included financial transactions and regulatory matters of all types. Prior to his original government service, Mr. Breeden practiced law in New York City from 1976–1981, where he handled major domestic and international business transactions. This followed completion of an appointment to teach constitutional law and federal jurisdiction at the University of Miami School of Law.

Educated at Stanford University (B.A. with honors in international relations, 1972) and Harvard Law School (1975), Mr. Breeden is the author of law review articles as well as analytical articles for legal and financial publications. Representing the United States, he has lectured in New Zealand, Indonesia, Hong Kong, and Japan. He has also served as a delegate to international

conferences on financial institutions and regulation, as well as on committees for local and national Bar Associations relating to financial services.

David S. Ruder

David Sturtevant Ruder was sworn in as the 23rd Chairman of the Securities and Exchange Commission on August 7, 1987, by Associate Justice Antonin Scalia of the Supreme Court of the United States, and resigned from the Commission on September 30, 1989.

During his tenure, former Chairman Ruder appointed a special Commission task force to deal with the increasingly prevalent problem of fraud and manipulation in the penny stock market.

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

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

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

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

A native of Wausau, Wisconsin, former Chairman Ruder received a bache-

lor's degree, cum laude, in 1951 from Williams College, where he was a member of Phi Beta Kappa and Gargoyle, the senior honorary society. He was editor-in-chief of the Williams Record, the college newspaper.

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

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

Charles C. Cox

Charles C. Cox was sworn in as the 62nd Member of the Securities and Exchange Commission on December 2, 1983 and resigned from the Commission on September 30, 1989 to join Lexecon Inc. in Chicago, Illinois.

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

Prior to joining the Commission, Mr. Cox was a professor of management at Texas A&M University from 1980 to 1982, and a professor of economics at Ohio State University from 1972 to 1980. He served as a National Fellow of the Hoover Institution at Stanford University from 1977 to 1978. During his academic career, Mr. Cox focused his research on the economics of public regulation of economic activity. He has published various articles on this topic in scholarly journals. Mr. Cox is a member of the American Economic Association and the Mont Pelerin Society.

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

Joseph A. Grundfest

Joseph A. Grundfest was sworn in as the 65th Member of the Securities and Exchange Commission on October 28, 1985. He resigned from the Commission on January 18, 1990 to join the faculty of Stanford Law School.

Mr. Grundfest came to the Commission from the Council of Economic Advisers in the Executive Office of the President, where he was counsel and senior economist for legal and regulatory matters. Mr. Grundfest is both an attorney and economist. He has practiced law with Wilmer, Cutler & Pickering and has served as an economist with The Rand Corporation, and the Brookings Institution.

Mr. Grundfest is author or co-author of numerous research reports and

publications. His works deal with a range of topics, including contests for corporate control, insider trading, international securities regulation, regulation of markets subject to kickback schemes, the economics and regulation of broadcasting, and the role of citizen participation in administrative proceedings. During his academic career, Mr. Grundfest served as a Brookings Institution Fellow, a Stanford University Fellow, and a California State Fellow for the Study of Law and Economics.

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

Edward H. Fleischman

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

He formerly practiced law with Beekman & Bogue (a predecessor of the present Gaston & Snow firm), where he specialized in securities and corporate law and related areas.

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

Mr. Fleischman was born in Cambridge, Massachusetts on June 25, 1932. He received his undergraduate education at Harvard College, served in the U.S. Army from 1952 to 1955, and obtained his LL.B. degree from Columbia Law School in 1959.

Mr. Fleischman was admitted to the New York Bar in 1959 and to the bar of the U.S. Supreme Court in 1980. He serves on the American Bar Association Section of Business Law's Committee on Counsel Responsibility and chairs the Committee on Developments in Business Financing. He co-drafted that Committee's 1979 paper on resale of institutional privately-placed debt and chaired its Subcommittees on Simplified Indenture and on Annual Review of Developments. He also serves on the Committee on Federal Regulation of Securities, for which he chaired Subcommittees on Rule 144 and on Broker-Dealer Matters and co-drafted the Committee's 1973 letter on utilization and dissemination of "inside" information. In addition, he serves on the Committee on Futures Regulation and the Committee on Developments in Investment Services, and has been active in the Section on Administrative Law.

Mr. Fleischman is also a member of Committee E—Banking Law and of

Committee Q—Issues and Trading in Securities of the International Bar Association Section on Business Law. In the International Law Association (American Branch), he has been appointed to membership on the Committee on International Regulation of Securities.

Mary L. Schapiro

Mary L. Schapiro was sworn in as the 67th Member of the Securities and Exchange Commission on December 5, 1988. She was nominated to the Commission by President Reagan on December 22, 1988 in a recess appointment. Ms. Schapiro was renominated to the Commission by President Bush on November 8, 1989 and confirmed by the Senate on November 18, 1989. Her term expires on June 5, 1994.

Ms. Schapiro came to the Commission from the Futures Industry Association (FIA), where she was General Counsel and Senior Vice President. While at the FIA, her work included regulatory, tax and international issues, including extensive liaison with foreign governmental officials.

Prior to her service at the FIA, Ms. Schapiro spent four years at the Commodity Futures Trading Commission. There, she served as Counsel and Executive Assistant to the Chairman of the Commodity Futures Trading Commission and was Trial Attorney in the Manipulation and Trade Practice Investigations Unit of the Division of Enforcement. In the former position, Ms. Schapiro advised on all regulatory and adjudicatory matters pending before the Commission and on legislation. She also represented the Chairman with federal and state officials, Congress, and the futures industry, in addition to other duties.

A 1977 honors graduate of Franklin and Marshall College in Lancaster, Pennsylvania, Ms. Schapiro earned a Juris Doctor degree (with honors) from The National Law Center of George Washington University in 1980. While in law school, Ms. Schapiro completed internships in the Farm Credit Administration and in the Executive Office of the President. She is a member of the District of Columbia Bar, the American Bar Association, and the Association of the Bar of the City of New York. From 1986 to 1988, she served on the Executive Council of the Committee on Futures Regulation of the American Bar Association.

Philip R. Lochner, Jr.

Philip R. Lochner, Jr. was sworn in as the 68th Member of the Securities and Exchange Commission on March 12, 1990 by the Honorable Stanley Sporkin, Judge of the United States District Court for the District of Columbia. Mr. Lochner was nominated to the Commission by President Bush in January 1990 for a term expiring in 1991.

Before being nominated to the Commission, Mr. Lochner was General Counsel, Secretary, and Vice President for Time Warner Inc. He became General Counsel and Secretary in September 1988. He was elected a Vice President of Time Warner Inc. in October 1986, and also assumed responsibility for Corporate Human Resources that year. From 1984 to 1986, he served

as Senior Vice President and General Counsel for the Time Warner Inc. Video Group. Prior to that, he was Corporate Associate General Counsel for Time Warner Inc. for four years, having joined the company in 1978 as Associate General Counsel.

Before joining Time Warner Inc., Mr. Lochner was with the law firm of Cravath, Swaine & Moore. He joined the law firm in 1973 after serving, from 1971 to 1973, as an Associate Dean and Assistant Professor of Law at State University of New York in Amherst, New York.

Mr. Lochner earned a Ph.D. in political science from Stanford University in 1971. He also studied at the University of London from 1967 to 1968 as a Fulbright Fellow. Mr. Lochner earned a LL.B. degree from Yale University in 1967, where he was on the Board of Editors of the Yale Law Journal, and was a member of the Order of the Coif. He earned a B.A. from Yale University in 1964 and was elected to Phi Beta Kappa.

His professional activities include the New York State Bar Association, where he served as Chairman of the Corporate Counsel Section, and has also served as a member of the Committee on Corporation Law for the Banking, Corporation and Business Law Section of that Association. Mr. Lochner is a Fellow of the American Bar Foundation and he served as a lecturer on securities law matters for the Practising Law Institute. He is a member of the American, New York State, and City of New York Bar Associations.

Mr. Lochner was born in New Rochelle, New York on March 3, 1943. He and his wife, Sally, have two children.

Regional and Branch Offices and Administrators

REGION 1

Lawrence Iason
NEW YORK REGIONAL OFFICE
75 Park Place, 14th Floor
New York, NY 10007
212/264-1636
Region: New York and New Jersey

REGION 2

Douglas Scarff
BOSTON REGIONAL OFFICE
John W. McCormack Post Office
and Courthouse Building, Suite 700
Boston, MA 02109
617/223-9900
Region: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut

REGION 3

Richard P. Wessel
ATLANTA REGIONAL OFFICE
1375 Peachtree Street, NE, Suite 788
Atlanta, GA 30367
404/347-4768
Region: Tennessee, Virgin Islands, Puerto Rico, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Louisiana east of the Atchafalaya River

Charles C. Harper
MIAMI BRANCH OFFICE
Dupont Plaza Center
300 Biscayne Boulevard Way, Suite 500
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305/536-5765

REGION 4

William D. Goldsberry
CHICAGO REGIONAL OFFICE
Everett McKinley Dirksen Building
219 South Dearborn Street, Room 1204
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312/353-7390
Region: Michigan, Ohio, Kentucky, Wisconsin, Indiana, Iowa, Illinois, Minnesota, and Missouri

REGION 5

T. Christopher Browne
FORT WORTH REGIONAL OFFICE
411 West Seventh Street, 8th Floor
Fort Worth, TX 76102
817/334-3821
Region: Oklahoma, Arkansas, Texas, Louisiana west of the Atchafalaya River, and Kansas

Joseph C. Matta
HOUSTON BRANCH OFFICE
7500 San Felipe Street, Suite 550
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REGION 6

Robert H. Davenport
DENVER REGIONAL OFFICE
410 17th Street, Suite 700
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303/844-2071
Region: North Dakota, South Dakota, Wyoming, Nebraska, Colorado, New Mexico, and Utah

Donald M. Hoerl
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801/524-5796

REGION 7

James L. Sanders
LOS ANGELES REGIONAL OFFICE
5757 Wilshire Boulevard, Suite 500 East
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213/965-3998
Region: Nevada, Arizona, California, Hawaii, and Guam

Cer Gladwyn Goins
SAN FRANCISCO BRANCH OFFICE
901 Market Street, Suite 470
San Francisco, CA 94103
415/744-3140

REGION 8

Jack H. Bookey
SEATTLE REGIONAL OFFICE
3040 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174
206/442-7990
Region: Montana, Idaho, Washington, Oregon, and Alaska

REGION 9

James C. Kennedy
PHILADELPHIA REGIONAL OFFICE
The Curtis Center, Suite 1005 E.
601 Walnut Street
Philadelphia, PA 19106-3322
215/597-3100
Region: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia

Footnotes

[1] *In the Matter of The Stuart-James Co., Inc., et al.*, Securities Exchange Act Release No. 26700 (April 5, 1989), 43 SEC Docket 966.

[2] *SEC v. Arnold Kimmes, et al.*, Litigation Release No. 12210 (August 10, 1989), 44 SEC Docket 507.

[3] *SEC v. Arthur Tuchinsky, et al.*, Litigation Release No. 12155 (July 11, 1989), 43 SEC Docket 2573.

[4] *SEC v. Brownstone Smith Securities Corp., et al.*, Litigation Release No. 12126 (June 12, 1989), 43 SEC Docket 2072.

[5] *In the Matter of Brownstone-Smith Securities Corp., et al.*, Securities Exchange Act Release No. 26936 (June 15, 1989), 43 SEC Docket 1993.

[6] *SEC v. Habersheir Securities, Inc.*, Litigation Release No. 11999 (February 16, 1989), 42 SEC Docket 1652.

[7] *SEC v. Glenn Golenberg, et al.*, Litigation Release No. 12074 (May 1, 1989), 43 SEC Docket 1379.

[8] *In the Matter of Glenn Golenberg*, Securities Exchange Act Release No. 26795 (May 8, 1989), 43 SEC Docket 1409.

[9] *SEC v. William S. Banowsky*, Litigation Release No. 12033 (March 14, 1989), 43 SEC Docket 742.

[10] *SEC v. David Hellberg, et al.*, Litigation Release No. 12113 (May 31, 1989), 43 SEC Docket 1865.

[11] *SEC v. Kerry A. Hurton, et al.*, Litigation Release No. 12097 (May 16, 1989), 43 SEC Docket 1695.

[12] *SEC v. Seymour G. Ruderman*, Litigation Release No. 12109 (May 25, 1989), 43 SEC Docket 1784.

[13] *SEC v. Shayne A. Walters*, Litigation Release No. 12219 (August 17, 1989), 44 SEC Docket 588.

[14] *SEC v. William J. Dillon, et al.*, Litigation Release No. 12157 (July 11, 1989), 43 SEC Docket 2575.

[15] *SEC v. Stephen Sui-Kuan Wang Jr. and Fred C. Lee a/k/a Chuan Hong Lee*, Litigation Release No. 12191 (August 2, 1989), 44 SEC Docket 389.

[16] *SEC v. John Naylor Clark, III*, Litigation Release No. 12056 (April 5, 1989), 43 SEC Docket 1003.

[17] *SEC v. Eddie Antar, et al.*, Accounting and Auditing Enforcement Release No. 247 (September 6, 1989), 44 SEC Docket 998.

[18] *SEC v. Donald D. Sheelen, et al.*, Accounting and Auditing Enforcement Release No. 215 (February 8, 1989), 42 SEC Docket 1562.

[19] *In the Matter of Matrix Science Corp., et al.*, Accounting and Auditing Enforcement Release No. 207 (November 1, 1988), 42 SEC Docket 190.

[20] *SEC v. Ronald A. Hammond, et al.*, Accounting and Auditing Enforcement Release No. 208 (November 1, 1988), 42 SEC Docket 275.

[21] *SEC v. Frederick S. Plotkin, et al.*, Litigation Release No. 11895 (October 17, 1988), 42 SEC Docket 82.

[22] *SEC v. Information Solutions Inc., et al.*, Litigation Release No. 12119 (June 6, 1989), 43 SEC Docket 1928.

[23]*SEC v. David N. Hanania, et al.*, Accounting and Auditing Enforcement Release No. 223 (April 17, 1989) 43 SEC Docket 1236.

[24]*SEC v. Wilderness Electronics, Inc., et al.*, Litigation Release No. 12018 (March 2, 1989), 42 SEC Docket 1899.

[25]*SEC v. Rocky Mount Undergarment Co., Inc., et al.*, Accounting and Auditing Enforcement Release No. 212 (January 9, 1989), 42 SEC Docket 1206.

[26]*SEC v. Timothy L. Sasak, et al.*, Accounting and Auditing Enforcement Release No. 214 (December 28, 1988), 42 SEC Docket 1203.

[27]*In the Matter of Richard P. Franke, CPA, et al.*, Accounting and Auditing Enforcement Release No. 220 (March 24, 1989), 43 SEC Docket 856.

[28]*In the Matter of Lynne K. Mercer, CPA*, Accounting and Auditing Enforcement Release No. 222 (April 13, 1989), 43 SEC Docket 1095.

[29]*In the Matter of Jack M. Portney, CPA*, Accounting and Auditing Enforcement Release No. 242 (August 21, 1989), 44 SEC Docket 638.

[30]*In the Matter of Edmon A. Morrison, III*, Accounting and Auditing Enforcement Release No. 216 (February 23, 1989), 42 SEC Docket 1681.

[31]*In the Matter of John L. Van Horn*, Accounting and Auditing Enforcement Release No. 209 (November 1, 1988), 42 SEC Docket 210.

[32]*In the Matter of Larry A. Dixon*, Accounting and Auditing Enforcement Release No. 219 (March 15, 1989), 43 SEC Docket 670.

[33]*In the Matter of Noemi L. Rodriguez Santos*, Accounting and Auditing Enforcement Release No. 246 (September 1, 1989), 44 SEC Docket 935.

[34]*In the Matter of Marvin D. Haney, CPA*, Accounting and Auditing Enforcement Release No. 237 (July 17, 1989), 44 SEC Docket 2.

[35]*In the Matter of Sheldon M. Blazar*, Accounting and Auditing Enforcement Release No. 226 (May 22, 1989), 43 SEC Docket 1736.

[36]*SEC v. Paul A. Bilzerian, et al.*, Litigation Release No. 12144 (May 31, 1989) 43 SEC Docket 2315.

[37]*SEC v. Amster & Co.*, Litigation Release No. 11928 (December 5, 1988), 42 SEC Docket 670.

[38]*In the Matter of William R. Grant*, Securities Exchange Act Release No. 26339 (December 5, 1988), 42 SEC Docket 618.

[39]*In the Matter of Merry Land & Investment Co., Inc.*, Securities Exchange Act Release No. 26410 (December 30, 1988), 42 SEC Docket 998.

[40]*SEC v. Rana Research, Inc., et al.*, Litigation Release No. 12049 (March 30, 1989), 43 SEC Docket 925.

[41]*SEC v. Frederick J. Ball, Jr.*, Litigation Release No. 12242 (September 7, 1989), 44 SEC Docket 1001.

[42]*SEC v. Louisiana Real Estate Equity Ltd., et al.*, Litigation Release No. 12005 (February 21, 1989), 42 SEC Docket 1757.

[43]*SEC v. Arthur P. Miller*, Litigation Release No. 11976 (January 25, 1989), 42 SEC Docket 1649.

[44]*SEC v. William A. Bartlett, et al.*, Litigation Release No. 12021 (March 6, 1989), 43 SEC Docket 103.

[45]*SEC v. Frank R. Breitweiser*, Litigation Release No. 12043 (March 27, 1989), 43 SEC Docket 920.

[46]*SEC v. Drexel Burnham Lambert Incorporated, et al.*, Litigation Release No. 12061 (April 13, 1989), 43 SEC Docket 1147.

[47]*In the Matter of Drexel Burnham Lambert Incorporated*, Securities Exchange Act Release No. 27236 (September 11, 1989), 44 SEC Docket 1059.

[48] *SEC v. Waddell Jenmar Securities Inc., et al.*, Litigation Release No. 12234 (August 29, 1989), 44 SEC Docket 905.

[49] *In the Matter of Waddell Jenmar Securities Inc., et al.*, Securities Exchange Act Release No. 27188 (August 25, 1989), 44 SEC Docket 859.

[50] *In the Matter of Gary M. Wozniak*, Securities Exchange Act Release No. 26459 (January 13, 1989), 42 SEC Docket 1212.

[51] *In the Matter of William S. Hoglund*, Securities Exchange Act Release No. 27317 (September 29, 1989), 44 SEC Docket 1469.

[52] *In the Matter of William E. Parodi, Sr., et al.*, Securities Exchange Act Release No. 27299 (September 27, 1989), 44 SEC Docket 1337.

[53] *In the Matter of American Investors of Pittsburgh, et al.*, Securities Exchange Act Release No. 26393 (December 27, 1988), 42 SEC Docket 897.

[54] *SEC v. Matthews & Wright Group Inc., et al.*, Accounting and Auditing Enforcement Release No. 224 (April 27, 1989), 43 SEC Docket 1724.

[55] *In the Matter of Matthews & Wright Inc.*, Securities Exchange Act Release No. 26841 (May 19, 1989), 43 SEC Docket 1724.

[56] *In the Matter of Salomon Brothers, Inc.*, Securities Exchange Act Release No. 26838 (May 19, 1989), 43 SEC Docket 1712.

[57] *In the Matter of Prudential-Bache Securities, Inc.*, Securities Exchange Act Release No. 27313 (September 28, 1989), 44 SEC Docket 1362.

[58] *SEC v. Thomas E. Bernhoft, et al.*, Litigation Release No. 12241 (September 6, 1989), 44 SEC Docket 1000.

[59] *In the Matter of Forbes Portfolio Management, et al.*, Investment Advisers Act Release No. 1197 (September 11, 1989), 44 SEC Docket 1145.

[60] *In the Matter of Roberto C. Polo*, Investment Advisers Act Release No. 1201 (September 18, 1989), 44 SEC Docket 1272.

[61] *In the Matter of Managed Advisory Services, Inc., et al.*, Investment Advisers Act Release No. 1148 (December 27, 1988), 42 SEC Docket 975.

[62] *In the Matter of Harvest Financial Group, Inc., et al.*, Investment Advisers Act Release No. 1155 (February 21, 1989), 42 SEC Docket 1744.

[63] *SEC v. Dave Mason, et al.*, Accounting and Auditing Enforcement Release No. 243 (August 21, 1989), 44 SEC Docket 841.

[64] *In the Matter of Dave Mason, R.I.A., Inc., et al.*, Investment Advisers Act Release No. 1200 (September 18, 1989), 44 SEC Docket 1269.

[65] *In the Matter of Frederick D. Woodside, CPA*, Accounting and Auditing Enforcement Release No. 244 (August 21, 1989), 44 SEC Docket 827.

[66] *In the Matter of Heine Securities Corp.*, Investment Advisers Act Release No. 1150 (December 28, 1988), 42 SEC Docket 979.

[67] *In the Matter of United Services Advisors, et al.*, Investment Advisers Act Release No. 1196 (September 8, 1989), 44 SEC Docket 1139.

[68] *In the Matter of Sea Investment Management, Inc., et al.*, Investment Company Act Release No. 16952 (May 11, 1989), 43 SEC Docket 1457.

[69] *SEC v. John Peter Galanis, et al.*, Litigation Release No. 12154 (July 10, 1989), 43 SEC Docket 2571.

[70] *In the Matter of Chicago Board Options Exchange*, Securities Exchange Act Release No. 26809 (May 11, 1989), 43 SEC Docket 1432.

[71] Release No. 33-6838 (July 11, 1989), 43 SEC Docket 2421.

[72] Release No. 33-6841 (July 24, 1989), 44 SEC Docket 71.

[73] Release No. 33-6806 (October 25, 1988), 42 SEC Docket 91.

[74] Release No. 33-6839 (July 11, 1989), 43 SEC Docket 2434.

[75]Release Nos. 33-6806 (October 25, 1988), 42 SEC Docket 91, and 33-6839 (July 11, 1989), 43 SEC Docket 2434.

[76]Release No. 34-26333 (December 2, 1988), 42 SEC Docket 570.

[77]Release No. 34-27148 (August 18, 1989), 44 SEC Docket 599.

[78]Release No. 33-6835 (May 18, 1989), 43 SEC Docket 1577.

[79]Release No. 33-6836 (June 19, 1989), 43 SEC Docket 1952.

[80]Release No. 33-6823 (March 2, 1989), 42 SEC Docket 1784.

[81]Release No. 34-26598 (March 6, 1989), 43 SEC Docket 22.

[82]Release No. 34-26599 (March 6, 1989), 43 SEC Docket 32.

[83]Release No. 33-6815 (February 1, 1989), 42 SEC Docket 1370.

[84]Release Nos. 33-6825 (March 14, 1989), 43 SEC Docket 664, 33-6811 (December 20, 1988), 42 SEC Docket 753, and 33-6812 (December 20, 1988), 42 SEC Docket 754.

[85]Staff Accounting Bulletin No. 81 (April 4, 1989), 42 SEC Docket 1010 (Gain Recognition on the Sale of a Business or Operating Assets to a Highly Leveraged Entity); Staff Accounting Bulletin No. 82 (July 5, 1989), 43 SEC Docket 2417 (Transfers of Nonperforming Assets by Financial Institutions; and Disclosure of the Impact of Financial Assistance from Regulators).

[86]Staff Accounting Bulletin No. 80 (November 21, 1988), 42 SEC Docket 481 (Application of Rule 3-05 in Initial Public Offerings); Staff Accounting Bulletin No. 83 (July 31, 1989), 44 SEC Docket 404 (Earnings per Share Computations in an Initial Public Offering); Staff Accounting Bulletin No. 84 (July 31, 1989), 44 SEC Docket 408 (Accounting for Sales of Stock by a Subsidiary); Staff Accounting Bulletin No. 85 (September 18, 1989), 44 SEC Docket 1291 (Amortizing Capitalized Costs of Oil and Gas Properties; Inclusion of Methane Gas within Proved Reserves); and Staff Accounting Bulletin No. 86 (September 28, 1989), 44 SEC Docket 1460 (Certain Matters Related to Quasi-Reorganizations).

[87]Staff Accounting Bulletin No. 87 (December 12, 1989), 45 SEC Docket 192 (Property-Casualty Insurance Reserves for Unpaid Claims Costs; Contingency Disclosures).

[88]Letter to David C. Mulford, Under Secretary for International Affairs, U.S. Department of the Treasury, from Edmund Coulson, Chief Accountant, SEC, and Linda C. Quinn, Director, Division of Corporate Finance, SEC, dated July 14, 1989.

[89]Report of the National Commission on Fraudulent Financial Reporting (October 1987). The National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, was jointly sponsored and funded by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors, and the National Association of Accountants.

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

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

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

[93]17 CFR 229.302(a).

[94]Release No. 33-6837 (June 20, 1989), 43 SEC Docket 2080.

[95]Release No. 34-27153 (August 21, 1989), 44 SEC Docket 655.

[96]H.R. 975, 101st Congress, 1st Session (1989).

[97]Proposed Statement of Financial Accounting Standards, *Employers' Accounting for Post-retirement Benefits Other than Pensions* (February 14, 1989).

[98] Statement of Financial Accounting Standards No. 103, *Deferral of Effective Date of FASB Statement No. 96* (December 1989).

[99] Statements of Financial Accounting Standards No. 101, *Regulated Enterprises—Accounting for the Discontinuation of Application of FASB Statement No. 71* (December 1988), and No. 102, *Statement of Cash Flows—Exemption of Certain Enterprises and Classification of Cash Flows from Certain Securities Acquired for Resale* (February 1989).

[100] FASB Technical Bulletins No. 88-1, *Issues Relating to Accounting for Leases* (December 28, 1988) and No. 88-2, *Definition of Right of Setoff* (December 28, 1988).

[101] Letter to Jack Kreischer, Chairman of AcSEC, from Edmund Coulson, Chief Accountant, SEC, dated December 20, 1989.

[102] Exposure Draft of Statement of Position, *Reporting by Financial Institutions of Debt Securities Held as Assets*, publication forthcoming.

[103] Practice Bulletin 6, Amortization of Discounts on Certain Acquired Loans (August 1989).

[104] SEC Practice Section, Annual Report 1987-1988 at 19.

[105] Release No. 33-6695 (April 1, 1987), 37 SEC Docket 1825.

[106] International Accounting Standards Committee Exposure Draft 32 (January 1, 1989).

[107] Securities Exchange Act Release Nos. 26198 (October 19, 1988), 42 SEC Docket 43; 26386 (December 12, 1988), 42 SEC Docket 795; 26368 (December 16, 1988), 42 SEC Docket 767; 26218 (October 26, 1988), 42 SEC Docket 127; and 26440 (January 10, 1989), 42 SEC Docket 1129.

[108] *See* note 155 and accompanying text, *infra*.

[109] *See, Report of the Presidential Task Force on Market Mechanisms* (January 1988) pp. 64-66.

[110] *See* subsection "National System for Clearance and Settlement," *infra*.

[111] Group of Thirty, *Clearance and Settlement in the World's Securities Markets* (March 20, 1989).

[112] Securities Exchange Act Release No. 34-27445 (November 16, 1989), 44 SEC Docket 2037.

[113] Securities Exchange Act Release No. 26402 (December 28, 1988), 42 SEC Docket 910. *See also* Securities Exchange Act Release No. 26580 (March 1, 1989), 42 SEC Docket 1827.

[114] Securities Exchange Act Release No. 27044 (July 18, 1989), 44 SEC Docket 16.

[115] The Commission's proposals were originally introduced in the House by Chairmen Dingell and Markey as H.R. 1609, and in the Senate by Chairman Dodd and Senator Heinz as S. 648.

[116] Securities Exchange Act Release No. 27178 (August 24, 1989), 44 SEC Docket 719.

[117] Securities Exchange Release No. 27472 (November 24, 1989), 44 SEC Docket 2286.

[118] Securities Exchange Act Release No. 26545 (February 14, 1989), 42 SEC Docket 1581.

[119] Securities Exchange Act Release No. 27012 (July 10, 1989), 43 SEC Docket 2465.

[120] Securities Exchange Act Release No. 27329 (October 2, 1989), 44 SEC Docket 1495.

[121] Securities Exchange Act Release No. 26991 (June 29, 1989), 43 SEC Docket 2265.

[122] Securities Exchange Act Release No. 27229 (September 7, 1989), 44 SEC Docket 961.

[123] Securities Exchange Act Release No. 26790 (May 5, 1989), 43 SEC Docket 1397.

[124] *See, e.g.*, SEC, Division of Market Regulation, *The October 1987 Market Break*, Chapter 10 (February 1988), and *Interim Report of the Working Group on Financial Markets* (May 1988).

[125] Securities Exchange Act Release Nos. 26627 (March 14, 1989), 43 SEC Docket 682; 26783 (May 4, 1989), 43 SEC Docket 1366; 27074 (July 28, 1989), 44 SEC Docket 268; 27152 (August 18, 1989), 44 SEC Docket 649; and 27582 (December 29, 1989), 45 SEC Docket 469.

[126] Securities Exchange Act Release No. 26773 (May 1, 1989), 43 SEC Docket 1338.

[127] Securities Exchange Act Release No. 27044 (July 18, 1989), 44 SEC Docket 16. *See also* Securities Exchange Act Release No. 26300 (November 21, 1988), 42 SEC Docket 415, for text of SCG Agreement. *See* subsection "Market Reform Initiatives," *supra*.

[128] Securities Exchange Act Release No. 26840 (May 19, 1989), 43 SEC Docket 1721.

[129] Securities Exchange Act Release No. 27534 (December 13, 1989), 45 SEC Docket 118.

[130] Securities Exchange Act Release No. 27410 (October 31, 1989), 44 SEC Docket 1898.

[131] Securities Exchange Act Release No. 27104 (August 8, 1989), 44 SEC Docket 427.

[132] S. 648, 101st Cong., 1st Sess., and H.R. 3656, 101st Cong., 1st Sess.

[133] Securities Exchange Act Release No. 27581 (December 29, 1989), 45 SEC Docket 467.

[134] Securities Exchange Act Release No. 26671 (March 28, 1989), 43 SEC Docket 868.

[135] Securities Exchange Act Release No. 27006 (July 7, 1989), 43 SEC Docket 2446.

[136] *See* Securities Exchange Act Release No. 26450 (January 12, 1989), 42 SEC Docket 1142.

[137] 883 F.2d 537 (7th Cir. 1989).

[138] The Commission subsequently determined that the OTC option trading system is not an exchange, and a new order granting registration was issued in January 1990. *See* Securities Exchange Act Release No. 27611 (January 12, 1990), 45 SEC Docket 617.

[139] *See Policy Statement on Regulation of International Securities Markets*, Securities Act Release No. 6807 (November 14, 1988), 53 FR 46963, 42 SEC Docket 334.

[140] Securities Exchange Act Release No. 27017 (July 11, 1989), 43 SEC Docket 2471.

[141] Securities Exchange Act Release No. 27018 (July 11, 1989), 43 SEC Docket 2492.

[142] Letter regarding S.G. Warburg Securities (November 9, 1989).

[143] Letter regarding NFC PLC (February 2, 1989).

[144] Letter regarding NOVA Corporation of Alberta (August 14, 1989).

[145]Letter regarding Pacific Dunlop Limited (May 9, 1989) and Letter regarding National Australia Bank Limited (July 31, 1989).

[146]Letter regarding Cable and Wireless PLC (September 26, 1989).

[147]Letter regarding PolyGram N.V. (December 12, 1989).

[148]Letter regarding Rhone-Poulenc S.A. (November 13, 1989).

[149]Letter regarding Benetton Group S.p.A. (June 8, 1989).

[150]Letter regarding Repsol S.A. (May 9, 1989).

[151]Securities Exchange Act Release No. 26812 (May 12, 1989), 43 SEC Docket 1616.

[152]Securities Exchange Act Release No. 26626 (March 14, 1989), 43 SEC Docket 680.

[153]Securities Exchange Act Release No. 27470 (November 24, 1989), 44 SEC Docket 2250.

[154]The twelve countries are Australia, Canada, France, West Germany, Hong Kong, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States.

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

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

[157]Securities Exchange Act Release Nos. 27159 (August 21, 1989), 44 SEC Docket 664; 27075 (July 28, 1989), 44 SEC Docket 270; and 27186 (August 25, 1989), 44 SEC Docket 848.

[158]Securities Exchange Act Release No. 26870 (May 26, 1989), 43 SEC Docket 1793.

[159]Letter dated January 9, 1990 from Richard C. Breeden, Chairman, SEC, to James R. Jones, Chairman, Amex; Alger B. Chapman, Chairman and CEO, CBOE; John Phelan, Chairman, NYSE; Dr. Maurice Mann, Chairman and CEO,PSE; and Nicholas Giordano, President, Phlx.

[160]Securities Exchange Act Release No. 26871 (May 26, 1989), 43 SEC Docket 1807.

[161]Securities Exchange Act Release No. 26709 (April 11, 1989), 43 SEC Docket 1039.

[162]*Chicago Mercantile Exchange v. SEC*, 883 F.2d 537. The Court later denied a petition for rehearing filed by the Commission. *Chicago Mercantile Exchange v. SEC*, (Nos. 89-1538, 89-1763, 89-1786 and 89-2012) slip. op. (October 23, 1989).

[163]Securities Exchange Act Release No. 26938 (June 21, 1989), 43 SEC Docket 1998.

[164]Securities Exchange Act Release No. 26271 (November 10, 1988), 42 SEC Docket 340.

[165]Letter dated October 11, 1988 from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC.

[166]Letter dated October 7, 1988 from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis, CFTC.

[167]Letter dated June 16, 1989 from Jonathan G. Katz, Secretary, SEC, to Jean A. Webb, Secretary, CFTC.

[168]Securities Exchange Act Release No. 27047 (July 19, 1989), 44 SEC Docket 22.

[169]Securities Exchange Act Release Nos. 27185 (August 25, 1989), 44 SEC Docket 846, and 26952 (June 21, 1989), 43 SEC Docket 2105.

[170] Securities Exchange Act Release No. 26755 (April 21, 1989), 43 SEC Docket 1254.

[171] *See* Chapter "Enforcement Program," *supra*.

[172] Securities Exchange Act Release No. 27160 (August 22, 1989), 44 SEC Docket 665

[173] Securities Exchange Act Release No. 27247 (September 14, 1989), 44 SEC Docket 1072.

[174] Pub. Law No. 100-704, Insider Trading and Securities Fraud Enforcement Act of 1988 (November 19, 1988).

[175] Securities Exchange Act Release No. 26985 (July 10, 1989), 43 SEC Docket 2245.

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

[177] 15 U.S.C. 78bb(e).

[178] *Roundtable on Commission Dollar and Sale of Order Flow Practices* (July 24, 1989).

[179] Pub. L. No. 101-73, 103 Stat. 183 (August 9, 1989).

[180] Securities Exchange Act Release No. 27231 (September 8, 1989), 44 SEC Docket 1047.

[181] 15 U.S.C. 78c(a)(12)(A)(v).

[182] Securities Act Release No. 6844 (September 8, 1989), 44 SEC Docket 1015.

[183] Securities Exchange Act Release No. 34-27249 (September 15, 1989).

[184] Securities Exchange Act Release No. 26402 (December 28, 1988), 42 SEC Docket 910. *See also* Securities Exchange Act Release No. 26580 (March 1, 1989), 42 SEC Docket 1827.

[185] Securities Exchange Act Release No. 26608 (March 8, 1989), 43 SEC Docket 58.

[186] Letter dated March 2, 1989 from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Frances R. Bermanzohn, Senior Vice President and General Counsel, Public Securities Association.

[187] Securities Exchange Act Release No. 27047 (July 19, 1989), 44 SEC Docket 22.

[188] 54th Annual Report at 58.

[189] *Higgins v. SEC*, 866 F.2d 47 (2d Cir. 1989).

[190] Securities Exchange Act Release No. 26523 (February 7, 1989), 42 SEC Docket 1462.

[191] Securities Exchange Act Release No. 27292 (September 26, 1989), 44 SEC Docket 1325.

[192] Securities Exchange Act Release Nos. 26487 (January 24, 1989), 42 SEC Docket 1294 and 27164 (August 22, 1989), 44 SEC Docket 685.

[193] Securities Exchange Act Release No. 27035 (July 14, 1989), 44 SEC Docket 5.

[194] *See* section "Securities Markets, Facilities and Trading," *supra*, for additional information on NASD rule changes in 1989.

[195] Securities Exchange Act Release No. 26907 (June 8, 1989), 43 SEC Docket 1899.

[196] Securities Exchange Act Release No. 26915 (June 12, 1989), 43 SEC Docket 1975.

[197] Securities Exchange Act Release No. 26920 (June 12, 1989), 43 SEC Docket 1979.

[198]Securities Exchange Act Release No. 27494 (December 1, 1989), 45 SEC Docket 9.

[199]Securities Exchange Act Release No. 26794 (May 8, 1989), 43 SEC Docket 1407.

[200]Securities Exchange Act Release No. 26626 (March 14, 1989), 43 SEC Docket 680.

[201]Securities Exchange Act Release No. 27139 (August 14, 1989), 44 SEC Docket 548.

[202]Securities Exchange Act Release No. 27389 (October 25, 1989), 44 SEC Docket 1815.

[203]Securities Exchange Act Release No. 26805 (May 10, 1989), 43 SEC Docket 1417.

[204]Securities Exchange Act Release No. 27093 (August 2, 1989), 44 SEC Docket 292.

[205]Securities Exchange Act Release No. 27187 (August 25, 1989), 44 SEC Docket 854.

[206]Securities Exchange Act Release No. 27341 (October 5, 1989), 44 SEC Docket 1513.

[207]*In the Matter of Chicago Board Options Exchange, Inc.*, Securities Exchange Act Release No. 26809 (May 11, 1989).

[208]*In the Matter of Proposed Association of Joseph Frymer with an NYSE Member Firm*, Administrative Proceeding File No. 4-347. *See also, Antoniu v. SEC*, 877 F.2d 721 (7th Cir. 1989), *petition for cert. filed*, No. 89-835 (U.S. October 30, 1989).

[209]Rule 19d-1 authorizes certain SROs to report certain technical violations quarterly in chart form. In fiscal year 1989, the number of cases reported in this abbreviated format was as follows: American Stock Exchange—11, New York Stock Exchange—46, Philadelphia Stock Exchange—107, and Pacific Stock Exchange—23. These cases are included in the text discussion and chart.

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

[211]Investment Company Act Release No. 16766 (January 23, 1989), 42 SEC Docket 1267.

[212]Investment Company Act Release No. 16845 (March 2, 1989), 42 SEC Docket 1784.

[213]Investment Company Act Release No. 17085 (July 26, 1989), 44 SEC Docket 193.

[214]Investment Company Act Release No. 17091 (July 28, 1989), 44 SEC Docket 231.

[215]Investment Company Act Release No. 17294 (January 8, 1990), 45 SEC Docket 517.

[216]Investment Company Act Release No. 16842 (March 1, 1989), 42 SEC Docket 1869.

[217]Investment Company Act Release No. 17077 (July 21, 1989), 44 SEC Docket 173.

[218]Investment Company Act Release No. 17084 (International Series No. 110) (July 26, 1989), 44 SEC Docket 188.

[219]Investment Company Act Release No. 17357 (International Series No. 119) (February 26, 1990), 45 SEC Docket 1255.

[220]Investment Company Act Release No. 17097 (August 3, 1989), 44 SEC Docket 326.

[221] Investment Company Act Release No. 17096 (August 3, 1989), 44 SEC Docket 317.

[222] Holding Company Act Release No. 24815 (February 7, 1989), 42 SEC Docket 1515.

[223] Holding Company Act Release No. 24891 (May 17, 1989), 43 SEC Docket 1667.

[224] Holding Company Act Release No. 25058 (March 19, 1990), 45 SEC Docket 1577.

[225] Holding Company Act Release No. 25059 (March 19, 1990), 45 SEC Docket 1582.

[226] Investment Company Act Release No. 16899 (March 30, 1989), 43 SEC Docket 916 (Notice); Investment Company Act Release No. 16938 (April 25, 1989), 43 SEC Docket 1291 (Order).

[227] Investment Company Act Release No. 17116 (August 22, 1989), 44 SEC Docket 750.

[228] Investment Company Act Release No. 17257 (December 8, 1989), 45 SEC Docket 167 (Notice); Investment Company Act Release No. 17303 (January 11, 1990), 45 SEC Docket 601 (Order).

[229] Investment Company Act Release No. 17198 (October 31, 1989), 44 SEC Docket 1953 (Notice); Investment Company Act Release No. 17242 44 (November 29, 1989), SEC Docket 2347.

[230] American Funds Distributors, Inc. (pub. avail. October 16, 1989).

[231] Investment Trust of Boston Funds (pub. avail. April 13, 1989).

[232] T. Rowe Price Funds (pub. avail. June 30, 1989).

[233] Resolution Funding Corporation (pub. avail. October 20, 1989).

[234] Equitable Variable Life Insurance Company (pub. avail. August 9, 1989).

[235] Investment Advisers Act Release No. 1170 (June 14, 1989), 43 SEC Docket 2065 (Notice); Investment Advisers Act Release No. 1178 (July 11, 1989), 43 SEC Docket 3568 (Order).

[236] Holding Company Act Release No. 24908 (June 22, 1989), 43 SEC Docket 2115.

[237] Holding Company Act Release No. 24879 (May 5, 1989), 43 SEC Docket 1465.

[238] Holding Company Act Release No. 24872 (April 25, 1989), 43 SEC Docket 1268.

[239] Holding Company Act Release No. 24956 (September 26, 1989), 44 SEC Docket 1368.

[240] Central and South West Corporation; CSW Credit, Inc., Administrative Proceeding File No. 3-7027.

[241] Holding Company Act Release No. 24619 (April 7, 1988), 40 SEC Docket 1108.

[242] Holding Company Act Release No. 24764 (December 1, 1988), 42 SEC Docket 522.

[243] Holding Company Act Release No. 24959 (September 28, 1989), 44 SEC Docket 1395.

[244] *SEC v. First City Financial Corp.*, 688 F. Supp. 705 (D.D.C. 1988), *aff'd*, 890 F.2d 1215 (D.C. Cir. 1989).

[245] *United States v. Chestman*, No. 89-1276 (2d Cir.).

[246] *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989).

[247] *The Business Roundtable v. SEC*, No. 88-1651 (D.C. Cir.).

[248] *Chicago Mercantile Exchange v. SEC*, 883 F.2d 537 (7th Cir. 1989).

[249]*Arthur Young & Co. v. Reves*, 856 F.2d 52 (8th Cir. 1988), *cert. granted*, 109 S.Ct. 3154 (1989).

[250]*SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[251]*Holloway v. Peat, Marwick, Mitchell & Co.*, 879 F.2d 772 (10th Cir. 1989), *cert. granted*, 110 S.Ct. 1314 (1990).

[252]*Marine Bank v. Weaver*, 455 U.S. 551 (1982).

[253]*Foremost Guaranty Corp. v. Meritor Savings Bank*, Nos. 88-3164, 88-3165, 88-3172 (4th Cir.).

[254]*Hollinger v. Titan Capital Corp.*, No. 87-3837 (9th Cir.).

[255]*Wilson v. Saintine Exploration & Drilling Corp. (Ruffa & Hanover, P.C.)*, 872 F.2d 1124 (2d Cir. 1989).

[256]*Pinter v. Dahl*, 108 S.Ct. 2063 (1988).

[257]*Lebman v. Aktiebolaget Electrolux*, 854 F.2d 1319 (5th Cir. 1988)(Table), *cert. denied*, 109 S.Ct. 3214 (1989).

[258]*Ceres Partners v. GEL Associates*, No. 89-7666 (2d Cir.).

[259]*Deutschman v. Beneficial Corp.*, 841 F.2d 502 (3d Cir. 1988), *cert. denied*, 109 S.Ct. 3176 (1989).

[260]*Consolidated Gold Fields, PLC v. Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989).

[261]*Wisconsin's Environmental Decade, Inc. v. SEC*, 882 F.2d 523 (D.C. Cir. 1989).

[262]*SEC v. Zale*, 866 F.2d 1419 (5th Cir. 1989)(Table).

[263]*United States v. Swift & Co.*, 286 U.S. 106 (1932).

[264]*SEC v. Goldcor, Inc.*, 883 F.2d 77 (11th Cir. 1989)(Table).

[265]*Federal Deposit Insurance Corporation v. Jenkins*, 888 F.2d 1537 (11th Cir. 1989).

[266]*SEC v. Carl N. Karcher*, Misc. No. 89-15 (D.D.C.).

[267]*SEC v. Carl N. Karcher, et al.*, Civil Action No. 88-02021-ER (Tx) (C.D. Cal.).

[268]*Occidental Petroleum Corp. v. SEC*, 873 F.2d 325 (D.C. Cir. 1989).

[269]The district court Order had required the Commission to take additional procedural steps to determine Occidental's claim for confidential treatment of documents requested by a third party under the FOIA. The Commission had argued on appeal that its existing procedures gave confidential treatment requestors adequate notice and the opportunity to submit evidence to the FOIA officer and the General Counsel, who conducts *de novo* review.

[270]*Safecard v. SEC*, No. 84-3073 (D.D.C. August 18, 1989), *appeal pending*, No. 89-5374 (D.C. Cir. September 13, 1989).

[271]*Suter v. Ruder*, No. 89 C 3292 (N.D. Ill. June 28, 1989).

[272]Appeal No. 89-3317.

[273]*Lin v. SEC*, C-89-20104-RFP (N.D. Cal. August 23, 1989), *app. pending*, No. 89-16511 (9th Cir.)

[274]Admin. Proc. File No. 3-6776 (September 5, 1989).

[275]The respondents have appealed to the Commission from Judge Murray's decision. Their appeal is pending.

[276]Admin. Proc. File No. 3-7155 (August 11, 1989), 44 SEC Docket 515.

[277]*Deutsch v. SEC*, No. 88 CV 6016 (S.D.N.Y. February 24, 1989); *Mandell v. SEC*, No. 89-0427 (S.D. Cal. September 5, 1989); *Sprecher v. SEC*, No. 89-C-203-J (D. Utah November 27, 1989; *Rutan V. SEC*, No. 89-B-1568 (D. Colo. November 1, 1989).

[278]In *Mandell v. SEC*, the district court rejected plaintiff's claim that the

subpoenaed bank records were protected by the attorney-client privilege because they were held in an attorney's customer trust-fund account.

In *Sprecher v. SEC*, the court held that the First Amendment did not preclude the Commission from obtaining the bank records of a purported religious organization.

[279] *In the Matter of the Application of Hamilton Bohner, Inc., John R. McKowen and John E. Sherman*, Securities Exchange Act Release No. 27232 (September 8, 1989), 44 SEC Docket 1297.

[280] *In the Matter of Robert J. Check*, Securities Exchange Act Release No. 26367 (December 16, 1988), 42 SEC Docket 760.

[281] The Commission subsequently concluded that the provisions of the original proposal should be enhanced. In testimony before the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs on February 1, 1990, Chairman Breeden described the recommended changes. First, the revised proposal would expressly authorize the Commission to issue cease-and-desist orders for violations of the federal securities laws. Second, the Commission would be empowered to order disgorgement in its administrative and cease-and-desist proceedings. Third, the Federal Criminal Code would be amended to permit a court to authorize disclosure to the Commission of grand jury information concerning potential securities law violations. Fourth, the express authority of courts to impose officer and director bars would be limited to violations of certain scienter-based antifraud provisions. Because of the cease-and-desist authority contained in the revised proposal, the Commission would not seek authority to impose such sanctions administratively, nor does the revision contain the proposed amendments to Section 15(c)(4) that are in S. 647.

[282] After the House Subcommittee voted to report out the revised proposal on clearance and settlement, the revision was introduced as a separate bill, H.R. 3566.

[283] A companion bill was introduced in the Senate as S. 438.

[284] *Request for Public Comments on the Role of the Securities and Exchange Commission in Reorganization Cases under Chapter 11 of the Bankruptcy Code*, Corporate Reorganization Release No. 384, Release No. 34-27300 (September 27, 1989), 54 Fed. Reg. 40760 (October 3, 1989).

[285] *In re Continental Information Systems Corp., et al.*, No. 89-B10073-84 (Bankr. S.D.N.Y.) (granted) and *In re Sahlen & Associates, Inc., et al.*, Nos. 89 B 11234 through 89 B 11244 inclusive (PBA) (Bankr. S.D.N.Y.) (U.S. Trustee agreed to appoint committee).

[286] *In re Continental Information Systems Corp., et al.*, No. 89-B10073-84 (PBA) (Bankr. S.D.N.Y.).

[287] *In re Angicor Ltd.*, No. 3-88-2209 (Bankr. D. Minn.).

[288] *In re Johns-Manville Corp.*, 801 F.2d 60 (2d Cir. 1986).

[289] *In re Sahlen & Associates, Inc.*, No. 89 B 11234-44 (Bankr. S.D.N.Y. August 17, 1989), *appeal pending*, Civ. No. 89-6120-DNE (S.D.N.Y.).

[290] *In re The Charter Co.*, 76 B.R. 191 (M.D. Fla. 1987), *aff'd*, No. 86-1079-Civ-J-16 (M.D. Fla.), *rev'd*, 876 F.2d 866 (11th Cir.), *petition for cert. filed*, 58 U.S.L.W. 3291 (U.S. Oct. 10, 1989) (No. 89-579). *See* 54th Annual Report at 96.

[291] *In re American Reserve*, 80 B 4786 (Bankr. N.D. Ill. April 12, 1985), *rev'd*, 71 B.R. 32 (N.D. Ill. 1987), *rev'd*, 840 F.2d 487 (7th Cir. 1988).

[292] See *In re Standard Metals Corporation, et al.*, 817 F.2d 625 (10th Cir.), *rev'd*

in part on rehearing, 839 F.2d 1383 (10th Cir. 1987) (per curiam), *cert. dismissed*, 109 S.Ct. 201 (1988). Petitioner agreed to dismiss the writ of certiorari because the parties had reached a settlement agreement providing for relief on a class basis.

[293] *In re LTV Corp.*, 104 B.R. 626 (S.D.N.Y. 1989), *appeal pending*, No. 89-5040 (2d Cir.).

[294] *In re Johns-Manville*, 53 B.R. 346, 350-51 (Bankr. S.D.N.Y. 1985).

[295] *In re Texas International Co.*, No. 88-02672-BH (Bankr. W.D. Okla. November 10, 1988), *appeal pending*, Civ. No. 89-77R (W.D. Okla.).

[296] *In re Allegheny International, Inc., appeal pending*, No. 89-2039 (W.D. Pa.).

[297] *In re Kaiser Steel Corp. (Kaiser Steel Resources, Inc. v. Jacobs)*, 110 B.R. 514 (D. Colo. 1990).

[298] *In re Kaiser Steel Corp., et al., (Kaiser Steel Resources, Inc. v. Jacobs)*, No. 89-K-1731 (D. Colo. Jan. 22, 1990).

[299] *In re Texas International Co.*, No. 88-02672-BH (Bankr. W.D. Okla.).

[300] *See, e.g., In re Custom Laboratories, Inc.*, 53rd Annual Report at 74 (objection to disclosure statement); *In re Energy Exchange Corp. and Vulcan Energy Corp.* and *In re Storage Technology Corp.*, 53rd Annual Report at 74-75 (objection to confirmation of reorganization plan).

Appendix

The Securities Industry

Revenues, Expenses, and Selected Balance Sheet Items

Broker-dealers that are registered with the Commission produced revenues of $66.7 billion in calendar year 1988, one percent above the 1987 level. The traditional securities activities, the brokerage business in particular, suffered from weak investor interest in 1988.

As a result of low volume, revenues from the brokerage business declined by $6.4 billion (26 percent) in 1988. Virtually all of this decline resulted from a decrease in revenues from retailing securities products (securities commissions and revenues from the sale of mutual funds). Margin interest declined by a modest $300 million.

Business in traditional dealer activities also was stagnant. Revenues from trading and investments rose by $2.4 billion (17 percent) in 1988, but this reflects the abnormally low 1987 figures. These revenues were substantially below the 1986 levels. Underwriting profits declined by $100 million (two percent).

"All other revenues," which are dominated by interest income from securities purchased under agreements to resell and fees from handling private placements, mergers, and acquisitions, rose $4.6 billion (21 percent) in 1988. These revenues accounted for 40 percent of total revenues in 1988, compared to 33 percent in 1987.

Like revenues, expenses showed little gross change in 1988, increasing by $300 million (under one percent). Declines in transaction-related expenses, such as registered representatives' compensation (a $2 billion decline) and commissions and clearance paid other brokers (a $700 million decline), were compensated for by a $3.3 billion increase in interest expenses.

Pre-tax income rose $300 million to $3.5 billion in 1988. The pre-tax return on equity in 1988 was 9.6 percent, comparable to the return in 1987 but substantially below those of earlier years.

Assets rose by 18 percent to $560.9 billion at year-end 1988, with liabilities also rising 18 percent to $523.8 billion. Ownership equity increased $2.8 billion during 1988 to $37.0 billion.

Table 1

UNCONSOLIDATED FINANCIAL INFORMATION FOR BROKER-DEALERS 1984–1988[1]

(Millions of Dollars)

	1984	1985	1986	1987[r]	1988[p]
Revenues					
1 Securities commissions	$ 9,269 7	$ 10,955 0	$ 13,976.5	$ 16,574 1	$ 11,992 3
2. Gains (losses) in trading and investment accounts	10,760 9	14,549 2	18,145 0	14,423 0	16,838 1
3 Profits (losses) from underwriting and selling groups	3,248 6	4,986 7	6,742 6	5,719 4	5,608.3
4. Margin interest	2,970.8	2,746 0	3,021 6	3,493.3	3,180 0
5. Revenues from sale of investment company shares	1,452 0	2,753 6	4,540 3	4,069.3	2,644 3
6 All other revenues	11,905 2	13,853 8	17,997 8	21,825 3	26,437 8
7 Total revenues	$ 39,607 1	$ 49,844 3	$ 64,423 8	$ 66,104 4	$ 66,700 8
Expenses					
8. Registered representatives' compensation (Part II only)[2]	$ 6,171 2	$ 8,184.0	$ 10,701 0	$ 11,042 2	$ 9,011.4
9 Other employee compensation and benefits	6,756.7	8,149 0	11,002.6	12,110 9	12,274 1
10. Compensation to partners and voting stockholder officers	1,503 0	1,778.9	2,232.7	2,429.6	2,283 9
11 Commissions and clearance paid to other brokers	1,906 8	2,314 2	2,994.5	3,562.6	2,858 0
12 Interest expenses	10,693 1	11,469 8	14,232.9	16,473 4	19,730 8
13. Regulatory fees and expenses	225 8	339 7	416.5	432 4	492 0
14 All other expenses[2]	9,493.9	11,106 4	14,542 4	16,843 4	16,504.7
15. Total expenses	$ 36,750 6	$ 43,341.9	$ 56,122 6	$ 62,894 5	$ 63,154 8
Income and Profitability					
16. Pre-tax income	$ 2,856.6	$ 6,502 4	$ 8,301.2	$ 3,209 9	$ 3,546 0
17. Pre-tax profit margin	7.2	13.0	12 9	4 9	5 3
18 Pre-tax return on equity	15.2	26 7	26 8	9 4	9 6
Assets, Liabilities and Capital					
19 Total assets	$313,821 7	$452,463.3	$520,940 5	$477,442 4	$560,854 9
20 Liabilities					
a Unsubordinated liabilities	290,255.1	421,593 8	478,990.6	430,498 3	509,705 7
b Subordinated liabilities	4,761.3	6,553 6	10,944.7	12,686.8	14,113 6
c. Total liabilities	295,016.4	428,147 4	489,935 3	443,185 1	523,819 3
21. Ownership Equity	$ 18,805 3	$ 24,315 9	$ 31,005 2	$ 34,257.3	$ 37,035.6
Number of firms	8,272	8,957	9,436	9,515	9,247

[1] Calendar, rather than fiscal, year data is reported in this table.

[2] Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report

Figures may not sum due to rounding

r = revised

p = preliminary

Source FOCUS Report

Table 2

UNCONSOLIDATED ANNUAL REVENUES AND EXPENSES FOR BROKER-DEALERS DOING A PUBLIC BUSINESS

1984–1988[1]

(Millions of Dollars)

	1984	1985	1986	1987[r]	1988[p]
Revenues					
1 Securities commissions	$ 8,953 9	$10,537 1	$13,488 2	$16,016 2	$11,558.7
2. Gains (losses) in trading and investment accounts	9,699 3	12,996 6	16,264 5	12,393.4	15,358.6
3 Profits (losses) from underwriting and selling groups	3,244.2	4,981 3	6,737.9	5,718 5	5,607 1
4. Margin interest	2,950 1	2,683.6	2,999 4	3,467.0	3,160.9
5 Revenues from sale of investment company shares	1,451 8	2,753 4	4,539 8	4,069.5	2,643.6
6 All other revenues	11,321.3	13,343 5	17,368 7	21,450 2	26,194.1
7 Total revenues	$37,620 6	$47,295 6	$61,398 5	$63,114 8	$64,523 0
Expenses					
8 Registered representatives' compensation (Part II only) [2]	$ 6,162 3	$ 8,161 6	$10,653 6	$11,032.4	$ 9,000 4
9 Other employee compensation and benefits	6,621.7	7,984 9	10,777 0	11,869.7	11,969.9
10 Compensation to partners and voting stockholder officers	1,367 6	1,643 0	2,037.2	2,185 2	2,068.1
11 Commissions and clearance paid to other brokers	1,794 1	2,178 4	2,776 2	3,355 8	2,674 4
12 Interest expenses	10,122 4	10,842 7	13,611 7	16,179.1	19,384 9
13 Regulatory fees and expenses	202.9	313 2	384 4	399 9	452.4
14 All other expenses [2]	9,129.1	10,708 7	13,983.1	16,284.1	16,040 0
15 Total expenses	$35,400 0	$41,832 6	$54,223.2	$61,306 0	$61,590 2
Income and Profitability					
16 Pre-tax income	$ 2,220 6	$ 5,463 0	$ 7,175.3	$ 1,808 8	$ 2,932 8
17 Pre-tax profit margin	5 9	11 6	11 7	2 9	4.5
18 Pre-tax return on equity	13 3	25 3	25.8	5 7	8 5
Number of firms	5,350	5,890	6,225	6,307	6,015

[1] Calendar, rather than fiscal, year data is reported in this table

[2] Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report

Figures may not sum due to rounding

r = revised
p = preliminary

Source FOCUS Report

Table 3

UNCONSOLIDATED BALANCE SHEET FOR BROKER-DEALERS DOING A PUBLIC BUSINESS YEAR-END, 1984–1988 [1]

(Millions of Dollars)

	1984	1985	1986	1987[r]	1988[p]
Assets					
1 Cash	$ 4,217 3	$ 6,618 2	$ 8,916 3	$ 7,538 9	$ 9,639 8
2. Receivables from other broker-dealers	29,801.0	63,289.8	65,279 2	61,953 1	69,924 0
3 Receivables from customers	30,537 4	47,632 3	54,132 3	38,706 4	40,531 4
4 Receivables from non-customers	1,417 6	2,603 6	3,572 7	3,370 1	3,062 2
5 Long positions in securities and commodities	108,203 5	150,834 3	164,655 6	118,150 2	134,943 4
6 Securities and investments not readily marketable	651.2	425 9	490 3	460 4	628 7
7 Securities purchased under agreements to resell (Part II only) [2]	107,859 3	140,634 2	185,482 7	213,935 0	264,839 8
8 Exchange membership	256.6	268 4	292 9	345 4	374.5
9. Other assets [2]	12,225 7	16,066.2	20,286 2	21,339 1	23,650 8
10. Total assets	$295,169.6	$428,372 9	$503,108 2	$465,798 6	$547,594 5
Liabilities and Equity Capital					
11 Bank loans payable	$ 27,351.0	$ 41,344.8	$ 38,471 2	$ 20,756 0	$ 22,968 0
12 Payables to other broker-dealers	24,999 3	52,275.9	50,987 6	43,138 1	48,496 7
13 Payables to non-customers	1,691.9	3,197.1	3,403 1	4,173 1	4,215 0
14 Payables to customers	19,997.9	31,723 6	40,671 0	34,328 7	40,081 3
15 Short positions in securities and commodities	45,779 6	79,162.2	76,851 0	73,725 8	96,439 4
16. Securities sold under repurchase agreements (Part II only) [2]	134,919 3	164,950 3	220,965 8	213,049 9	250,074 1
17. Other non-subordinated liabilities [1]	19,290.1	28,197.4	34,024.9	32,681 0	37,062 4
18 Subordinated liabilities	4,425.0	5,965 2	9,904 1	12,306 4	13,672 6
19 Total liabilities	$278,454.1	$406,816.6	$475,278 6	$434,158.9	$513,009 4
20 Equity capital	$ 16,715 5	$ 21,556 3	$ 27,829.6	$ 31,639 6	$ 34,585 1
Number of firms	5,350	5,890	6,225	6,307	6,015

[1] Calendar, rather than fiscal, year data is reported in this table

[2] Resale agreements and repurchase agreements for firms that neither carry nor clear is included in "other assets" and "other non-subordinated liabilities" respectively as these items are not reported separately on Part IIA of the FOCUS Report

Figures may not sum due to rounding

r = revised
p = preliminary

Source FOCUS Report

Securities Industry Dollar In 1988 For Carrying and Clearing Firms

Data for carrying and clearing firms which do a public business is presented here to allow for more detail as reporting requirements for firms which neither carry nor clear differ and data aggregation of these two types of firms necessarily results in loss of detail. Carrying and clearing firms are those firms which clear securities transactions or maintain possession or control of customers' cash or securities. This group produced 86 percent of the securities industry's total revenues in calendar year 1988.

Brokerage activity accounted for about 24 cents of each revenue dollar in 1988, a substantial decrease from 35 cents in 1987. Securities commissions were the most important component, producing 16 cents of each dollar of revenue, while margin interest and revenues from mutual fund sales generated six cents and three cents, respectively.

The dealer side produced 70 cents of each dollar of revenue. Twenty-five of these cents came from trading and investments, nine cents from underwriting, and 36 cents from other securities-related revenues. The latter is comprised primarily of interest income from securities purchased under agreements to resell and fees from handling private placements, mergers, and acquisitions.

Total expenses consumed 96 cents of each revenue dollar, compared to 98 cents in 1987. The result was a pre-tax profit margin of four cents per revenue dollar, compared to two cents in 1987.

In 1988, interest became the most important expense category, consuming 33 cents of each revenue dollar, compared to 29 cents in 1987. As a percent of revenues, employee-related expenses (registered representatives' compensation and clerical and administrative employees' expenses) fell to 33 cents from 38 cents in 1987.

Total assets of broker-dealers carrying and clearing customer accounts rose by $83.4 billion to $539.5 billion at year-end 1988. Resale agreements accounted for the majority of this growth, increasing by $50.9 billion to $264.8 billion. Resale agreements now account for almost half of all assets. Long positions rose $16.6 billion to $132.3 billion but in dollar terms still remain below the levels maintained in 1985 and 1986. Most of the remaining assets represented receivables, either from customers or other broker-dealers.

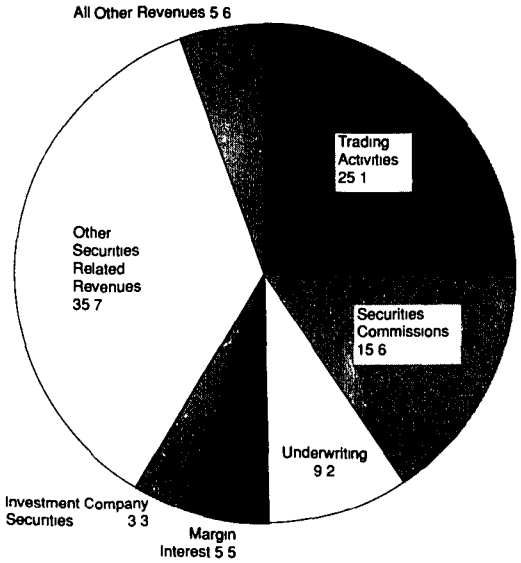
Total liabilities increased $80.5 billion, or 19 percent, to $508.3 billion in 1988. Short positions and repurchase agreements accounted for about three-fourths of this increase. Owners' equity rose 10 percent, from $28.2 billion in 1987 to $31.2 billion in 1988.

Table 4

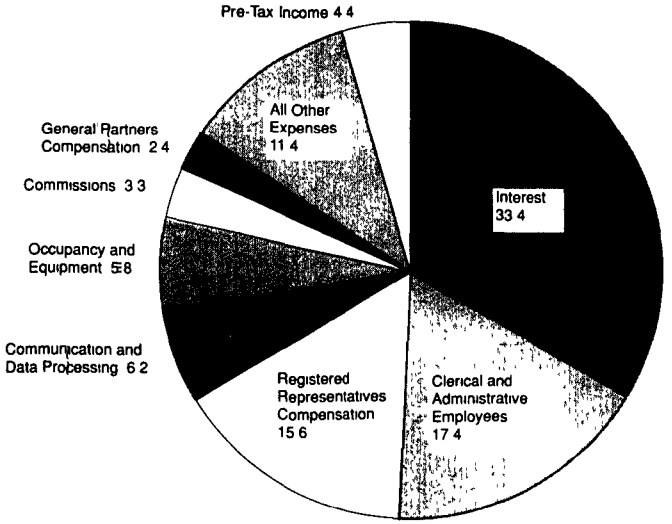
Securities Industry Dollar in 1988

For Carrying/Clearing Firms

SOURCES OF REVENUE



EXPENSES AND PRE-TAX INCOME



Figures may not add due to rounding

NOTE Includes information for firms doing a public business that carry customer accounts or clear securities transactions

SOURCE X-17A-5 FOCUS REPORTS

Table 5

UNCONSOLIDATED REVENUES AND EXPENSES FOR CARRYING/CLEARING BROKER-DEALERS[1]

(Millions of Dollars)

	1987[r]		1988[p]		
	Dollars	Percent of Total Revenues	Dollars	Percent of Total Revenues	Percent Change 1987–1988
Revenues					
1 Securities commissions	$12,959.6	23.4%	$ 9,007.5	15 6%	(30 5)%
2 Gains (losses) in trading and investment accounts	11,714.2	21.1	14,473 0	25 1	23.6
3 Profits (losses) from underwriting and selling groups	5,384 4	9 7	5,321 6	9 2	(1 2)
4 Margin interest	3,467.0	6.3	3,160.9	5 5	(8 8)
5 Revenues from sale of investment company shares	2,744.8	4.9	1,881.9	3 3	(31 4)
6 Other securities related revenues	16,047.3	28.9	20,555.3	35 7	28 1
7 All other revenues	3,147 5	5 7	3,216 2	5 6	2 2
8 Total revenues	$55,464.7	100.0%	$57,616.3	100.0%	3 9%
Expenses					
9 Registered representatives' compensation	$11,032 4	19 9%	$ 9,000 4	15 6%	(18 4)%
10 Other employee compensation and benefits	9,773 0	17.6	10,030.7	17 4	2.6
11 Compensation to partners and voting stockholder officers	1,599.2	2.9	1,402.0	2.4	(12 3)
12 Commissions and clearance paid to other brokers	2,314 2	4 2	1,912 1	3 3	(17.4)
13 Communications	2,776 4	5 0	2,771.9	4 8	(2)
14 Occupancy and equipment costs	2,986.8	5.4	3,338.4	5.8	11 8
15 Data processing costs	828.6	1 5	808.5	1.4	(2.4)
16 Interest expenses	16,013 4	28.9	19,240.2	33.4	20 2
17 Regulatory fees and expenses	332 7	0 6	384.5	0.7	15.6
18 Losses in error accounts and bad debts	1,175.0	2 1	460.0	0 8	(60.9)
19. All other expenses	5,382.3	9.7	5,717.0	9.9	6 2
20 Total expenses	$54,213.9	97.7%	$55,065.7	95 6%	1.6%
Income and Profitability					
21 Pre-tax income	$ 1,250.8		$ 2,550.6		103 9%
22 Pre-tax profit margin		2.3		4.4	
23 Pre-tax return on equity		4.4		8.2	
Number of firms	1,195		1,095		

Figures may not sum due to rounding

r = revised
p = preliminary

[1] Calendar, rather than fiscal, year data is reported in this table

Note Includes information for firms doing a public business that carry customer accounts or clear securities transactions

Source FOCUS Report

Table 6

UNCONSOLIDATED BALANCE SHEET FOR CARRYING/CLEARING BROKER-DEALERS[1]

(Millions of Dollars)

	Year-end 1987[r]		Year-end 1988[p]		
	Dollars	Percent of Total Assets	Dollars	Percent of Total Assets	Percent Change 1987–1988
Assets					
1 Cash	$ 6,965 1	1 5%	$ 8,952 5	1 7%	28 5%
2 Receivables from other broker-dealers	58,474 5	12 8	68,590.1	12 7	17 3
a. Securities failed to deliver	8,372 6	1 8	13,405 5	2 5	60 1
b. Securities borrowed	42,450.0	9 3	46,464 1	8 6	9 5
c Other	7,651 8	1 7	8,720 5	1 6	14 0
3 Receivables from customers	38,706.4	8 5	40,531 4	7 5	4 7
4 Receivables from non-customers	2,155 2	0 5	1,648 1	0 3	(23 5)
5 Long positions in securities and commodities	115,661 8	25 4	132,272 7	24 5	14 4
a Bankers acceptances, certificates of deposit and commercial paper	11,078 2	2 4	12,691 9	2.4	14 6
b U S and Canadian government obligations	63,953 2	14 0	67,637 3	12.5	5 8
c State and municipal government obligations	8,237 6	1 8	7,473 8	1 4	(9 3)
d Corporate obligations	17,455 3	3 8	27,127 0	5 0	55 4
e Stocks and warrants	9,883 7	2 2	11,598 1	2 1	17 3
f Options	566 3	0 1	658.9	0 1	16 4
g Arbitrage	3,175 5	0 7	3,147 9	0 6	(.9)
h Other securities	754.9	0 2	1,475.0	0 3	95 4
i Spot commodities	356 6	0 1	259 1	*	(27 3)
6 Securities and investments not readily marketable	341 4	0 1	478 8	0 1	40 2
7 Securities purchased under agreements to resell	213,935 0	46 9	264,839 8	49 1	23 8
8 Exchange membership	300 1	0.1	338.7	0.1	12 9
9 Other assets	19,537 8	4 3	21,856 5	4 1	11.9
10. Total assets	$456,077 3	100 0%	$539,508.7	100.0%	18.3%
Liabilities and Equity Capital					
11 Bank loans payable	$ 20,707 3	4 5%	$ 22,936 4	4 3%	10 8%
12 Payables to other broker-dealers	42,846.9	9 4	47,971 5	8 9	12.0
a Securities failed to receive	7,625 5	1 7	12,604 3	2 3	65 3
b Securities loaned	29,147 9	6 4	27,956 7	5.2	(4 1)
c Other	6,073 5	1 3	7,410 6	1 4	22 0
13 Payables to non-customers	3,200 4	0 7	3,043 3	6	(4 9)
14 Payables to customers	34,328.7	7 5	40,081 3	7 4	16 8
15 Short positions in securities and commodities	70,295 9	15 4	95,320 5	17 7	35 6
16 Securities sold under repurchase agreements	213,049 9	46 7	250,074 1	46 4	17 4
17 Other non-subordinated liabilities	31,701 3	7 0	35,920 5	6.7	13 3
18 Subordinated liabilities	11,705 5	2 6	12,943 3	2 4	10 6
19. Total liabilities	$427,836 0	93 8%	$508,290.9	94 2%	18 8%
20 Equity capital	$ 28,241 3	6 2%	$ 31,217 8	5 8%	10.5%
Number of firms	1,195		1,095		

Figures may not sum due to rounding

* under 05%

r = revised
p = preliminary

[1] Calendar, rather than fiscal, year data is reported in this table

Note Includes information for firms doing a public business that carry customer accounts or clear securities transactions

Source FOCUS Report

Self-Regulatory Organizations: Expenses, Pre-Tax Income and Balance Sheet Structure

Aggregate clearing agency service revenue decreased over 12%, or $44 million, in calendar year 1988 due to decreases in securities trading volume and use of depository services. Total depository service revenue decreased $33 million including revenue decreases of $21 million at the Depository Trust Company (DTC), $2 million at the Midwest Securities Trust Company (MSTC) and $3 million at the MBS Clearing Corporation (MBSCC). MBSCC, which was organized to service the mortgage-backed securities industry, left the depository business. Service revenue of clearing corporations decreased almost $11 million, or 8%, largely as a result of decreases of almost $7 million at the Options Clearing Corporation (OCC) and $1.5 million at the National Securities Clearing Corporation (NSCC).

Total depository pre-tax income was up $9.6 million. The main factor was MBSCC's reorganization and its cessation of business. MBSCC lost $7.5 million in 1987. In addition, DTC earned $1.5 million more than the previous year by retaining fees in order to increase shareholders' equity. DTC, as with all clearing agencies, adjusts refunds of fees and its fee structure to provide the amount of earnings which it wishes to retain.

The depositories continued to expand their base for service revenues by increasing the number of shares on deposit and the face value of debt securities in custody. At the end of 1988, the total value of securities in the depository system reached $3.5 trillion, of which DTC alone held over $2 trillion, not including over $1 trillion in certificates held by transfer agents as DTC's agent. This movement of certificates into depositories was due to further expansion of depository-eligible issues and the desire of participants to avail themselves of depository services. The MSTC had 715,000 eligible issues at year end, up 11%, and DTC had 609,000, up 24%. Eligibility for all types of securities increased; however, the number of municipal bond issues increased 24%, and now more than three-fourths of the principal amount of all municipal bonds currently outstanding in the United States is in the depository system.

As a group, the clearing corporations recorded a net decrease in pre-tax income of almost $9 million. NSCC posted a pre-tax earnings decrease of $1.6 million; OCC recorded an increase of three-fourths of a million; and the MBSCC reported a loss of $4 million as compared to earnings in 1987 of about $4 million.

In April 1987, the PSE announced the closure of the clearance and depository functions not essential to PSE's trading operations. As a result, $47 billion of securities were moved to DTC's custody during midyear 1987. NSCC now processes almost all of PSE's clearing volume. The Pacific Clearing Corporation (PCC) incurred a pre-tax loss of $1.2 million after a loss of $2.6 million in 1987. Of the 1988 loss, $1 million was attributable to costs of discontinued operations. The Pacific Securities Depository Trust Company (PSDTC) reported only interest income of $1.6 million versus $517,000 of pre-tax income in 1987. In 1988, all expenses relating to PSDTC were absorbed by PSE and charged to an accrual for costs of dis-

position established in 1987. Additional expenses of $275,000 were absorbed by PSE in 1988 compared to almost $2.4 million in 1987. The combined stockholders' equity of PCC and PSDTC was $1 million at the end of 1988. PSE members' equity totaled $15.7 million at the end of 1988.

The aggregate net worth of all clearing corporations and depositories rose almost $4.4 million to a new high of almost $50 million. Participant clearing fund contributions decreased by $16 million, less than 2%, to $900 million. These funds provide protection to the clearing agencies in the event of a participant default.

Table 7

CONSOLIDATED FINANCIAL INFORMATION OF SELF-REGULATORY ORGANIZATIONS
1985–1988

(Thousands of Dollars)

	Amex[1]	BSE[2]	CBOE[3]	CSE[1]	ISE[4]	MSE[1]	NASD[2]	NYSE[1]	PHLX[1]	PSE[1]	SSE[1]	Total
Total Revenues												
1985	$ 84,503	$ 9,221	$ 71,889	$1,239	$23	$ 57,081	$ 97,343	$257,706	$ 41,903	$ 24,100	$ 61	$ 645,069
1986	102,252	11,160	93,816	1,526	—	71,576	124,501	296,364	46,591	30,376	82	778,244
1987	114,490	13,044	101,669	2,268	—	88,625	144,777	349,400	33,376	48,921	78	896,648
1988	102,765	12,547	81,445	2,661	—	80,698	156,027	323,622	28,797	37,621	78	826,261
Total Expenses												
1985	$ 69,465	$ 7,971	$ 62,641	$1,312	$20	$ 54,617	$ 83,890	$222,007	$ 40,113	$ 22,031	$ 57	$ 564,124
1986	77,709	9,673	75,325	1,432	—	66,562	97,932	247,749	45,184	25,937	57	647,560
1987	92,825	11,627	82,295	2,283	—	86,397	125,896	281,100	31,455	51,266	63	765,207
1988	99,269	11,902	81,244	2,591	—	73,093	145,032	303,091	28,554	36,121	110	781,007
Pre-Tax Income												
1985	$ 9,596	$ 687	$ 9,247	$ (37)	$ 7	$ 1,910	$ 13,453	$ 35,699	$ 1,113	$ 2,069	$ 4	$ 73,748
1986	19,675	1,486	18,491	113	—	4,664	26,569	48,615	1,251	4,439	24	125,327
1987	15,662	1,417	19,373	(15)	—	2,028	18,881	68,300	1,919	(2,345)	15	125,235
1988	3,496	645	197	70	—	7,605	13,995	20,531	243	1,500	(33)	48,249
Total Assets												
1985	$ 74,937	$12,262	$ 95,539	$ 704	$57	$346,484	$108,658	$327,075	$126,966	$ 94,968	$ 43	$1,187,723
1986	92,948	12,856	109,707	992	—	482,116	138,245	354,959	241,917	122,835	65	1,556,640
1987	103,259	15,904	118,713	1,295	—	309,209	165,027	435,204	69,371	68,259	77	1,286,318
1988	103,758	18,306	118,935	1,708	—	571,345	175,109	430,313	135,540	54,256	96	1,609,366
Total Liabilities												
1985	$ 18,927	$ 9,920	$ 56,060	$ 630	$ 2	$326,161	$ 22,154	$164,286	$113,003	$ 75,712	$ 4	$ 768,859
1986	26,099	9,804	60,221	757	—	459,159	28,039	170,119	227,039	100,653	5	1,081,895
1987	28,103	11,995	59,632	552	—	284,853	39,005	216,219	45,717	53,856	5	739,931
1988	25,996	14,020	59,760	895	—	546,250	36,917	200,881	111,442	38,529	21	1,034,711
Net Worth												
1985	$ 56,010	$ 2,343	$ 39,478	$ 75	$55	$ 20,323	$ 86,534	$162,789	$ 13,963	$ 19,256	$ 43	$ 400,869
1986	66,849	3,052	49,486	195	—	22,957	110,206	184,840	14,878	22,182	60	474,705
1987	75,156	3,909	59,081	743	—	24,356	126,022	218,985	23,660	14,403	73	546,388
1988	77,762	4,286	59,175	813	—	25,095	138,192	229,432	24,098	15,727	75	574,655

[1] Fiscal year ending December 31

[2] Fiscal year ending September 30

[3] Fiscal year ending June 30

[4] The Intermountain Stock Exchange became inactive on October 31, 1986, and was unable to provide information for 1986, 1987, and 1988. The ISE's registration as a national securities exchange was withdrawn on May 25, 1989.

Sources: SRO Annual Reports and Consolidated Financial Statements

Table 8

SELF-REGULATORY ORGANIZATIONS—CLEARING AGENCIES
1988 REVENUES and EXPENSES [1]

(thousands of dollars)

	Boston Stock Exchange Clearing Corporation 9/30/88	Depository Trust Company 12/31/88	MBS Clearing Corporation 12/31/88	Midwest Clearing Corporation 12/31/88	Midwest Securities Trust Company 12/31/88	National Securities Clearing Corporation 12/31/88[2]	Options Clearing Corporation 12/31/88	Pacific Clearing Corporation & Pacific Securities Depository Trust Company 12/31/88 [3]	Philadelphia Depository Trust Company 12/31/88	Stock Clearing Corporation of Philadelphia 12/31/88	Total
Revenues											
Clearing services	$4,522		$ 4,447	$ 9,520		$ 70,852	$ 30,347	$4,459		$1,780	$125,928
Depository services		$143,551			$31,624				$6,275		181,450
Interest	340	102,990	711	2,296	1,114	3,868	1,271	1,633	798	404	115,425
Other	284		294		1,789		10,530			425	13,321
Total revenues [4]	5,147	246,541	5,451	11,816	34,527	74,720	42,148	6,092	7,073	2,609	436,124
Expenses											
Employee costs	622	145,041	725	4,277	12,415	10,600	15,517	1,039	3,537	1,313	195,086
Data processing and communications costs	1,894	19,220	422	1,594	3,196	40,004	6,625	1,446	2,802	1,043	78,247
Occupancy costs	283	38,019	338	1,624	4,150	1,893	3,522	145	342	176	50,491
Contracted services cost	436				5,205	15,370		997			22,008
Costs of Discontinued Operations			7,854					1,000			8,854
All other expenses	58	42,261	369	3,281	8,951	5,280	13,483	1,045	489	247	75,414
Total expenses	3,292	244,541	9,708	10,776	33,918	73,147	39,148	5,672	7,120	2,779	430,101
Excess of revenues over expenses [5]	$1,854	$ 2,000	$(4,257)	$ 1,041	$ 609	$ 1,573	$ 3,000	$ 420	$ (47)	$ (170)	$ 6,023
Shareholders' Equity	$3,956	$ 16,204	$(2,722)	$ 5,163	$ 3,948	$ 11,654	$ 7,512	$1,058	$1,260	$1,839	$ 49,872
Clearing Fund											
Depository		$361,195			$ 8,599			$ 876	$ 530		$371,200
Option Clearing							$193,856				$193,856
Equity Clearing	$ 774		$33,132	$ 6,104		$290,115		$ 313		$4,493	$334,931

[1] *Although efforts have been made to make the presentations comparable, any single revenue or expense category may not be completely comparable between any two clearing agencies because of (i) the varying classification methods employed by the clearing agencies in reporting operating results and (ii) the grouping methods employed by the Commission staff due to these varying classification methods*

[2] The consolidated financial statements of NSCC includes the International Securities Clearing Corporation ("ISCC"), a wholly owned subsidiary of NSCC

[3] In April 1987, the Board of Governors of the PSE authorized the closure of PCC and PSDTC In 1988, all expenses relating to PSDTC were absorbed by PSE and charged to an accrual for costs of disposition established in 1987 Additional expenses for discontinued operations of $275,000 were incurred in 1988 and absorbed by PSE The 1988 expenses shown here are for PCC only

[4] Revenues are net of refunds which have the effect of reducing a clearing agency's base fee rates

[5] This is the result of operations and before the effect of income taxes, which may significantly impact a clearing agency's net income

Exemptions

Section 12(h) Exemptions

Section 12(h) of the Exchange Act authorizes the Commission to grant a complete or partial exemption from the registration provisions of Section 12(g) or from other disclosure or insider trading provisions of the Act where such exemption is consistent with the public interest and the protection of investors. Twenty four applications were pending at the beginning of fiscal year 1989 and 56 applications were filed during the year. Of the total 80 applications, 25 were granted and 55 were pending at the end of the fiscal year.

Exemptions for Foreign Private Issuers

Rule 12g3-2 provides various exemptions from the registration provisions of Section 12(g) of the Exchange Act for the securities of foreign private issuers. The most significant of these exemptions is that contained in subparagraph (b), which provides an exemption for certain foreign issuers that submit on a current basis the material specified in the rule. Such material includes that information about which investors ought reasonably to be informed and which the issuer: (1) has made public pursuant to the law of the country in which it is incorporated or organized; (2) has filed with a foreign stock exchange on which its securities are traded and which was made public by such exchange; and (3) has distributed to its security holders. Periodically, the Commission publishes a list of those foreign issuers that appear to be current under the exemptive provision. The most current list, as of September 29, 1989, contains a total of 1,056 foreign issuers.

FINANCIAL INSTITUTIONS

There were 3,544 companies registered under the Investment Company Act of 1940 as of September 30, 1989. New registrations totaled 304 with 157 registrations being terminated during the fiscal year. This compares with fiscal year 1988 figures of 3,497 total registrations, 338 new registrations, and 124 terminations.

Table 9

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940

(As of September 30, 1989)

	New Registrations During FY '89	Terminations During FY '89	Approximate Market Value of Assets of Active Companies (Billions)*
Management Open-End (Mutual Funds) (Non-Insurance Company)	124	90	$ 969
Management Closed-End.			52
SBICs	4	3	8
All others	69	24	
Subtotal	73	27	
Unit Investment Trust (Non-Insurance Company)	36	30	138
Face Amount Certificates	0	0	2
Insurance Company, Both Open-End Management and Unit Investment Trust	71	10	107
TOTALS for Fiscal Year '89	304	157	$1,276

Total Number of Active Registered Investment Companies as of September 30, 1989. 3,544

There are approximately 362 inactive companies registered Inactive refers to registered companies which, as of September 30, 1989, were in the process of being liquidated or merged, or have filed applications pursuant to Section 8(f) of the Act for deregistration, or which have otherwise gone out of existence and remain only until such time as the Commission issues an order under Section 8(f) terminating their registrations

* Calculated using various published services as well as staff estimates

SECURITIES ON EXCHANGES

Market Value and Share Volume

The market value of equity and option transactions (trading in stocks, options, warrants, and rights) on registered exchanges totaled $1.7 trillion in 1988. Of this total, $1.6 trillion, or 93 percent, represented the market value of transactions in stocks, rights and warrants and $114 billion or seven percent in equity (including exercises) and non-equity options transactions.

The value of equity/option transactions on the New York Stock Exchange (NYSE) was $1.4 trillion, down 31 percent from the previous year. The market value of such transactions fell 42 percent to $59.1 billion on the American Stock Exchange (Amex) and by 35 percent to $262.7 billion on all other exchanges. The volume of trading in stocks on all registered exchanges totaled 52.5 billion shares, an 18 percent decline from the previous year, with 84 percent of the total accounted for by trading on the NYSE.

The volume of options contracts traded on options exchanges (excluding exercises) was 196 million contracts in 1988, 36 percent lower than in 1987. The market value of these contracts decreased 47 percent to $62.6 billion. The volume of contracts executed on the Chicago Board Options Exchange dropped 39 percent to 111.8 million; option trading on the Amex declined 37 percent; contract volume on the Philadelphia Stock Exchange fell 21 percent; and option trading on the Pacific Stock Exchange decreased 31 percent.

Table 10

MARKET VALUE OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES [1]

(Thousands of Dollars)

		Total Market Value	Stocks [2]	Warrants	Rights	Equity Options		Non-Equity Options [5,6]
						Traded	Exercised	
All Registered Exchanges for Past Six Years								
Calendar Year	1982	$ 693,850,963	$ 602,669,878	$ 423,236	$ 1,152	$53,659,796	$37,046,803	$ 50,098
	1983	1,082,241,196	957,139,047	1,162,124	2,997	59,598,740 [3]	59,714,431	4,623,857
	1984	1,059,716,263	950,654,453	430,292	9,754	33,822,259	55,640,028	19,159,477
	1985	1,308,353,791	1,199,419,614	744,715	25,162	29,952,739	49,182,980	29,028,581
	1986	1,867,887,058	1,705,123,953	1,663,395	359,764	40,054,282	72,827,859	47,887,805
	1987	2,491,720,836	2,284,165,520	2,713,954	23,314	53,123,325	85,946,102	65,748,621
	1988	$1,702,047,768	$1,587,011,727	$ 884,269	$ 54,773	$27,163,915	$51,477,128	$35,455,956
Breakdown of 1988 Data by Registered Exchanges [7]								
All Registered Exchanges								
American Stock Exchange		$ 59,063,416	$ 31,110,730	$ 55,738	$ 1,547	$ 9,069,188	$15,502,764	$ 3,323,449
Boston Stock Exchange		21,298,524	21,298,522	0	0	0	0	0
Cincinnati Stock Exchange		7,720,038	7,720,038	0	0	0	0	0
Midwest Stock Exchange		86,642,123	86,642,123	0	0	0	0	0
New York Stock Exchange		1,380,302,569	1,377,717,084	668,459	45,575	450,319	1,278,104	143,028
Pacific Stock Exchange		49,080,370	41,457,763	153,072	7,651	2,677,966	4,619,896	164,023
Philadelphia Stock Exchange		34,101,695	21,058,111	7,001	0	2,954,040	5,953,291	4,129,251
Spokane Stock Exchange		7,355	7,355	0	0	0	0	0
Chicago Board of Trade [3]		$ 63,831,681	$ 0	$ 0	$ 0	$12,012,403	$24,123,073	$27,696,205

Note For footnotes see Table 11. This table has been changed to reflect more meaningfully current changes in the market

Table 11

VOLUME OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES [1]

(Data in Thousands)

	Stocks [2] (Shares)	Warrants (Units)	Rights (Units)	Equity Options: Traded (Contracts)	Equity Options: Exercised [4] (Contracts)	Non-Equity Options [5 6]
All Registered Exchanges for Past Six Years						
Calendar Year: 1982	22,423,023	56,053	21,500	137,266	9,202	41
1983	30,146,335	157,942	11,737	134,286 [3]	13,629	14,399
1984	30,456,010	77,452	13,924	118,925	11,917	77,512
1985	37,046,010	108,111	33,547	118,553	10,512	114,190
1986	48,337,694	195,501	47,329	141,931	14,545	147,234
1987	63,770,625	238,357	74,014	164,432	17,020	140,698
1988	52,533,283	118,662	13,709	114,928	11,395	80,999
Breakdown of 1988 Data by Registered Exchanges						
All Registered Exchanges						
‡American Stock Exchange	2,575,760	25,288	5,217	37,471	3,519	7,530
*Boston Stock Exchange	693,859	0	0	0	0	0
*Cincinnati Stock Exchange	203,864	0	0	0	0	0
Midwest Stock Exchange	2,771,497	0	0	0	0	0
‡New York Stock Exchange	44,018,410	76,314	6,464	1,903	260	724
Pacific Stock Exchange	1,575,809	16,423	2,027	13,069	1,313	281
*Philadelphia Stock Exchange	681,041	637	0	13,093	1,504	10,073
Spokane Stock Exchange	13,043	0	0	0	0	0
*Chicago Board of Trade [3]	0	0	0	49,393	4,798	62,391

Figures may not sum due to rounding

N.A. = Not Available

‡ Data of those exchanges marked with an asterisk covers transactions cleared during the calendar month; clearance usually occurs within five days of the execution of a trade. Data of other exchanges covers transactions effect trade dates falling within the reporting month.

[1] Data on the value and volume of equity security sales is reported in connection with fees paid under Section 31 of the Securities Exchange Act of 1934 as amended by the Securities Acts Amendments of 1975. It covers odd-lot as well as round-lot transactions.

[2] Includes voting trust certificates, certificates of deposit for stocks, and American Depository Receipts for stocks but excludes rights and warrants.

[3] Options only; data for June 1, 2, and 3, 1983 is not included.

[4] Exercised Contracts do not include January and February 1985 data.

[5] Includes all exchange trades of call and put options in stock indices, interest rates, and foreign currencies.

[6] Trading in non-equity options began on October 22, 1982.

[7] Total market value for individual exchanges does not include data for equity options exercised.

Source: SEC Form R-31 and Options Clearing Corporation Statistical Report.

NASDAQ (Volume and Market Value)

NASDAQ share volume and market value information for over-the-counter trading has been reported on a daily basis since November 1, 1971. At the end of 1988 there were 5,144 issues in the NASDAQ system as compared to 5,537 a year earlier and 2,582 at the end of 1978.

Share volume for 1988 was 31.1 billion as compared to 37.9 billion in 1987 and 2.8 billion in 1978. This trading volume encompasses the number of shares bought and sold by market makers plus their net inventory changes. The market value of shares traded in the NASDAQ system was $347.1 billion during 1988 as compared to $499.9 billion in 1987 and $36.1 billion in 1978.

Share and Dollar Volume by Exchange

Share volume on all registered exchanges totaled 52.5 billion, a decrease of 18 percent from the previous year. The New York Stock Exchange accounted for 84 percent of the 1988 share volume; the American Stock Exchange, five percent; the Midwest Stock Exchange, five percent; and the Pacific Stock Exchange, three percent.

The market value of stocks, rights, and warrants traded was $1.6 trillion, a 31 percent drop from the previous year. Trading on the New York Stock Exchange contributed 87 percent of the total. The Midwest Stock Exchange and Pacific Stock Exchange contributed five percent and three percent, respectively. The American Stock Exchange accounted for two percent of dollar volume.

Table 12

SHARE VOLUME BY EXCHANGES [1]

In Percentage

Year	Total Share Volume (Thousands)	NYSE	AMEX	MSE	PSE	PHLX	BSE	CSE	Other [2]
1945	769,018	65 87	21.31	1 77	2 98	1 06	0 66	0 05	6 30
1950	893,320	76 32	13.54	2 16	3 11	0 97	0 65	0 09	3 16
1955	1,321,401	68 85	19 19	2 09	3 08	0 85	0 48	0 05	5 41
1960	1,441,120	68 47	22 27	2 20	3 11	0 88	0 38	0 04	2 65
1961	2,142,523	64.99	25 58	2 22	3.41	0 79	0 30	0 04	2 67
1962	1,711,945	71 31	20.11	2 34	2 95	0 87	0 31	0 04	2 07
1963	1,880,793	72 93	18 83	2.32	2 82	0 83	0 29	0 04	1 94
1964	2,118,326	72 81	19 42	2 43	2.65	0 93	0 29	0 03	1 44
1965	2,671,012	69 90	22 53	2.63	2 33	0 81	0 26	0 05	1 49
1966	3,313,899	69 38	22 84	2 56	2 68	0 86	0 40	0 05	1 23
1967	4,646,553	64 40	28 41	2 35	2 46	0 87	0 43	0 02	1 06
1968	5,407,923	61.98	29 74	2 63	2 64	0 89	0 78	0 01	1 33
1969	5,134,856	63.16	27.61	2.84	3 47	1 22	0 51	0 00	1 19
1970	4,834,887	71 28	19.03	3.16	3 68	1.63	0.51	0 02	0 69
1971	6,172,668	71 34	18 42	3 52	3 72	1 91	0 43	0 03	0 63
1972	6,518,132	70 47	18.22	3.71	4 13	2.21	0 59	0 03	0 64
1973	5,899,678	74 92	13.75	4 09	3 68	2 19	0 71	0 04	0 62
1974	4,950,842	78.47	10 28	4 40	3 48	1 82	0 86	0 05	0 64
1975	6,376,094	80 99	8 97	3 97	3 26	1 54	0 85	0 13	0 29
1976	7,129,132	80 05	9 35	3 87	3 93	1 42	0 78	0 44	0 16
1977	7,124,640	79 71	9 56	3 96	3 72	1 49	0 66	0 64	0 26
1978	9,630,065	79 53	10 65	3 56	3 84	1 49	0 60	0 16	0 17
1979	10,960,424	79 88	10.85	3 30	3 27	1 64	0 55	0 28	0 23
1980	15,586,986	79 94	10 78	3 84	2.80	1 54	0 57	0 32	0 21
1981	15,969,186	80 68	9 32	4.60	2 87	1 55	0 51	0 37	0 10
1982	22,491,935	81 22	6.96	5 09	3 62	2 18	0 48	0 38	0.07
1983	30,316,014	80 37	7 45	5 48	3.56	2 20	0 65	0.19	0.10
1984	30,548,014	82.54	5 26	6.03	3 31	1.79	0 85	0 18	0 04
1985	37,187,567	81 52	5 78	6 12	3 66	1 47	1 27	0 15	0 03
1986	48,580,524	81 12	6.28	5 73	3 68	1.53	1 33	0 30	0 02
1987	64,082,996	83 09	5 57	5 19	3.23	1 30	1 28	0 30	0 04
1988	52,665,654	83 74	4 95	5 26	3.03	1 29	1.32	0 39	0 02

r = revised

[1] Share volume for exchanges includes stocks, rights, and warrants, calendar, rather than fiscal, year data is reported in this table
[2] Includes all exchanges not listed individually

Source SEC Form R-31

Table 13

DOLLAR VOLUME BY EXCHANGES [1]

In Percentage

Year	Total Dollar Volume (Thousands)	NYSE	AMEX	MSE	PSE	PHLX	BSE	CSE	Other [2]
1945	16,284,552	82.75	10.81	2.00	1.78	0.96	1.16	0.06	0.48
1950	21,808,284	85.91	6.85	2.35	2.19	1.03	1.12	0.11	0.44
1955	38,039,107	86.31	6.98	2.44	1.90	1.03	0.78	0.09	0.47
1960	45,309,825	83.80	9.35	2.72	1.94	1.03	0.60	0.07	0.49
1961	64,071,623	82.43	10.71	2.75	1.99	1.03	0.49	0.07	0.53
1962	54,855,293	86.32	6.81	2.75	2.00	1.05	0.46	0.07	0.54
1963	64,437,900	85.19	7.51	2.72	2.39	1.06	0.41	0.06	0.66
1964	72,461,584	83.49	8.45	3.15	2.48	1.14	0.42	0.06	0.81
1965	89,549,093	81.78	9.91	3.44	2.43	1.12	0.42	0.08	0.82
1966	123,697,737	79.77	11.84	3.14	2.84	1.10	0.56	0.07	0.68
1967	162,189,211	77.29	14.48	3.08	2.79	1.13	0.66	0.03	0.54
1968	197,116,367	73.55	17.99	3.12	2.65	1.13	1.04	0.01	0.51
1969	176,389,759	73.48	17.59	3.39	3.12	1.43	0.67	0.01	0.31
1970	131,707,946	78.44	11.11	3.76	3.81	1.99	0.67	0.03	0.19
1971	186,375,130	79.07	9.98	4.00	3.79	2.29	0.58	0.05	0.24
1972	205,956,263	77.77	10.37	4.29	3.94	2.56	0.75	0.05	0.27
1973	178,863,622	82.07	6.06	4.54	3.55	2.45	1.00	0.06	0.27
1974	118,828,270	83.63	4.40	4.90	3.50	2.03	1.24	0.06	0.24
1975	157,256,676	85.20	3.67	4.64	3.26	1.73	1.19	0.17	0.14
1976	195,224,812	84.35	3.88	4.76	3.83	1.69	0.94	0.53	0.02
1977	187,393,084	83.96	4.60	4.79	3.53	1.62	0.74	0.75	0.01
1978	251,618,179	83.67	6.13	4.16	3.64	1.62	0.61	0.17	0.00
1979	300,475,510	83.72	6.94	3.83	2.78	1.80	0.56	0.35	0.02
1980	476,500,688	83.53	7.33	4.33	2.27	1.61	0.52	0.40	0.01
1981	491,017,139	84.74	5.41	5.04	2.32	1.60	0.49	0.40	0.00
1982	603,094,266	85.32	3.27	5.83	3.05	1.59	0.51	0.43	0.00
1983	958,304,168	85.13	3.32	6.28	2.86	1.55	0.66	0.16	0.04
1984	951,318,448	85.61	2.26	6.57	2.93	1.58	0.85	0.19	0.00
1985	1,200,127,848	85.25	2.23	6.59	3.06	1.49	1.20	0.18	0.00
1986	1,707,117,112	85.02	2.56	6.00	3.00	1.57	1.44	0.41	0.00
1987	2,286,902,788	86.79	2.32	5.32	2.53	1.35	1.33	0.35	0.00
1988	1,587,950,769	86.81	1.96	5.46	2.62	1.33	1.34	0.49	0.00

r = revised

[1] Dollar volume for exchanges includes stocks, rights and warrants; calendar, rather than fiscal, year data is reported in this table.
[2] Includes all exchanges not listed individually.

Source: SEC Form R-31

Value and Number of Securities Listed on Exchanges

The market value of stocks and bonds listed on U.S. exchanges at the end of calendar year 1988 was $4.0 trillion, an increase of five percent over the previous year. The market value of stocks was $2.5 trillion, an increase of $250 billion over a year earlier. The value of listed bonds decreased three percent. Stocks listed on the New York Stock Exchange had a market value of $2.4 trillion and represented 96 percent of the value of common and preferred stocks listed on registered exchanges. Those listed on the American Stock Exchange accounted for almost all of the remaining three percent of the total and were valued at $84.1 billion, a decrease of two percent over the previous year.

Table 14
SECURITIES LISTED ON EXCHANGES [1]
December 31, 1988

EXCHANGE	COMMON		PREFERRED		BONDS		TOTAL SECURITIES	
Registered	Number	Market Value (Million)	Number	Market Value (Million)	Number	Market Value (Million)	Number	Market Value (Million)
American	876	$ 80,707	100	$ 3,360	305	$ 20,876	1,281	$ 104,943
Boston	114	1,615	0	0	5	30	119	1,644
Cincinnati	4	155	1	1	7	140	12	297
Midwest	13	748	3	16	3	N A	19	764
New York	1,566	2,323,567	588	42,539	3,014	1,550,848	5,168	3,916,954
Pacific	56	1,284	14	463	94	5,114	164	6,861
Philadelphia	35	471	15	197	23	N A.	73	668
Spokane	41	7	0	0	0	0	41	7
Total	2,705	$2,408,554	721	$46,576	3,451	$1,577,008	6,877	$4,032,138
Includes Foreign Stocks								
New York	77	$ 90,337	5	$ 1,018	92	$ 10,183	174	$ 101,538
American	54	25,606	2	768	2	68	58	26,442
Pacific	1	43	0	0	0	0	1	43
Philadelphia	1	21	0	0	0	0	1	21
Total	133	$ 116,007	7	$ 1,786	94	$ 10,251	234	$ 128,044

N A = Not Available
+ = Less than 1 million

[1] Excludes securities which were suspended from trading at the end of the year and securities which, because of inactivity, had no available quotes

Source SEC Form 1392

Table 15

VALUE OF STOCKS LISTED ON EXCHANGES

(Billions of Dollars)

Dec 31	New York Stock Exchange	American Stock Exchange	Exclusively On Other Exchanges	Total
1938	47 5	10.8		58 3
1939	46.5	10 1		56.6
1940	41 9	8 6		50.5
1941	35.8	7.4		43.2
1942	38.8	7.8		46.6
1943	47 6	9.9		57.5
1944	55 5	11.2		66 7
1945	73 8	14.4		88 2
1946	68.6	13.2		81.8
1947	68.3	12.1		80.4
1948	67 0	11 9	3 0	81 9
1949	76 3	12.2	3 1	91.6
1950	93.8	13.9	3.3	111.0
1951	109 5	16.5	3 2	129 2
1952	120.5	16 9	3 1	140 5
1953	117 3	15 3	2.8	135 4
1954	169.1	22 1	3 6	194 8
1955	207 7	27.1	4 0	238.8
1956	219.2	31 0	3 8	254.0
1957	195 6	25 5	3 1	224.2
1958	276.7	31.7	4 3	312 7
1959	307.7	25 4	4 2	337.3
1960	307.0	24 2	4.1	335 3
1961	387 8	33.0	5.3	426.1
1962	345 8	24.4	4.0	374 2
1963	411.3	26.1	4 3	441 7
1964	474.3	28 2	4 3	506 8
1965	537 5	30.9	4 7	573.1
1966	482 5	27.9	4 0	514.4
1967	605.8	43 0	3.9	652.7
1968	692.3	61 2	6.0	759.5
1969	629.5	47 7	5 4	682.6
1970	636.4	39 5	4 8	680.7
1971	741.8	49 1	4.7	795.6
1972	871 5	55 6	5.6	932 7
1973	721.0	38 7	4.1	763 8
1974	511 1	23 3	2.9	537.3
1975	685 1	29.3	4.3	718.7
1976	858.3	36 0	4 2	898.5
1977	776.7	37 6	4.2	818 5
1978	822 7	39.2	2 9	864.8
1979	960 6	57.8	3.9	1,022.3
1980	1,242.8	103.5	2 9	1,349 2
1981	1,143.8	89.4	5.0	1,238 2
1982	1,305.4	77.6	6.8	1,389.7
1983	1,522.2	80.1	6 6	1,608.8
1984	1,529.5	52 0	5 8	1,587 3
1985	1,882 7	63 2	5.9	1,951.8
1986	2,128.5	70 3	6 5	2,205 3
1987	2,132.2	67 0	5 9	2,205.1
1988	2,366 1	84.1	4 9	2,455 1

Source: SEC Form 1392

Table 16
CERTIFICATE IMMOBILIZATION TRENDS

	1988	1987	1986	1985	1984	1983
Book-entry Deliveries at DTC (in thousands)	67,200	78,000	66,700	55,800	48,000	50,000
Total of All Certificates Withdrawn	7,500	10,600	9,600	9,300	10,100	13,600
Book-entry Deliveries per Certs Withdrawn	9.0	7.4	6.9	6 0	4 8	3 7

Certificate Immobilization

Book-entry deliveries continued to outdistance physical deliveries in the settlement of securities transactions among depository participants. This tendency is illustrated in Table 16, CERTIFICATE IMMOBILIZATION TRENDS. The Table captures the relative significance of the mediums employed, in a ratio of book-entry deliveries to certificates withdrawn from DTC. The figures include Direct Mail by Agents but exclude municipal bearer bonds. In 1988, while the number of shares traded in U.S. markets decreased almost 15%, the total certificates withdrawn decreased over 29%, and the ratio of book-entry deliveries to certificates withdrawn continued to grow. In 1988, the ratio was almost 2.5 times the 1983 figure of 3.7 book-entry deliveries rendered for every certificate withdrawn.

Table 17
TYPES OF PROCEEDINGS

ADMINISTRATIVE PROCEEDINGS	
Persons Subject to Acts Constituting, and Basis for, Enforcement Action	Sanction
Broker-dealer, municipal securities dealer, government securities dealer, transfer agent, investment adviser or associated person	
Willful violation of securities laws or rules, aiding or abetting such violation, failure reasonably to supervise others, willful misstatement or omission in filing with the Commission, conviction of or injunction against certain crimes or conduct	Censure or limitation on activities, revocation, suspension or denial of registration; bar or suspension from association (1934 Act, Sections 15(b) (4)–(6), 15B(c) (2)–(5), 15C(c) (1)–(2), 17A(c) (3)–(4), Advisers Act, Section 203(e)–(f)).
Registered securities association	
Violation of or inability to comply with the 1934 Act, rules thereunder, or its own rules, unjustified failure to enforce compliance with the foregoing or with rules of the Municipal Securities Rulemaking Board by a member or person associated with a member	Suspension or revocation of registration, censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1)).
Member of registered securities association, or associated person	
Entry of Commission order against person pursuant to 1934 Act, Section 15(b), willful violation of securities laws or rules thereunder or rules of Municipal Securities Rulemaking Board, effecting transaction for other person with reason to believe that person was committing violations of securities laws	Suspension or expulsion from the association, bar or suspension from association with member of association (1934 Act, Section 19(h) (2)–(3)).
National securities exchange	
Violation of or inability to comply with 1934 Act, rules thereunder or its own rules, unjustified failure to enforce compliance with the foregoing by a member or person associated with a member	Suspension or revocation of registration, censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1)).
Member of national securities exchange, or associated person	
Entry of Commission order against person pursuant to 1934 Act, Section 15(b), willful violation of securities laws or rules thereunder, effecting transaction for other person with reason to believe that person was committing violation of securities laws	Suspension or expulsion from exchange, bar or suspension from association with member (1934 Act, Section 19(h) (2)–(3)).
Registered clearing agency	
Violation of or inability to comply with 1934 Act, rules thereunder, or its own rules, failure to enforce compliance with its own rules by participants	Suspension or revocation of registration, censure or limitation of activities, functions, or operations (1934 Act, Section 19(h) (1))
Participant in registered clearing agency	
Entry of Commission order against participant pursuant to 1934 Act, Section 15(b) (4), willful violation of clearing agency rules, effecting transaction for other person with reason to believe that person was committing violations of securities laws	Suspension or expulsion from clearing agency (1934 Act, Section 19(h) (2)).

Securities information processor	
Violation of or inability to comply with provisions of 1934 Act or rules thereunder.	Censure or limitation of activities; suspension or revocation of registration (1934 Act, Section 11A(b) (6)).
Any person	
Willful violation of 1933 Act, 1934 Act, Investment Company Act or rules thereunder; aiding or abetting such violation; willful misstatement in filing with Commission.	Temporary or permanent prohibition against serving in certain capacities with registered investment company (Investment Company Act, Section 9(b)).
Officer or director of self-regulatory organization	
Willful violation of 1934 Act, rules thereunder or the organization's own rules; willful abuse of authority or unjustified failure to enforce compliance.	Removal from office or censure (1934 Act, Section 19(h) (4)).
Principal of broker-dealer	
Officer, director, general partner, ten-percent owner or controlling person of a broker-dealer for which a SIPC trustee has been appointed.	Bar or suspension from being or becoming associated with a broker-dealer (SIPA, Section 14(b)).
1933 Act registration statement	
Statement materially inaccurate or incomplete.	Stop order refusing to permit or suspending effectiveness (1933 Act, Section 8(d)).
Person subject to Sections 12, 13, 14 or 15(d) of the 1934 Act or associated person	
Failure to comply with such provisions or having caused such failure by an act or omission that person knew or should have known would contribute thereto.	Order directing compliance or steps effecting compliance (1934 Act, Section 15(c) (4)).
Securities registered pursuant to Section 12 of the 1934 Act	
Noncompliance by issuer with 1934 Act or rules thereunder.	Denial, suspension of effective date, suspension or revocation of registration; (1934 Act, Section 12(j)).
Public interest requires trading suspension.	Summary suspension of over-the-counter or exchange trading (1934 Act, Section 12(k)).
Registered investment company	
Failure to file Investment Company Act registration statement or required report; filing materially incomplete or misleading statement or report.	Suspension or revocation of registration (Investment Company Act, Section 8(e)).
Company has not attained $100,000 net worth 90 days after 1933 Act registration statement became effective.	Stop order under 1933 Act; suspension or revocation of registration (Investment Company Act, Section 14(a)).
Attorney, accountant, or other professional or expert	
Lack of requisite qualifications to represent others; lacking in character or integrity; unethical or improper professional conduct; willful violation of securities laws or rules; or aiding and abetting such violation.	Permanent or temporary denial of privilege of appearing or practicing before the Commission (17 CFR Section 201.2(e) (1)).

Attorney suspended or disbarred by court; expert's license revoked or suspended; conviction of a felony or of a misdemeanor involving moral turpitude.	Automatic suspension from appearance or practice before the Commission (17 CFR Section 201.2(e) (2)).
Permanent injunction against or finding of securities violation in Commission-instituted action; finding of securities violation by Commission in administrative proceedings.	Temporary suspension from practicing before the Commission; censure; permanent or temporary disqualification from practicing before the Commission (17 CFR Section 201.2(e) (3)).
Member or employee of Municipal SecuritiesRulemaking Board	
Willful violation of 1934 Act, rules thereunder, or rules of the Board; abuse of authority.	Censure or removal from office (1934 Act, Section 15B(c) (8)).

CIVIL PROCEEDINGS IN FEDERAL DISTRICT COURTS

Persons Subject to Acts Constituting, and Basis for, Enforcement Action	Sanction
Any person	
Engaging in or about to engage in acts or practices violating securities laws, rules or orders thereunder (including rules of a registered self-regulatory organization).	Injunction against acts or practices constituting violations (plus other equitable relief under court's general equity powers) (1933 Act, Section 20(b); 1934 Act, Section 21(d); Holding Company Act, Section 18(e); Investment Company Act, Section 42(d); Advisers Act, Section 209(d); Trust Indenture Act, Section 321).
Noncompliance with provisions of the laws, rules, or regulations under 1933, 1934, or Holding Company Act, orders issued by Commission, rules of a registered self-regulatory organization, or undertaking in a registration statement.	Writ of mandamus, injunction, or order directing compliance (1933 Act, Section 20(c); 1934 Act, Section 21(e); Holding Company Act, Section 18(f)).
Trading while in possession of material non-public information in a transaction on an exchange or from or through a broker-dealer (and transaction not part of a public offering), aiding and abetting or directly or indirectly controlling the person who engages in such trading.	Maximum civil penalty: three times profit gained or loss avoided as a result of transaction (1934 Act, Section 21A (a)–(b)).
Issuer subject to Section 12 or 15(d) of the 1934 Act, officer, director, employee or agent of issuer; stockholder acting on behalf of issuer	
Payment to foreign official, foreign political party or official, or candidate for foreign political office, for purposes of seeking the use of influence in order to assist issuer in obtaining or retaining business for or with, or directing business to, any person.	Maximum civil penalty: $10,000 (1934 Act, Section 32(c)).
Securities Investor Protection Corporation	
Refusal to commit funds or act for the protection of customers.	Order directing discharge of obligations and other appropriate relief (SIPA, Section 11(b)).
National securities exchange or registered securities association	
Failure to enforce compliance by members or persons associated with its members with the 1934 Act, rules or orders thereunder, or rules of the exchange or association.	Writ of mandamus, injunction or order directing such exchange or association to enforce compliance (1934 Act, Section 21(e)).

Registered clearing agency	
Failure to enforce compliance by its participants with its own rules	Writ of mandamus, injunction or order directing clearing agency to enforce compliance (1934 Act, Section 21(e))
Issuer subject to Section 15(d) of 1934 Act	
Failure to file required information, documents or reports	Forfeiture of $100 per day (1934 Act, Section 32(b))
Registered investment company	
Name of company or of security issued by it deceptive or misleading	Injunction against use of name (Investment Company Act, Section 35(d))
Officer, director, member of advisory board, adviser, depositor, or underwriter of investment company	
Engage in act or practice constituting breach of fiduciary duty involving personal misconduct	Injunction against acting in certain capacities for investment company and other appropriate relief (Investment Company Act, Section 36(a))

CRIMINAL PROSECUTION BY DEPARTMENT OF JUSTICE

Persons Subject to Acts Constituting, and Basis for, Enforcement Action	Sanction
Any person	
Willful violation of securities laws or rules thereunder, willfull misstatement in any document required to be filed by securities laws or rules, willful misstatement in any document required to be filed by self-regulatory organization in connection with an application for membership or association with member	Maximum penalties $1,000,000 fine and ten years imprisonment for individuals, $2,500,000 fine for non-natural persons (1934 Act, Sections 21(d), 32(a)), $10,000 fine and five years imprisonment (or $200,000 if a public utility holding company for violations of the Holding Company Act) (1933 Act, Sections 20(b), 24, Investment Company Act, Sections Sections 42(e), 49, Advisers Act, Sections 209(e), 217, Trust Indenture Act, Sections 321, 325, Holding Company Act, Sections 18(f), 29)
Issuer subject to Section 12 or 15(d) of the 1934 Act: officer or director of issuer; stockholder acting on behalf of issuer; employee or agent subject to the jurisdiction of the United States	
Payment to foreign official, foreign political party or official, or candidate for foreign political office for purposes of seeking the use of influence in order to assist issuer in obtaining or retaining business for or with, or directing business to, any person	Issuer–$2,000,000, officer, director, employee, agent or stockholder–$100,000 and five years imprisonment (issuer may not pay fine for others) (1934 Act, Section 32(c))

*Statutory references are as follows "1933 Act," the Securities Act of 1933, "1934 Act," the Securities Exchange Act of 1934, "Investment Company Act," the Investment Company Act of 1940, "Advisers Act," the Investment Advisers Act of 1940, "Holding Company Act," the Public Utility Holding Company Act of 1935, "Trust Indenture Act," the Trust Indenture Act of 1939; and "SIPA," the Securities Investor Protection Act of 1970

Table 18

Fiscal 1989 Enforcement Cases Listed by Program Area

(Each case initiated has been included in only one category listed below, even though many cases involve multiple allegations and may fall under more than one category)

Program Area—Broker-Dealer. Back Office

Name of Case	Date Filed	Release No
In the Matter of Seligman Securities Inc	112188	34-26296
In the Matter of Prudential-Bache Securities, Inc	092889	34-27313
SEC v Habersheir Securities, Inc	021389	LR-11999

Program Area—Broker-Dealer. Fraud Against Customer

Name of Case	Date Filed	Release No
In the Matter of Daniel B Ptak	110288	34-26239
In the Matter of Oscar Gomez	122788	34-26394
In the Matter of Michael W Rehtorik	011289	34-26456
In the Matter of Gary M Wozniak	011389	34-26459
In the Matter of William Ray White	012389	34-26481
In the Matter of Leslie H Roberts	020989	34-26531
In the Matter of Alvie Loretta Asta	021689	34-26554
In the Matter of Nicholas A Boccella	022789	34-26574
In the Matter of William L Vieira	022889	34-26576
In the Matter of Steven Jay Moddelmog	040489	34-26690
In the Matter of The Stuart-James Co , Inc , et al	040589	34-26700
In the Matter of Profile Investments Corp , et al	041489	34-26726
In the Matter of Doy L Daniels, Jr	050989	34-26798
In the Matter of Gordon E Harry	051589	34-26822
In the Matter of William R Beach	061389	34-26919
In the Matter of William H Bratton	081489	34-27138
In the Matter of Craig L. Silverman	082189	34-27158
In the Matter of Waddell Jenmar Securities Inc , et al.	082589	34-27188
In the Matter of Gary W Chambers	092789	34-27298
In the Matter of William E Parodi, Sr, et al.	092789	34-27299
In the Matter of John F Garvan	092889	34-27314
In the Matter of Thomas D Pixley	092989	34-27316
In the Matter of William S Hoglund	092989	34-27317
SEC v Jose Luis Hernandez	111488	NONE
SEC v William S Hoglund	040489	LR-12100
SEC v Michael R Vierra, et al	060289	NONE
SEC v Waddell Jenmar Securities Inc , et al	072489	LR-12234
SEC v Leonard Myers	092089	LR-12120
SEC v Marc Stuart Weiner	092989	LR-12261

Program Area—Broker-Dealer Municipal Securities

Name of Case	Date Filed	Release No
In the Matter of Roger J Burns	051989	34-26843
In the Matter of George W Benoit	051989	34-26842
In the Matter of Matthews & Wright Inc	051989	34-26841
SEC v Matthews & Wright Group Inc , et al	042789	AAER 224

Program Area—Broker-Dealer Other

Name of Case	Date Filed	Release No
In the Matter of Patrick Rooney	122088	34-26372
In the Matter of American Investors of Pittsburgh, et al	122788	34-26393
In the Matter of Leonard S Berman	011889	34-26467
In the Matter of Richardson, Greenshields Securities, Inc	012789	34-26494
In the Matter of Outwater & Wells, Inc	020389	34-26516
In the Matter of Mark L Stahl	031689	34-26633
In the Matter of Howard A Rubin	040389	34-26686
In the Matter of Leumi Securities Corp , et al	041289	34-26716
In the Matter of The David-Maxwell Co , Inc , et al	051589	34-26823
In the Matter of Salomon Brothers Inc	051989	34-26838
In the Matter of Andrew Amadio Tarantini	062689	34-26972
In the Matter of William J Kelley	092889	34-27308
In the Matter of Gilbert C Schulman, et al	092989	34-27319
In the Matter of Metropolitan Stock Transfer Co , et al	092989	34-27318

SEC v Lon Roy Kavanaugh, Jr	111888	LR-11921
SEC v Steven Telsey	071389	NONE

Program Area—Contempt-Civil

Name of Case	Date Filed	Release No
SEC v George R Carter, et al	111488	LR-12013
SEC v. Horizons Research Lab	120888	NONE
SEC v Goldcor Inc , et al	121588	LR-12064
SEC v Roc Hatfield, et al	121689	LR-11968
SEC v Centuri Mining Corp , et al	121688	LR-11968
SEC v. Carl Porto, et al	012489	LR-11996
SEC v Edwin D Wood, II, et al	031089	LR-12040
SEC v David Wiksell, et al	031689	NONE
SEC v William H Bartlett	052589	LR-12121
SEC v Leonard Meyers	052689	LR-12120
SEC v Cali Computer Inc , et al	060989	NONE
SEC v Mysore S Sundra	070689	LR-12183
SEC v William H. Keller	080789	NONE

Program Area—Contempt-Criminal

Name of Case	Date Filed	Release No
U S ex rel SEC v. George R. Carter, et al	021589	LR-12013
US v William Robert Mette	032289	LR-12060

Program Area—Corporate Control: Beneficial Ownership

Name of Case	Date Filed	Release No
In the Matter of William R Grant	120588	34-26339
In the Matter of Merry Land & Investment Co , Inc	123088	34-26410
In the Matter of Sequa Corp.	051989	34-26839
SEC v Paul A Bilzerian, et al	053189	LR-12144
SEC v Amster & Co	120588	LR-11928

Program Area—Corporate Control. Other

Name of Case	Date Filed	Release No
SEC v Rana Research, Inc , et al.	033089	LR-12049

Program Area—Corporate Control Tender Offer

Name of Case	Date Filed	Release No
In the Matter of Paul David Herrlinger	060789	IA-1169
SEC v Frederick J Ball, Jr	090789	LR-12242

Program Area—Delinquent Filings: Forms 3 & 4

Name of Case	Date Filed	Release No
SEC v Charles Toth, et al.	030889	LR-12022

Program Area—Delinquent Filings. Issuer Reporting

Name of Case	Date Filed	Release No
SEC v. AutoSpa Corp., et al.	021689	LR-11998
SEC v Xtex Resources Inc.	042489	LR-12069
SEC v Stephen Read	072489	NONE

Program Area—Fraud Against Regulated Entities

Name of Case	Date Filed	Release No
In the Matter James Warren Hogue	060789	IA-1168
SEC v Clarence Long, et al	042489	LR-12070
SEC v. Jury Matt Hansen, et al.	080289	

Program Area—Insider Trading

Name of Case	Date Filed	Release No
In the Matter of Arthur B Silverman	120988	34-26347
In the Matter of Stephen Sui-Kuan Wang Jr.	020289	34-26511
In the Matter of William H. Mathis	030189	34-26586
In the Matter of Norman Stein	050289	34-26777
In the Matter of Lawrence S. Adler	050889	34-26796
In the Matter of Glenn Golenberg	050889	34-26795
In the Matter of Travis B Keltner IV	071789	34-27038
In the Matter of J. Christopher Rodeno	081189	34-27133
SEC v. Ted K Schwarzrock	110288	LR-11906

SEC v Jerry Sparks, et al	112188	LR-11916
SEC v Joel D. Weisman	113088	LR-11938
SEC v Arthur B Silverman	113088	LR-11933
SEC v Leo Mariani	120688	NONE
SEC v Harvey Alan Doliner	121488	LR-11940
SEC v Don S Peters, et al	122888	LR-11950
SEC v Mario Iseppi, et al	011789	LR-11964
SEC v Jerome B Cronin	020189	LR-11983
SEC v Selig Solomon, et al	022189	LR-12000
SEC v Jack N Polevoi, et al	022189	LR-12011
SEC v William S. Banowsky	031489	LR-12033
SEC v Glenn Golenberg, et al	050189	LR-12074
SEC v Robert C DiGennaro	050989	LR-12096
SEC v William Wolski, et al	051089	LR-12092
SEC v Kerry A Hurton, et al	051689	LR-12097
SEC v Daniel O Cherif	052189	LR-12103
SEC v Seymour G. Ruderman	052589	LR-12109
SEC v David Hellberg, et al	053189	LR-12113
SEC v Leonard J Mullen	063089	LR-12151
SEC v Douglas Frye, et al	071189	LR-12156
SEC v William J Dillon, et al	071189	LR-12157
SEC v Howard Passov, et al	072489	LR-12174
SEC v Shirley A Shiffman, et al	072489	LR-12175
SEC v Raymond Daddario	073189	LR-12202
SEC v Richard Schreiber	080389	LR-12194
SEC v Brian S Campbell, et al	080789	LR-12196
SEC v. Dennis W Evans	080989	LR-12208
SEC v Shayne A Walters	081789	LR-12219
SEC v Gerald A. Horwitz	083189	LR-12236
SEC v Morton Shapiro, et al	092689	NONE

Program Area—Investment Adviser

Name of Case	Date Filed	Release No
In the Matter of Pride Investors Corp , et al	113088	IA-1145
In the Matter of Managed Advisory Services, Inc , et al	122788	IA-1148
In the Matter of Jeffers, Lavelle, Maxwell & Assoc. Agency Inc , et al	011289	IA-1151
In the Matter of North Coast Advisors, Inc., et al	012789	IA-1152
In the Matter of Patrick A. Carrie, et al	013189	IA-1154
In the Matter of Harvest Financial Group, Inc , et al	022189	IA-1155
In the Matter of Frank Breitweiser	041089	34-26704
In the Matter of Investment Management Associates, et al	042589	IA-1164
In the Matter of Thomas Walter McKibbin, et al	050189	IA-1165
In the Matter of Paramount Capital Group Inc.	061989	IA-1173
In the Matter of George Sein Lin	061989	IA-1174
In the Matter of Jason Baker Tuttle Sr., et al	062789	NONE
In the Matter of Makrod Investment Associates Inc., et al	070389	IA-1176
In the Matter of Tax Professionals Inc , et al	071289	IA-1177
In the Matter of Bogey Enterprises, Inc.	072589	IA-1180
In the Matter of Waltzer & Associates, et al	072889	IA-1182
In the Matter of Benchmark International Investment Corp., et al	080489	IA-1184
In the Matter of James Paul Hollis, Jr	081189	IA-1189
In the Matter of IRI Asset Management Inc., et al	081489	IA-1190
In the Matter of Frederick D Woodside, CPA	082189	AAER 244
In the Matter of Monitored Assets Corp , et al	082889	IA-1195
In the Matter of Forbes Portfolio Management, et al	091189	IA-1197
In the Matter of Dave Mason, R.I.A., Inc , et al	091889	IA-1200
In the Matter of Roberto C Polo	091889	IA-1201
SEC v Frank R Breitweiser	032389	LR-12043
SEC v. Thomas Walter McKibbin, et al	032989	LR-12077
SEC v Investment Management Associates, et al	040689	LR-12068
SEC v Monitored Assets Corp , et al	042689	NONE
SEC v Asco Advisory Services Corp	060589	LR-12116
SEC v Michael Helvey	071989	LR-12177
SEC v James P Hollis, Jr	072589	LR-12184
SEC v Dave Mason, et al	082189	AAER 243
SEC v. Thomas E. Bernhoft, et al	082489	LR-12241
SEC v Joseph V. Oliviera	092889	LR-12272

Program Area—Investment Company

Name of Case	Date Filed	Release No
In the Matter of Heine Securities Corp	122888	IA–1150
In the Matter of Sea Investment Management, Inc , et al	051189	IC–16952
In the Matter of Jurek Enterprises Inc , et al	061989	IA–1172
In the Matter of Fox, Jr	080889	IA–1188
In the Matter of John Geanoulis	080889	IA–1187
In the Matter of Douglas C Adams	080889	IA–1186
In the Matter of United Services Advisors, et al	090889	IA–1196
In the Matter of Nachman Bench, et al	091989	IC–17141
SEC v John Peter Galanis, et al	071089	LR–12154
SEC v. Charles W. Steadman, et al	071789	LR–12167

Program Area—Issuer Financial Disclosure

Name of Case	Date Filed	Release No
In the Matter of John L Van Horn	110188	AAER 209
In the Matter of Matrix Science Corp , et al	110188	AAER 207
In the Matter of DSC Communications Corp , et al	010989	AAER 213
In the Matter of Edmon A. Morrison, III	022389	AAER 216
In the Matter of Richard P Franke, CPA, et al	032489	AAER 220
In the Matter of Lynne K Mercer, CPA	041389	AAER 222
In the Matter of Hiex Development USA, Inc	041389	AAER 221
PRIVATE PROCEEDING	051189	NONE
In the Matter of Marvin D Haney, CPA	071789	AAER 237
In the Matter of Jack M. Portney, CPA	082189	AAER 242
In the Matter of Noemi L Rodriguez Santos	090189	AAER 246
In the Matter of MDC Holdings Inc	090189	AAER 245
SEC v. Frederick S. Plotkin, et al	101788	LR–11895
SEC v Ronald A Hammond, et al	110188	AAER 208
SEC v. Elana Inc., et al	120688	AAER 210
SEC v Timothy L. Sasak, et al	122888	AAER 214
SEC v. Rocky Mount Undergarment Co , Inc , et al	010989	AAER 212
SEC v World Resources International, Inc , et al	012589	AAER 218
SEC v. Donald D. Sheelen, et al	020889	AAER 215
SEC v Wilderness Electronics, Inc., et al	021589	LR–12018
SEC v. Levin International Corp , et al	022389	AAER 217
SEC v David N Hanania, et al	041789	AAER 223
SEC v Gilbert Singerman, et al	050189	NONE
SEC v Frederick A Gross, et al	050389	AAER 225
SEC v Information Solutions Inc., et al	051989	LR–12119
SEC v. Hiex Development USA, Inc	053089	LR–12118
SEC v Gateway Medical Systems Inc., et al	062189	NONE
SEC v. TRX Industries, Inc , et al	070589	AAER 234
SEC v. Elijah Waldron	070689	AAER 235
SEC v Ask Corp., et al	071989	AAER 236
SEC v. Terry S Rakoff, et al	081789	AAER 240
SEC v Cliff Engle Inc , et al.	082189	AAER 241
SEC v Eddie Antar, et al	090689	AAER 247

Program Area—Issuer Related Party Transactions

Name of Case	Date Filed	Release No
SEC v. Continental Excalibur Corp , et al	052289	LR–12110
SEC v. Sheldon M Blazar, et al	052289	AAER 225
SEC v. Peter Kolokouris, et al	061289	LR–12125

Program Area—Issuer Reporting Other

Name of Case	Date Filed	Release No
In the Matter of Sheldon M. Blazar	052289	AAER 226
In the Matter of Edward M Grushko	091889	34–27253
In the Matter of Robert E Iles, Sr.	092089	34–27261
In the Matter of Monica M Iles	092089	34–27262
SEC v. DuPont Instruments Corp , et al	021389	LR–12051
SEC v. Edward M Grushko	090589	LR–12252

Program Area—Market Manipulation

Name of Case	Date Filed	Release No
In the Matter of F D Roberts Securities Inc , et al	122288	34–26389
In the Matter of Thomas R Blonquist	013189	NONE

In the Matter of Richard C Landerman	030189	34-26583
In the Matter of Stephen P Clark, CPA	030689	AAER 239
In the Matter of Lewis Leeds	041489	34-26725
In the Matter of Brownstone-Smith Securities Corp , et al	061589	34-26936
In the Matter of Drexel Burnham Lambert Inc	091189	34-27236
SEC v. Hughes Capital Corp , et al	121388	LR-11939
SEC v Vincent John Militano, et al	012589	LR-11973
SEC v Brownstone Smith Securities Corp., et al	032989	LR-12126
SEC v Arnold Kimmes, et al	080389	LR-12210
SEC v AMX International Inc , et al	080789	LR-12213
SEC v American Pain & Stress Inc , et al	092989	LR-12273
SEC v SSF Inc , et al.	092989	LR-12274

Program Area—Offering Violations (By Non-Regulated Entities)

Name of Case	Date Filed	Release No
In the Matter of Bruce H Frost	122788	34-26395
In the Matter of Irwin Schneider	102888	34-26224
In the Matter of CTI Financial Inc	021089	33-6829
In the Matter of Brian H Kay	021689	34-26555
In the Matter of Scorpion Technologies, Inc.	021689	33-6817
In the Matter of Memory Metals, Inc	022289	33-6820
In the Matter of Composite Design, Inc.	022289	33-6819
In the Matter of Larry A. Dixon	031289	AAER 219
In the Matter of Paul H. Metzinger	031789	34-26640
In the Matter of First Securities of America, Inc., et al	062689	NONE
In the Matter of Karen L Gavin	092889	34-27309
In the Matter of Stephen T Haley	092889	34-27310
In the Matter of Faspaq, Inc	092889	33-6847
SEC v Jerzy Kozlowski	110888	LR-11909
SEC v Centuri Mining Corp , et al	110888	LR-11913
SEC v. Sheldon S. Somerman, et al.	122888	LR-11955
SEC v William D Folz, et al	011389	LR-11989
SEC v American Receivables, Inc , et al	011989	LR-11979
SEC v Lynn Paul Martin	012589	LR-11994
SEC v Brian H Kay	020189	LR-11987
SEC v Edwin D Wood II, et al	020689	LR-12001
SEC v. Louisiana Real Estate Equity Ltd., et al	020789	LR-12005
SEC v. E Albert Boone, et al	021589	LR-12035
SEC v Memory Metals Inc , et al.	022289	LR-12004
SEC v William A Bartlett, et al	022889	LR-12021
SEC v Global Investment Brokers Ltd , et al	030989	LR-12052
SEC v Dean S Lemmon	032089	NONE
SEC v Rick N Hansen	040489	LR-12073
SEC v Frank R Grillo, et al	040689	LR-12058
SEC v Centrac Associates Inc , et al	051189	LR-12268
SEC v National Gas & Power Co , Inc , et al	051289	LR-12104
SEC v Gary Van Waeyenberghe, et al	052289	LR-12101
SEC v Plaino Oil & Gas	052389	LR-12117
SEC v Jerry Timothy, et al	061289	NONE
SEC v Thomas J Reilly, et al	061489	LR-12129
SEC v Arthur Tuchinsky, et al	062689	LR-12155
SEC v. Union Petroleum Corp , et al.	062789	LR-12152
SEC v William F Harkay	071089	LR-12153
SEC v. Alpha Trust, et al.	071189	LR-12163
SEC v Krisell International Corp , et al	071489	LR-12200
SEC v Paul W Nielsen	072089	NONE
SEC v Coal Corp of America, et al.	080389	LR-12224
SEC v Thomas E McReynolds, et al.	082589	LR-12237
SEC v Earl Fallen, et al	092189	LR-12266
SEC v Medicorp Research Laboratories Corp , et al.	092889	LR-12260

Program Area—Offering Violations (By Regulated Entities)

Name of Case	Date Filed	Release No
In the Matter of Eugene B Garrett	110488	34-26251
In the Matter of John J Connolly	111088	34-26270
In the Matter of Taiwo S. Inman	120188	34-1146
In the Matter of Jack D Prosen	120288	34-26335
In the Matter of Gary A Kaku	120588	34-26338
In the Matter of John Wesley George, Jr , et al	122788	34-26396

In the Matter of Victoria E Yates	011189	34-26448
In the Matter of Mark W Sharpe	011189	34-26449
In the Matter of Robert McCormack	011289	34-26454
In the Matter of Robert Vincent Yeo, Jr , et al	030189	IA-1156
In the Matter of Russell C Gray	030689	34-26600
In the Matter of James E Simpson	030689	34-26597
In the Matter of Mark S Wilson	031689	34-26634
In the Matter of Jeffrey A Sadowski	032089	34-26647
In the Matter of Thomas L Powers, et al	032489	34-26661
In the Matter of Virginia Melhorn	033189	34-26681
In the Matter of Jack S. Staton	040389	34-26684
In the Matter of Steven Hammer	040389	34-26685
In the Matter of Eton Securities Corp , et al	051289	34-26818
In the Matter of Clifford M Reiter	052689	34-26868
In the Matter of John F Toale	052689	34-26869
In the Matter of Edward A Coury	062789	34-26983
In the Matter of Kenneth H Kube	070689	34-27000
In the Matter of Joseph Anthony Belmonte, Jr	071389	34-27029
In the Matter of Arthur P Miller	073189	34-27081
In the Matter of Merlin Blackburn	081489	34-27137
In the Matter of Robert C Grubbs, et al	081489	34-27332
In the Matter of Keith Sheldon	082989	34-27191
SEC v Gilbert Beall, et al.	100588	LR-11883
SEC v Taiwo S Inman	101888	R-11897
SEC v William E Pohl	120188	NONE
SEC v Arthur P Miller	011789	LR-11976
SEC v. John Wesley George, Jr	020289	LR-11988
SEC v Stoneridge Securities, Inc , et al	020389	LR-11995
SEC v Great Lakes Equities, et al	022389	LR-12038
SEC v Walter F Kusay, Jr	051689	LR-12114
SEC v Mysore Sundara & Associates, Inc	062189	LR-12159
SEC v Lawrence Murray, et al	062789	NONE
SEC v Harry Schreiber, et al	062989	AAER 238
SEC v. Keith S Sheldon	072689	LR-12189

Program Area—Self Regulatory Organization

Name of Case	Date Filed	Release No
In the Matter of Chicago Board Options Exchange	051189	34-26809

Program Area—Transfer Agent

Name of Case	Date Filed	Release No
In the Matter of v Efficient Transfer Inc , et al	102189	34-26208
In the Matter of William Kouris	011289	34-26455
In the Matter of Bonneville Registrar & Transfer, et al	092589	34-27288

Table 19

ENFORCEMENT CASES INITIATED BY THE COMMISSION DURING FISCAL 1989 IN VARIOUS PROGRAM AREAS

(Each case initiated has been included in only one category listed below, even though many cases involve multiple allegations and may fall under more than one category.)

Program Area in Which a Civil Action or Administrative Proceeding Was Initiated	Civil Actions [1, 2]	Administrative Proceedings	Total [1]	% of Total Cases
Securities Offering Cases				
(a) Non-regulated Entity	32 (109)	13 (14)	45 (123)	
(b) Regulated Entity	12 (36)	28 (36)	40 (72)	
Total Securities Offering Cases	44 (145)	41 (50)	85 (195)	28%
Broker-Dealer Cases				
(a) Back Office	1 (1)	2 (2)	3 (3)	
(b) Fraud Against Customer	6 (10)	23 (41)	29 (51)	
(c) Municipal Securities	1 (6)	3 (3)	4 (9)	
(d) Other	2 (2)	14 (21)	16 (23)	
Total Broker-Dealer Cases	10 (19)	42 (67)	52 (86)	16%
Other Regulated Entity Cases				
(a) Investment Advisers	10 (21)	24 (46)	34 (67)	
(b) Investment Companies	2 (12)	8 (13)	10 (25)	
(c) Transfer Agents	0 (0)	3 (5)	3 (5)	
(d) Self Regulatory Organizations	0 (0)	1 (1)	1 (1)	
Total Other Regulated Entity Cases	12 (33)	36 (65)	48 (98)	15%
Issuer Financial Statement and Reporting Cases				
(a) Issuer Financial Disclosure	21 (63)	12 (23)	33 (86)	
(b) Issuer Related Party Trans	3 (6)	0 (0)	3 (6)	
(c) Issuer Reporting Other	2 (4)	4 (4)	6 (8)	
Total Issuer Financial Statement and Reporting Cases	26 (73)	16 (27)	42 (100)	14%
Insider Trading Cases	31 (70)	8 (8)	39 (78)	13%
Market Manipulation Cases	7 (45)	7 (13)	14 (58)	5%
Contempt Proceedings	15 (29)	0 (0)	15 (29)	5%
Corporate Control Cases	4 (14)	4 (5)	8 (19)	3%
Fraud Against Regulated Entities	2 (11)	1 (1)	3 (12)	1%
Delinquent Filings				
(a) Issuer Reporting	3 (5)	0 (0)	3 (5)	
(b) Forms 3 & 4	1 (7)	0 (0)	1 (7)	
Total Delinquent Filings	4 (12)	0 (0)	4 (12)	1%
GRAND TOTALS	155 (451)	155 (236)	310 (687)	101%[3]

[1] The number of defendants and respondents is noted parenthetically

[2] This category includes injunctive actions, and civil and criminal contempt proceedings

[3] Percentages total more than 100% due to rounding of figures

Table 20
INVESTIGATIONS OF POSSIBLE VIOLATIONS OF THE ACTS ADMINISTERED BY THE COMMISSION

Pending as of October 1, 1988	944
Opened in fiscal year 1989	377
Total	1,321
Closed in fiscal year 1989	321
Pending as of September 30, 1989	1,000
Formal Orders of Investigation Issued in Fiscal Year 1989	142

Table 21
ADMINISTRATIVE PROCEEDINGS INSTITUTED DURING FISCAL YEAR ENDING SEPTEMBER 30, 1989

Broker-Dealer Proceedings	93
Investment Adviser, Investment Company, Transfer Agent and Self Regulatory Organization Proceedings	50
Stop Order Proceedings	5
Rule 2(e) Proceedings	20
Disclosure Proceedings (Section 15(c)(4) of the Exchange Act)	7
Suspensions of Trading in Securities in Fiscal Year 1989	23

Table 22
INJUNCTIVE ACTIONS

Fiscal Year	Actions Initiated	Defendants Named
1980	103	387
1981	114	398
1982	136	418
1983	151	416
1984	179	508
1985	143	385
1986	163	488
1987	144	373
1988	125	401
1989	140	422

Foreign Restricted List

The Securities and Exchange Commission maintains and publishes a Foreign Restricted List which is designed to put broker-dealers, financial institutions, investors and others on notice of possible unlawful distributions of foreign securities in the United States. The list consists of names of foreign companies whose securities the Commission has reason to believe have been, or are being offered for public sale in the United States in possible violation of the registration requirement of Section 5 of the Securities Act of 1933. The offer and sale of unregistered securities deprives investors of all the protections afforded by the Securities Act of 1933, including the right to receive a prospectus containing the information required by the Act for the purpose of enabling the investor to determine whether the investment is suitable. While most broker-dealers refuse to effect transactions in securities issued by companies on the Foreign Restricted List, this does not necessarily prevent promotors from illegally offering such securities directly to investors in the United States by mail, by telephone, and sometimes by personal solicitation. The following foreign corporations and other foreign entities comprise the Foreign Restricted List.

1. Aguacate Consolidated Mines, Incorporated (Costa Rica)
2. Alan MacTavish, Ltd. (England)
3. Allegheny Mining and Exploration Company, Ltd. (Canada)
4. Allied Fund for Capital Appreciation (AFCA, S.A.) (Panama)
5. Amalgamated Rare Earth Mines, Ltd. (Canada)
6. American Industrial Research S.A., also known as Investigation Industrial Americana, S.A. (Mexico)
7. American International Mining (Bahamas)
8. American Mobile Telephone and Tape Co., Ltd. (Canada)
9. Antel International Corporation, Ltd. (Canada)
10. Antoine Silver Mines, Ltd. (Canada)
11. ASCA Enterprisers Limited (Hong Kong)
12. Atholl Brose (Exports) Ltd. (England)
13. Atholl Brose Ltd. (England)
14. Atlantic and Pacific Bank and Trust Co., Ltd. (Bahamas)
15. Bank of Sark (Sark, Channel Islands, U.K.)
16. Briar Court Mines, Ltd. (Canada)
17. British Overseas Mutual Fund Corporation Ltd. (Canada)
18. California & Caracas Mining Corp., Ltd. (Canada)
19. Caprimex, Inc. (Grand Cayman, British West Indies)
20. Canterra Development Corporation, Ltd. (Canada)
21. Cardwell Oil Corporation, Ltd. (Canada)
22. Caribbean Empire Company, Ltd. (British Honduras)
23. Caye Chapel Club, Ltd. (British Honduras)
24. Central and Southern Industries Corp. (Panama)
25. Cerro Azul Coffee Plantation (Panama)
26. Cia. Rio Banano, S.A. (Costa Rica)
27. City Bank A.S. (Denmark)
28. Claw Lake Molybdenum Mines, Ltd. (Canada)
29. Claravella Corporation (Costa Rica)
30. Compressed Air Corporation, Limited (Bahamas)
31. Continental and Southern Industries, S.A. (Panama)
32. Crossroads Corporation, S.A. (Panama)
33. Darien Exploration Company, S.A. (Panama)
34. Derkglen, Ltd. (England)
35. De Veers Consolidated Mining Corporation, S.A. (Panama)
36. Doncannon Spirits, Ltd. (Bahamas)
37. Durman, Ltd. Formerly known as Bankers International Investment Corporation (Bahamas)
38. Empresia Minera Caudalosa de-Panama, S.A. (Panama)
39. Ethel Copper Mines, Ltd. (Canada)
40. Euroforeign Banking Corporation, Ltd. (Panama)
41. Finansbanker a/s (Denmark)
42. First Liberty Fund, Ltd. (Bahamas)
43. General Mining S.A. (Canada)

44. Global Explorations, Inc. (Panama)
45. Global Insurance, Company, Limited (British West Indies)
46. Globus Anlage-Vermittlungsgesellschaft MBH (Germany)
47. Golden Age Mines, Ltd. (Canada)
48. Hebilla Mining Corporation (Costa Rica)
49. Hemisphere Land Corporation Limited (Bahamas)
50. Henry Ost & Son, Ltd. (England)
51. Hotelera Playa Flamingo, S.A.
52. Intercontinental Technologies Corp. (Canada)
53. International Communications Corporation (British West Indies)
54. International Monetary Exchange (Panama)
55. International Trade Development of Costa Rica, S.A.
56. Ironco Mining & Smelting Company, Ltd. (Canada)
57. James G. Allan & Sons (Scotland)
58. Jojoba Oil & Seed Industries S.A. (Costa Rica)
59. Jupiter Explorations, Ltd. (Canada)
60. Kenilworth Mines, Ltd. (Canada)
61. Klondike Yukon Mining Company (Canada)
62. KoKanee Moly Mines, Ltd. (Canada)
63. Land Sales Corporation (Canada)
64. Los Dos Hermanos, S.A. (Spain)
65. Lynbar Mining Corp. Ltd. (Canada)
66. Massive Energy Ltd. (Canada)
67. Mercantile Bank and Trust & Co., Ltd. (Cayman Island)
68. Multireal Properties, Inc. (Canada)
69. J.P. Morgan & Company, Ltd., of London, England (not to be confused with J.P. Morgan & Co., Incorporated, New York)
70. Norart Minerals Limited (Canada)
71. Normandie Trust Company, S.A. (Panama)
72. Northern Survey (Canada)
73. Northern Trust Company, S.A. (Switzerland)
74. Northland Minerals, Ltd. (Canada)
75. Obsco Corporation, Ltd. (Canada)
76. Pacific Northwest Developments, Ltd. (Canada)
77. Pan-Alaska Resources, S.A. (Panama)
78. Panamerican Bank & Trust Company (Panama)
79. Pascar Oils Ltd. (Canada)
80. Paulpic Gold Mines, Ltd. (Canada)
81. Pyrotex Mining and Exploration Co., Ltd. (Canada)
82. Radio Hill Mines Co., Ltd. (Canada)
83. Rancho San Rafael, S.A. (Costa Rica)
84. odney Gold Mines Limited (Canada)
85. Royal Greyhound and Turf Holdings Limited (South Africa)
86. S.A. Valles & Co., Inc. (Philippines)
87. San Salvador Savings & Loan Co., Ltd. (Bahamas)
88. Santack Mines Limited (Canada)
89. Security Capital Fiscal & Guaranty Corporation S.A. (Panama)
90. Silver Stack Mines, Ltd. (Canada)
91. Societe Anonyme de Refinancement (Switzerland)
92. Strathmore Distillery Company, Ltd. (Scotland)
93. Strathross Blending Company Limited (England)
94. Swiss Caribbean Development & Finance Corporation (Switzerland)
95. Tam O'Shanter, Ltd. (Switzerland)
96. Timberland (Canada)
97. Trans-American Investments, Limited (Canada)
98. Trihope Resources, Ltd. (West Indies)
99. Trust Company of Jamaica, Ltd. (West Indies)
100. United Mining and Milling Corporation (Bahamas)
101. Unitrust Limited (Ireland)
102. Vacationland (Canada)
103. Valores de Inversion, S.A. (Mexico)
104. Victoria Oriente, Inc. (Panama)
105. Warden Walker Worldwide Investment Co. (England)
106. Wee Gee Uranium Mines, Ltd. (Canada)
107. Western International Explorations, Ltd. (Bahamas)
108. Yukon Wolverine Mining Company (Canada)

Right to Financial Privacy

Section 21(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(h)(6)] requires that the Commission "compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of [Section 21(h)(2)] or the provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401–22 (the RFPA)] to obtain access to financial records of a customer and include it in its annual report to the Congress." During the fiscal year, the Commission made four applications to courts for orders pursuant to the subparagraphs and clauses of Section 21(h)(2) to obtain access to financial records of a customer. The Commission obtained access to the financial records of a customer using the procedures provided by the following sections of the RFPA:

Section 1104 (applicable to customer consents).....5
Section 1105 (applicable to administrative subpoenas).....92
Section 1107 (applicable to judicial subpoenas).....7

CORPORATE REORGANIZATIONS

During fiscal year 1989, the Commission entered its appearance in 53 reorganization cases filed under Chapter 11 of the Bankruptcy Code involving companies with aggregated stated assets of about $8.7 billion and about 200,000 public investors. Counting these new cases, the Commission was a party in a total of 163 Chapter 11 cases during the fiscal year. In these cases, the stated assets totalled approximately $35.2 billion and involved about 750,000 public investors. During fiscal year 1989, 32 cases were concluded through confirmation of a plan of reorganization, dismissal, or liquidation, leaving 131 cases in which the Commission was a party at year-end.

Table 23
REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District		FY Opened	FY Closed
A.H. Robins Co., Inc.	E D	VA	1985	
Aca Joe, Inc.	N D.	CA	1988	
ADI Electronics	E D.	NY	1987	
AIA Industries, Inc	E D	PA	1984	
Airlift International, Inc [1]	S D.	FL	1981	1989
Allegheny International, Inc	W.D.	PA	1988	
Allis-Chalmers [1]	S D.	NY	1987	1989
Allison's Place	C D	CA	1988	
American Healthcare Mgmt., Inc	N D.	TX	1988	
American Monitor Corp.	S D.	IN	1986	
American Continental Corporation	D.	AZ	1989	
American Carriers, Inc.	D	KS	1989	
Angicor Limited	D	MN	1989	
Anglo Energy, Inc.[1]	S.D.	NY	1988	
Basix Corporation	S D	NY	1988	
Beehive International	D	UT	1989	
Beker Industries Corp.	S.D.	NY	1986	
Bercor, Inc.[1]	C D.	CA	1989	1989
Berry Industries Corp.	C D.	CA	1985	
Birdview Satellite Communications, Inc.	D	KS	1988	
Boardroom Business Products, Inc.	C D.	CA	1989	
Branch Industries, Inc.	S.D.	NY	1985	
Buttes Gas & Oil Co.	S.D	TX	1986	
Calmark Real Estate	S.D	TX	1989	
Camera Enterprises, Inc., et al.	D	MA	1989	
Canton Industrial Corp	C D.	IL	1988	
Care Enterprises, Inc.	C D.	CA	1988	
Castle Industries, Inc.[1]	E.D	AR	1987	1989
Chalet Gourmet Corp.	C.D	CA	1985	
Charter Co.	M D	FL	1984	
Citywide Securities Corp [4]	S D	NY	1985	
CLC of America[1]	E.D.	MO	1986	1989
Coated Sales, Inc.	S D	NY	1988	
Coleco Industries, Inc.	S D	NY	1988	
Commonwealth Oil Refining Co , Inc	W.D	TX	1984	
Connor Corp.[1]	E D	NC	1987	1989

Table 23—Continued

REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District	F.Y. Opened	F.Y. Closed
Consolidated Oil & Gas	D. CO	1989	
Consolidated Companies	N.D. TX	1989	
Continental Information Systems	S D. NY	1989	
Convenient Food Mart	N.D. IL	1989	
Crazy Eddie, Inc., et al	S.D. NY	1989	
Crompton Co., Inc	S.D. NY	1985	
Dakota Minerals, Inc.	D WY	1986	
Dart Drug Stores, Inc.	D. MD	1989	
DeLaurentiis Entertainment	C.D. CA	1988	
DeltaUS Corp.	E D. TX	1989	
Dest Corp.	N D. CA	1989	
Detroit-Texas Gas Gathering Co.[1]	S.D TX	1988	1989
Domain Technology, Inc.	N.D. CA	1989	
Eagle Clothes, Inc	S.D NY	1989	
Eastern Air Lines, Inc., et al.	S D NY	1989	
Engineered Systems & Development Corp	N.D CA	1989	
Enterprise Technologies, Inc	S D. TX	1984	
Equestrian Ctrs. of Amer., Inc	C.D CA	1985	
Evans Products Co[1]	S D. FL	1985	1989
Fashion Channel Network[1]	C D. CA	1988	1989
Financial Corporation of America[2]	C D. CA	1989	1989
Financial & Bus. Serv., Inc	W D. NC	1986	
Finest Hour, Inc	C D. CA	1988	
First Republicbank Corp	N D. TX	1989	
General Resources Corp.[1]	N.D. GA	1980	1989
General Exploration Co[1]	N D OH	1986	1989
Global Marine, Inc	S.D TX	1986	
Hampton Healthcare, Inc	M D. FL	1988	
Heck's Inc.[1]	S.D. WV	1987	1989
Heliometics, Inc.	C D. CA	1986	
Holiday Resources, Inc.	S D. TX	1987	
Holland Industries, Inc.	S.D. NY	1988	
ICX, Inc	D CO	1987	
Inflight Services, Inc	S.D NY	1987	
Interstate Airlines, Inc.[1]	E.D AR	1988	1989
Intn'l Pharmaceutical Products, Inc.	C.D. CA	1988	
Kaiser Steel Corp.	D. CO	1987	
Kenai Corp[1]	S.D. NY	1987	1989
King of Video, Inc.	D. NV	1989	
LaPointe Industries, Inc.	D. CT	1989	
LTV Corporation	S D. NY	1986	
MacGregor Sporting Goods, Inc.	D. NJ	1989	
Marathon Office Supply, Inc.	C.D. CA	1988	
Margaux, Inc.	N.D. CA	1989	
Mars Stores, Inc., et al.	D. MA	1989	
Marvin Leon Warner[3]	M.D. FL	1988	
Maxicare Health Plus Inc.	C.D. CA	1989	
McLean Industries, Inc.	S.D. NY	1987	
MCorp (MCorp Financial, Inc. & MCorp Management)	S.D. TX	1989	
Melridge, Inc.[1]	D. OR	1988	1989
Meridian Reserve, Inc.	W.D. OK	1989	
Michigan General Corp.	N.D. TX	1987	

Table 23—Continued

REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District	FY Opened	FY Closed
Mid-America Petroleum, Inc.[1]	N.D TX	1986	1989
Midland Capital Corp.	S.D NY	1986	
Mission Insurance Group, Inc.	C.D. CA	1987	
Munson Geothermal, Inc.	D. NV	1988	
Mustang Resources Corp.	S.D TX	1988	
New Brothers, Inc.[1]	S.D. GA	1985	1989
Nitram Corporation[4]	D UT	1989	
Occidental Development Fund *	C D. CA	1989	
Occidental Development Fund IV *	C D. CA	1989	
Occidental Development Fund V *	C.D CA	1989	
Ohio Ferro-Alloys Corp[1]	N D OH	1987	1989
Oliver's Stores	E D. NY	1987	
OLR Development Fund *	C.D CA	1989	
OLR Development Fund II *	C D CA	1989	
Overland Express, Inc	S D. IN	1988	
Pacific Express Holding, Inc	E D CA	1984	
Pengo Industries, Inc.	N.D TX	1988	
Peregrine Entertainment, Ltd.	C D CA	1989	
Pettibone Corp.	N D. IL	1986	
Po'Folks, Inc.[1]	M D TN	1988	1989
Public Service Co of New Hampshire	D NH	1988	
QMax Technology Group, Inc	S D OH	1989	
QT&T, Inc	E.D NY	1987	
Qubix Graphic Systems *	N D CA	1989	
Radice Corporation[1]	S D FL	1988	1989
Ramtek Corporation	N D CA	1989	
Raytech Co.	D CT	1989	
Refinemet International, Inc.	C D CA	1988	
Residential Resources Mortgage Investment Corporation	D AZ	1989	
Revco D S. Inc.[4]	N D. OH	1988	
Ronco Teleproducts, Inc.[2]	N D IL	1984	1989
Royale Airlines, Inc[2].	W D. LA	1988	1989
Sahlen & Associates	S.D NY	1989	
Scientific Micro Systems, Inc.	N D. CA	1989	
Seatrain Lines, Inc.	S D. NY	1981	
Servamatic Systems, Inc.	N D. CA	1986	
Shearson-Murray Real Estate Fund, Ltd.[1]	N D TX	1987	1989
SIS Corporation	N.D. OH	1989	
Sooner Defense of Fla.[2]	M.D. FL	1988	1989
Sorg Incorporated, et al.	S.D. NY	1989	
Southern Hospitality Corp.[1]	M D. TN	1988	1989
Southmark Corporation	N.D. GA	1989	
Specialty Retail Concepts, Inc.	W D. NC	1988	
Spencer Cos., Inc.	D MA	1987	
Spring Meadows Associates	C D. CA	1988	
Standard Metals Corp.	D CO	1984	
Summit Oilfield Corp.	N.D. TX	1989	
Swanton Corp.	S.D. NY	1985	
Systems for Health Care, Inc.	N.D. IL	1988	
Telstar Satellite Corp. of America	C.D. CA	1989	
Texas International Co.	W.D. OK	1988	
Texas American Bancshares, Inc.	N.D. TX	1989	

Table 23—Continued

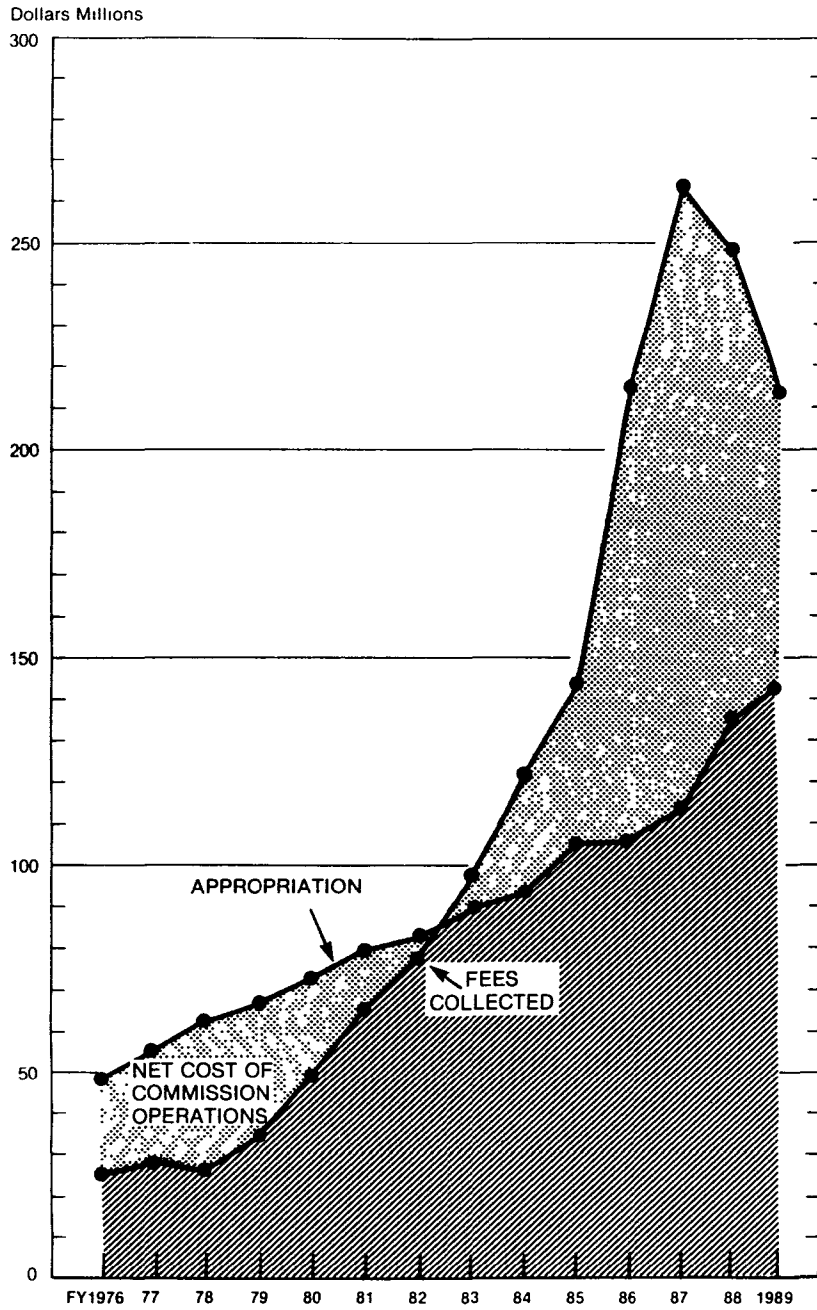
REORGANIZATION PROCEEDINGS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE IN WHICH COMMISSION ENTERED APPEARANCE

Debtor	District		F.Y. Opened	F.Y Closed
Texscan Corp	D.	AZ	1986	
The Regina Co.	D.	NJ	1989	
The Key Company [1]	W.D.	NC	1988	1989
The Western Co. of No. America [1]	N.D.	TX	1988	1989
Tidwell Industries, Inc [‡]	N.D.	AL	1986	
Todd Shipyards Corp.	D.	NJ	1988	
Tomahawk Industries, Inc.[3]	W.D	TN	1988	1989
Traweek Investment Fund No. 22, Ltd	C.D.	CA	1988	
Traweek Investment Fund No. 21, Ltd.	C.D.	CA	1988	
Traweek Investment Fund No. 20, Ltd [1]	C.D.	CA	1988	1989
Traweek Investment Fund No 18, Ltd.	C D.	CA	1988	
Twistee Treat Corporation	M.D.	FL	1989	
United Bldg. Service Corp of DE[*]	D	AZ	1989	
Univation, Inc	N.D.	CA	1989	
UNR Industries, Inc.	N D.	IL	1982	
Wedtech Corp	S D	NY	1987	
Wespac Investors Trust II	C.D.	CA	1988	
Westworld Community Healthcare, Inc.	C.D.	CA	1987	
Wheeling-Pittsburgh Steel Corp	W.D	PA	1985	
Worlds of Wonder, Inc.[1]	N.D.	CA	1988	1989
Zienth Corporation	D.	NJ	1988	
Zimmer Corp [1]	S.D.	FL	1988	1989
ZZZZ Best Co., Inc.	C D	CA	1987	
Total Cases Opened (FY 1989)			54	
Total Cases Closed (FY 1989)				32

[1] Plan of reorganization confirmed.
[2] Debtor liquidated under Chapter 7.
[3] Chapter 11 case dismissed.
[*] Debtor's securities not registered under Section 12(g) of the Exchange Act
[‡] Commission appearance authorized in FY 1989 but not filed until after the close of the fiscal year.

Table 24

Appropriated Funds vs Fees* Collected



*excludes disgorgements from fraud actions

Table 25
BUDGET ESTIMATES AND APPROPRIATIONS

$(000)

Action	Fiscal 1983		Fiscal 1984		Fiscal 1985		Fiscal 1986		Fiscal 1987		Fiscal 1988		Fiscal 1989	
	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money
Estimate submitted to the Office of Management and Budget	2,016	$88,053	2,021	$94,935 [1]	2,310	$105,880	2,181	$117,314	2,172	$123,089	2,357	$151,665	2,604	$170,064
Action by the Office of Management and Budget	−120	−3,753	−125	−3,000	−268	−1,197	−121	9,197	−86	−9,039	−90	−6,629	−184	−9,135
Amount allowed by the Office of Management and Budget	1,896	84,300	1,896	91,935	2,042	104,683	2,060	108,117 [2]	2,086	114,050	2,267	145,036	2,420	160,925
Action by the House of Representatives	+125	+4,300	+203	+3,847	+4	−2,215	+23	+1,650	..	+1,050	...	−36	−153	−25,704[3]
Sub-Total	2,021	88,600	2,099	95,782	2,046	102,468	2,088	109,787	2,086	115,100	2,267	145,000	2,267	135,221
Action by the Senate	.	−560	−170	−5,190	−4	+2,869	−28	+588	...	−1,050	..	−2,955	+153	+14,779
Sub-Total	2,021	88,040	1,929	90,592	2,042	105,337	2,060	110,355	2,086	114,050	2,267	142,045	2,420	150,000
Action by conferees	..	...	+92	+2,408	+4	...	+20	+745	...	+450	...	−6,824	−153	−7,360
Annual funding level	2,021	88,040	2,021	93,000	2,046	105,337	2,080	111,100	2,086	114,500	2,267	135,221	2,267	142,640
Supplemental appropriation	.	+1,650	..	+1,000	...	+1,045	...	...	...	...	...	...	...	...
Sequestration	...	..	...	...	...	...	...	−4,777	..	..	...	..	...	...
Total funding level	2,021	89,690	2,021	94,000	2,046	106,382	2,080	106,323	2,086	114,500	2,267	135,221	2,267	142,640

[1] Includes $3,135,000 not in original OMB submission for pay increase expenses considered by Congress in initial deliberations.

[2] Includes 14 positions and $850,000 for Public Utility Regulation activities which were excluded from the agency submission but considered by Congress

[3] Funds excluded from bill due to an absence of an enacted authorization.