

Nineteenth Annual Report of the Securities and Exchange Commission

Fiscal Year Ended June 30, 1953

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SECURITIES AND EXCHANGE COMMISSION

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

COMMISSIONERS

RALPH H. DEMMLER, Chairman
PAUL R. ROWEN
CLARENCE H. ADAMS
J. SINCLAIR ARMSTRONG
A. JACKSON GOODWIN, JR.

ORVAL L. DUBOIS, Secretary

January 15, 1954.

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION.

Washington, D. C.,

January 15, 1954

SIR: I have the honor to transmit to you the Nineteenth Annual Report of the Securities and Exchange Commission, covering the fiscal year July 1, 1952 to June 30, 1953, in accordance with the provisions of section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934; section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940; section 216 of the Investment Advisers Act of 1940, approved August 22, 1940; and section 3 of the act of April 25, 1949, amending the Bretton Woods Agreements Act. Respectfully.

RALPH H. DEMMLER.
Chairman.

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

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FOREWORD

This is the 19th Annual Report of the Securities and Exchange Commission to the Congress summarizing the work of the Commission during the fiscal year July 1, 1952, to June 30, 1953. Occasional references are made for the sake of completeness to developments after June 30, 1953.

During this period the Commission was composed of Donald C. Cook, Chairman (resigned June 17, 1953); Richard B. McEntire (resigned June 1, 1953); Paul R. Rowen; Clarence H. Adams; J. Howard Rossbach (resigned February 14, 1953); the present Chairman, Ralph H. Demmler, took office June 17, 1953.

Following the period covered by this report Commissioners J. Sinclair Armstrong and A. Jackson Goodwin, Jr. took office July 16, 1953.

COMMISSIONERS AND STAFF OFFICERS

(As of January 15, 1954)

Commissioners

RALPH H. DEMMLER, of Pennsylvania, Chairman [Appointed June 17, 1953, to fill the vacancy created by the resignation of J. Howard Rossbach.] -- Term Expires June 5, 1957

PAUL R. ROWEN, of Massachusetts -- Term Expires June 5, 1955

CLARENCE H. ADAMS, of Connecticut -- Term Expires June 5, 1956

J. SINCLAIR ARMSTRONG, of Illinois [Took office July 16, 1953, succeeding Richard B. McEntire.] -- Term Expires June 5, 1958

A. JACKSON GOODWIN, JR., of Alabama [Appointed July 16, 1953, to fill the vacancy created by the resignation of Donald O. Cook] -- Term Expires June 5, 1954

Secretary: ORVAL L. DUBOIS

Staff Officers

BYRON D. WOODSIDE, Director, Division of Corporation Finance.

ROBERT A. MCDOWELL, Director, Division of Corporate Regulation.

ANTHON H. LUND, Director, Division of Trading and Exchanges.

WILLIAM H. TIMBERS, General Counsel. MYRON S. ISAACS, Associate General Counsel.

EARLE C. KING, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing.

EDWARD T. TAIT, Executive Assistant to the Chairman; Director, Division of Administrative Management.

WILLIAM E. BECKER, Director of Personnel.

JAMES J. RIORDAN, Budget and Fiscal Officer.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Zone 1 -- Francis J. Purcell, 42 Broadway, New York 4, New York.

Zone 2 -- Philip E. Kendrick, Post Office Square Building (Room 501), 79 Milk Street, Boston 9, Mass.

Zone 3 -- William Green, Peachtree Seventh Building (Room 350), Atlanta 5, Ga.

Zone 4 -- Charles J. Odenweller, Jr., Standard Building (Room 1628), 1370 Ontario Street, Cleveland 13, Ohio.

Zone 5 -- Thomas B. Hart, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Ill.

Zone 6 -- Oran H. Allred, United States Courthouse (Room 103), Tenth and Lamar Streets, Fort Worth 2, Tex.

Zone 7 -- William L. Cohn, New Customhouse (Room 162), Nineteenth and Stout Streets, Denver 2, Colo.

Zone 8 -- Arthur E. Pennekamp (Acting), Appraisers Building (Room 308), 630 Sansome Street, San Francisco 11, Calif.

Zone 9 -- James E. Newton, Securities Building (Room 202), Third Avenue and Stewart Street, Seattle 1, Wash.

Zone 10 -- E. Russel Kelly, 425 Second Street, NW. (Room 107), Washington, D.C.

Branch Offices

Federal Building (Room 1074), Detroit 26, Mich.

United States Post Office and Courthouse (Room 1737), 312 North Spring Street, Los Angeles 12, Calif.

Pioneer Building (Room 400), Fourth and Roberts Streets, St. Paul 1, Minn.

-Mil

COMMISSIONERS

Ralph H. Demmler, Chairman

Chairman Demmler was born in Pittsburgh, Pa. on August 22, 1904 and has been a lifelong resident of that city. Chairman Demmler received an A. B. degree from Allegheny College in 1925 and an LL. B. degree from the Law School of the University of Pittsburgh in 1928. He was admitted to the Pennsylvania bar in 1928 and thereafter specialized in corporate and banking law. Between 1928 and 1930 he was associated with C. E. Theobald, Esq. and between 1930 and 1938 with the firm of Watson & Freeman. He was a partner in the firm of Hirsch, Shumaker, Demmler & Bash from 1938 to 1941. Between 1941 and 1943 he served as trust officer of Commonwealth Trust Company of Pittsburgh. Between 1943 and 1953 he was associated with the firm of Heed, Smith, Shaw & McClay, having been a partner in that firm since 1948. On June 17, 1953, he took office as a member of the Securities and Exchange Commission for a term of office expiring June 5, 1957 and was designated Chairman of the Commission by the President.

Paul R. Rowen

Commissioner Rowen was born in Brighton, Mass., October 7, 1899. He received an A. B. degree from Georgetown University in 1921, attended Harvard Law School from 1921 to 1924, received an LL. B. degree from Boston University Law School in 1925, and was admitted to the Bar of Massachusetts in 1926. From 1926 to 1932 Mr. Rowen was engaged in the general practice of law in Boston. From 1932 to 1936 he served successively as assistant district attorney in Boston, as assistant counsel, regional litigation attorney, N. R. A., in Washington; D. C., and as legal consultant, Federal Coordinator of Transportation, in Washington, D.C. In 1936 Mr. Rowen became a member of the staff of the Commission at its office in Washington, D. C., and served as an attorney on the staff until 1939. Thereafter, Mr. Rowen was appointed regional administrator of the Commission's Boston regional office and served in that capacity for over 6 years. On May 28, 1948, he took office as a member of the Securities and Exchange Commission and on June 14, 1950, was reappointed for a term of office ending June 5, 1955.

Clarence H. Adams

Commissioner Adams was born in Wells, Maine, on November 1, 1905, and resides in Bloomfield, Conn. In 1925 he moved to Connecticut where he entered the investment banking business. In 1931 he organized the securities division of the Banking Department and became the first Securities Administrator of Connecticut, responsible for the administration of the Connecticut Securities Act, which position he held until 1950. In 1945 he served as President of the National Association of State Securities Administrators. His business background includes membership in an investment banking firm in Hartford, and he headed a lending institution in that city. On May 8, 1952, he took office as a member of the Securities and Exchange Commission for a term of office expiring June 5, 1956.

J. Sinclair Armstrong

Commissioner Armstrong was born in New York City on October 15, 1915, and resides in Chicago, Ill. He received an A. B. degree from Harvard in 1938 and an LL. B. degree from the Harvard Law School in 1941, being admitted to practice in Illinois in that year. Between 1941 and 1945 he was associated with the firm of Isham, Lincoln & Beale. After approximately 1 1/2 years military service he returned to that firm, becoming a partner in 1950. On July 16, 1953, he took office as a member of the Securities and Exchange Commission for a term of office expiring June 5, 1958.

A. Jackson Goodwin, Jr.

Commissioner Goodwin was born in Anniston, Ala. on October 18, 1911 and resides in that city. He received an A. B. degree from Princeton University in 1934 and an M. B. A. degree from Harvard Business School in 1936. Between 1936 and 1940 he was associated with the investment banking firm of Dillon, Read & Co. Between 1946 and 1952, after 5 years military service during which, among other duties, he served as an assistant and aide to Undersecretary of War Robert P. Patterson and in the European Theater of Operations as a Lieutenant Colonel, became associated with the Anniston National Bank of Anniston, Ala., as vice president and director. In 1952 and 1953 he was a Director of the Federal Reserve Bank of Atlanta, Birmingham Branch, and a Director of the Life Insurance Company of Alabama. On July 16, 1953, he took office as a member of the Securities and Exchange Commission for a term of office expiring June 5, 1954.

PART I ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is designed to provide disclosure to investors of material facts concerning securities publicly offered for sale by use of the mails or other instrumentalities of interstate commerce, and to prevent misrepresentation, deceit or other fraudulent practices in the sale of securities. Disclosure is obtained by requiring the issuer of such securities to file with the Commission a registration statement, and related prospectus, containing significant information about the issuer and the offering. These documents are available for public inspection as soon as they are filed. In addition the prospectus must be furnished to the purchaser at or before delivery of the security. The contents of the registration statement are the primary responsibility of the issuer and the underwriter; the Commission has no authority to dictate or control the nature or quality of a security to be offered for public sale or to approve or disapprove its merits or the terms of its distribution.

DESCRIPTION OF THE REGISTRATION PROCESS

The Registration Statement and Prospectus

Any security proposed to be publicly offered may be registered by filing with the Commission a registration statement on the appropriate form. The Commission has adopted several such forms designed to disclose appropriately for the class of issues involved the types of information prescribed in Schedule A of the Act. In general these forms must reveal the names of persons who exercise control and direction of the business enterprise; their security holdings, remuneration, options, and bonus and profit-sharing privileges; the character and size of the business; financial statements, certified by independent accountants; the capital structure; underwriters' commissions; pending or threatened legal proceedings; and the purpose to which the proceeds of the offering are to be applied. The prospectus constitutes part of the registration statement and summarizes the more important items of the registration statement proper.

Examination Procedure

The Commission is charged with responsibility of preventing the sale of securities to the public on the basis of inaccurate or incomplete information. The staff of the Division of Corporation Finance examines each registration statement for compliance with the standards of disclosure and usually notifies the registrant by an informal letter of comment of any material respect in which the statement apparently fails to conform to these requirements. The registrant is thus afforded an opportunity to file an amendment before the statement becomes effective. In addition, the Commission has power to issue, after notice and opportunity for hearing, an order suspending the effectiveness of a registration statement. No such orders were issued during the 1953 fiscal year.

Effective Date of Registration Statement

Because speed in the processing of a registration statement is important to industry, the Commission completes its analysis in the shortest possible time consistent with the public interest.

Congress provided for a lapse of 20 days in the ordinary case between the filing date of a registration statement and the time it may become effective. The waiting period is designed to provide investors with an opportunity to become familiar with the proposed security before it is offered to them. In order to achieve this objective immediately upon the filing of a registration statement the information therein is made available by the Commission to representatives of financial news services, financial writers, and newspapers generally, who disseminate such information to the public.

The Commission is empowered to accelerate the effective date so as to shorten the 20-day waiting period where the facts justify such action. In exercising this power, the Commission is required by the statute to take into account the adequacy of the information already available to the public, the complexity of the particular financing, and the public interest and protection of investors.

Time Required To Complete Registration

The median time which elapsed between the filing and the effective date for the 596 registration statements that became effective during the 1953 fiscal year was 23 days, divided among the three principal stages of the registration process approximately as follows: (a) from date of filing registration statement to date of letter of comment, 12 days; (b) from date of letter of comment to date of filing first material amendment, 6 days; and (c) from date of filing first amendment to date of filing final amendment, 5 days.

VOLUME OF SECURITIES REGISTERED

The amount of securities effectively registered during the 1953 fiscal year was \$7,507,000,000, the second largest amount for any fiscal year since securities have been registered with the Commission, the high being \$9,500,000,000 in the 1952 fiscal year. Figures are presented below on the volume of registrations for each fiscal year since 1944 and the extent to which these registrations were for cash sale for account of issuers.

[table omitted]

Number of Statements

The amount registered in the 1953 fiscal year was represented by 593 statements covering 775 issues, compared with 635 statements covering 881 issues during the previous fiscal year. The number of statements differs slightly from that shown on page 5, as explained in table 1 of the Appendix, note 2.

Type of Registration

Of the dollar amount of securities registered in the 1953 fiscal year, 84.3 percent was for cash sale for account of issuers, 2.3 percent was for cash sale for account of others than issuers, and 13.4 percent was for other than cash sale. Comparative figures for the 1953 and 1952 fiscal years are as follows:

[table omitted]

Type of Industry

Securities registered for cash sale for account of issuers classified according to industry of issuer are shown in order of magnitude in fiscal year 1953 with comparable figures for 1952:

[table omitted]

Type of Offering

About 64 percent of the securities registered for cash sale for account of issuers in the 1953 fiscal year were to be sold through investment bankers pursuant to agreements to purchase for resale. Over 26 percent were to be sold on a best-efforts basis. The term "best-efforts" as used here means all offerings through investment bankers other than through agreements to purchase for resale. The remaining 10 percent were to be sold directly by issuers to investors. Comparative figures follow:

[table omitted]

Investment Companies

Data on securities registered for cash sale by investment companies, although included with data on all securities registered for cash sale, are presented here separately. This group of securities amounted to \$1.6 billion in the 1953 fiscal year and \$1.4 billion in the 1952 fiscal year. The registrants of these securities are divided into three main categories: (1) Open-end companies, (2) closed-end companies, and (3) issuers of unit and face-amount certificates. Comparative

data for the 2 years are shown:

[table omitted]

Purpose of Issue

About 64 percent of the net proceeds of the securities registered for cash sale for account of issuers was for new money purposes, including plant, equipment and working capital. Almost 6 percent was for retirement of debt and preferred stock. Over 28 percent was for the purchase of securities, principally by investment companies. The remaining 2 percent was mainly for foreign governments.

REGISTRATION STATEMENTS FILED

During the 1953 fiscal year, 621 registration statements were filed covering aggregate offerings of \$7,399,059,928, compared with 665 statements covering an aggregate of \$9,045,035,056 in the 1952 fiscal year. The 621 statements filed in 1953 included 152, or 23 percent, by companies which had not previously registered securities under the statute.

Particulars regarding the disposition of all registration statements filed are summarized below.

[table omitted]

EXEMPTION FROM REGISTRATION UNDER THE ACT

The Commission is authorized under section 3 (b) of the Act to adopt rules providing exemptions from the registration requirements for security offerings not exceeding a maximum of \$300,000. The Commission has adopted six types of exemptions of small offerings, including the exemption provided in new Regulation D made effective toward the close of the 1953 fiscal year, as enumerated below:

Regulation A. General exemption for small issues up to \$300,000 for issuers (limited to \$100,000 for controlling stockholders).

Regulation A-R. Special exemption for notes and bonds secured by first liens on family dwellings or commercial property up to \$100,000.

Regulation A-M. Special exemption for assessable shares of stock of mining companies up to \$100,000.

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

Regulation B-T. Exemption for interests in oil royalty trusts or similar types of trusts or unincorporated associations up to \$100,000.

Regulation D. Exemption for Canadian securities up to \$300,000 for issuers (limited to \$100,000 for persons other than issuers).

For a description of changes made during the year in certain of these regulations reference is made to the discussion under Changes in Rules, Regulations, and Forms appearing below.

Exemption from registration does not carry exemption from the civil liabilities for material misstatements or omissions imposed by section 12 or from the criminal liabilities for fraud imposed by section 17.

During the 1953 fiscal year the exemptions most frequently sought were those provided by Regulations A and B, which call for a brief disclosure of pertinent information which is far less complete than that prescribed by the Act for a registered security. Under the revised Regulation A, the issuer must file with the nearest regional office of the Commission, 10 days prior to the offering, a notification on Form 1-A, and a brief offering circular containing certain basic minimum information, including financial data, which may be uncertified. Under Regulation B an offeror must file with the central office of the Commission, eight days prior to the offering, an Offering Sheet containing the prescribed basic information. Any sales literature must be filed in advance of its use.

Exempt Offerings under Regulation A

During the 1953 fiscal year 1,528 notifications were filed under Regulation A to cover proposed offerings of \$223,350,026, compared with 1,494 notifications covering proposed offerings of \$210,672,596 in the 1952 fiscal year. Included in the 1953 totals are 235 notifications covering stock offerings of \$38,797,997 with respect to companies engaged in the oil and gas business. In addition there were filed 1,562 amendments and 2,199 copies of sales literature.

For 1,521 of these small offerings, information is available to show their size, sponsorship, and particulars regarding the underwriting, if any. Thus, 746 covered offerings of \$100,000 or less, 257 over \$100,000 but not over \$200,000, and 518 over \$200,000 but not over \$300,000. Issuers made 1,287 of the offerings, stockholders 227, and issuers and stockholders jointly the remaining 7. Less than half, scattered through all size groups, or 686, were underwritten, mostly by commercial underwriters who marketed 608. Officers, directors or

other persons not regularly engaged in the underwriting business handled the remaining 78.

Exempt Offerings under Regulation A-M

During the year five prospectuses were filed under Regulation A-M covering assessable shares of stock of mining companies having an aggregate offering price of \$199,170. All were filed in the Seattle Regional Office.

Exempt Offerings under Regulation B -- Oil and Gas Securities

During the 1953 fiscal year 126 offering sheets and 31 amendments thereto were filed with the Commission under Regulation B. These filings were examined by a specialized Oil and Gas Unit which collaborates with the staff of the Commission generally in the solution of the technical and complex problems peculiar to oil and gas securities. The following formal actions were taken with respect to the filings under Regulation B.

Action taken on filings under Regulation B

Temporary suspension orders -- Rule 340 (a): 6

Orders terminating proceedings after amendment: 4

Order consenting to withdrawal of offering sheet and terminating proceeding: 1

Orders terminating effectiveness of offering sheet: 3

Orders accepting amendment of offering sheet (no proceeding pending): 24

Order consenting to withdrawal of offering sheet (no proceeding pending): 1

Total number of orders: 39

Confidential reports of sales. -- As an aid in determining whether violations of law have occurred in the marketing of securities exempt under Regulation B, the Commission obtains confidential reports of actual sales made pursuant to such exemption. During the 1953 fiscal year, 2,389 such reports covering aggregate sales of \$1,678,898, were filed.

DISCLOSURE PROBLEMS IN EXAMINATION PROCESS

Following are a few examples of disclosure problems arising in the examination of registration statements during the 1953 fiscal year.

Latent defect in seller's title to interests in oil or gas rights. -- The issuer, an individual, filed a registration statement under which he proposed to offer participating interests in the production of two wells which were being drilled for the production of gas. The prospectus stated that the issuer had exclusive drilling rights to certain property and merchantable title to the gas and petroleum to be conveyed to purchasers of the interests. It was not disclosed that the issuer had purportedly acquired the rights to be transferred by assignment from another person, who held them under an agreement which provided that neither the agreement nor any privilege thereunder could be transferred without the consent of the grantor, and that the grantor had refused to consent to such assignment. In a letter of comment the Division of Corporation Finance took the position that the prospectus should disclose these facts. Following discussions between, the Division's staff and representatives of the issuer the registration statement was withdrawn.

Excessive reserve estimates of oil and gas offerors. -- Separate registration statements filed by an oil company and a gas company were alike in that both contained estimates of reserves which appeared to be unreasonably high on the basis of an analysis made by the Commission's petroleum engineer. The registration statement of the crude oil producer, as originally filed, stated the company had an estimated total of 3,081,516 barrels of crude oil from its present wells, its undrilled locations, and secondary recovery methods not currently in successful operation. By amendment the portion of reserves allocable to secondary recovery methods was deleted and the other reserves were reduced, showing a revised total estimate of 1,032,189 barrels.

The registration statement of the gas company, as originally filed, stated that the company had consolidated net natural gas reserves of 267,276,707,000 cubic feet and natural gas liquid reserves of 2,322,220 barrels. After receipt of the staff's comments the company filed an amendment revising those overall natural gas reserves to 134,000,000,000 cubic feet and 848,000 barrels, respectively.

Misleading summaries of earnings. -- The summary of past earnings is one of the most important items in the prospectus. In the course of its examination the staff makes appropriate inquiry with respect to all uncertified interim periods in such summaries to determine the existence of any unusual conditions affecting the propriety of the presentation and the necessity for inclusion of an appropriate previous period. If it appears that a significant decline in earnings may have occurred, unaudited interim figures to the latest practicable date and for the same interim period in the previous year are requested. In one case the prospectus, as originally filed, included a summary of earnings for nine fiscal years and a

statement that the figures for the subsequent 2-month period would be furnished by amendment. As a result of staff inquiries the summary of earnings was revised to state that estimated net earnings for the quarter ended January 31, 1952 was approximately \$1,000,000, compared with a net loss of between \$1,000,000 and \$2,000,000 for the quarter ended January 31, 1953, before adjustments for refund of prior years' Federal taxes on income, and between \$500,000 and \$1,000,000 after such adjustments. The importance of this disclosure was heightened by the fact that net earnings in the three previous full fiscal years had dropped from \$15,136,000 to \$9,786,000 and then to \$7,049,000 successively in those years. In addition the summary of earnings was revised to state that the company's sales for the quarter ended January 31, 1953 approximated \$13,300,000 whereas comparable sales for the same quarter in the preceding five years ranged from a low of approximately \$15,200,000 to a high of approximately \$40,400,000.

Inadequate accounting records. -- Companies in the promotional stage present problems resulting from the indifference of the typical promoter to the need for adequate accounting records. The following is an extreme example of this type of situation.

A company proposing to engage in locating, exploring, and producing mineral ores in a foreign country filed a registration statement, from which financial statements were omitted with an explanation that the company was new, had not been operating, and had no books. At the insistence of the staff, financial statements examined by independent certified public accountants were furnished. These statements and the accompanying certificate of the certifying accountants reflected a contract of the registrant to issue 600,000 shares to the promoter. They also disclosed that 497,500 shares had been issued, and that action was being taken to cancel 215,000 shares because of the failure to deliver title to mineral rights under the agreement pursuant to which the shares were issued.

Property acquisitions from promoters in exchange for stock. -- The balance sheet of a corporation in the promotional stage disclosed that land and construction in progress had been acquired for capital stock of the registrant, and recorded substantial appraisal increases of each of these items. The text of the prospectus and notes to the financial statements disclosed that the promoters had acquired the properties at a cost of \$257,000. Ten days later they exchanged the properties for 249,000 shares of \$1 par value stock and a few days thereafter sold 180,000 of these shares at their cost of \$1.06 per share. The properties were recorded on the books in the aggregate amount of \$514,750 with offsetting credits of \$249,000 to capital stock and \$265,750 to appraisal surplus, reflecting an appraisal made by the executive vice president of the company. The independent certified public accountants recited the facts with respect to the

appraisal in their certificate and stated that they were not in a position to render an opinion in regard to such revaluation. At the request of the staff the financial statements were revised to eliminate the writeup of the properties to the extent of the excess over the promoters' cost. The revised statements were certified, without qualification, as being in conformity with generally accepted accounting principles.

CHANGES IN RULES, REGULATIONS AND FORMS

During the 1953 fiscal year important changes were made in the rules, regulations, and forms used in the administration of the Securities Act. In all cases the adoption of such changes was preceded by the publication of proposals inviting public comment. Consideration was given to all suggestions received.

Identifying Statement

On October 27, 1952, the Commission adopted rule 132 under the Securities Act of 1933, and a statement of certain related policies having to do with acceleration of the effective date of registration statements. This action was designed generally to provide a means, consistent with the statutory prohibition against selling effort before the effective date of the registration statement, for achieving more widespread dissemination of information during that period and to further the aim of obtaining prospectuses which are reasonably concise and readable.

Rule 132. -- This rule permits the use of a brief "identifying statement," which is intended for use as a screening device to locate persons who might be interested in receiving the proposed form of prospectus pursuant to rule 131 (the "red herring prospectus") or the final prospectus. The identifying statement is not intended to be a selling document. The rule is in the form of a definition of the terms "sale" and "offer" for purposes of section 5 only. The anti-fraud provisions are not affected.

Among other things, the identifying statement may set forth, in summary form, the title of the security, and certain other salient facts regarding the offering. It must state from whom copies of the prospectus or proposed prospectus may be obtained.

Changes in Rules Providing Exemptions

Revision of Regulation A. -- On March 6, 1953, this regulation was amended in material respects. One of the principal changes effected is the addition of a requirement that an offering circular containing certain minimum information,

including financial information, must be employed in the distribution of securities under this regulation. This new requirement makes possible more effective enforcement of the anti-fraud provisions of the statute. The revised regulation contains an innovation in the Commission's rules providing exemptions by permitting the use of limited written advertisements or other written communications prior to sending the offering circular. This provision permits persons to obtain inquiries from persons who may be interested in receiving the offering circular.

Provision is also made in the revised regulation for denying or suspending the exemption in certain cases, such as where the Commission finds that the terms and conditions of the exemption have not been met or 'that the offering circular is fraudulent.

The revised regulation exempts offerings by an issuer up to a maximum of \$300,000. However, in computing this amount there must be included all securities of the issuer and its predecessors and affiliates currently being offered under this regulation or sold pursuant to an offering thereunder commenced within one year as well as all securities sold in violation of the registration provisions of the Act within one year. Offerings on behalf of any one person other than the issuer are limited to a maximum of \$100,000 but, subject to this limitation, a number of persons other than the issuer may offer, in the aggregate, a maximum of \$300,000.

The revised regulation also provides for the filing of semiannual reports showing the progress of the offering until the offering has been completed or terminated.

Adoption of Regulation D for Canadian offerings. -- On March 6, 1953 the Commission adopted an exemption from the registration requirements of the Securities Act of 1933 for offerings of securities, not exceeding \$300,000 in any one year, made by Canadian issuers or by domestic issuers having their principal business operations in Canada.

The recently ratified amendments to the extradition treaty between the United States and Canada, which are designed to cover fraud offenses of the type indictable in this country under section 17 (a) of the Act or under the Mail Fraud Statute, has made feasible the promulgation of this exemptive regulation.

The provisions of this new Regulation D are essentially the same as those incorporated in the revised Regulation A as described above. However, in order to give full effect to the civil liability provisions of the Act, the regulation requires that each nonresident connected with an offering made thereunder must file a written irrevocable consent and power of attorney which would authorize the commencement of any civil action arising out of any offering under the regulation

by the service of process upon the Commission, which forwards copies thereof to the appropriate person.

Regulation D requires the filing with the Commission at least 15 days before any offering is made, of copies of a Notification on Form 1-D and an offering circular. If the offering circular is thereafter revised or amended, copies of the revised or amended circular must be filed with the Commission.

Amendment of Rules 314 and 334 of Regulation B. -- Under rule 314 of Regulation B as previously in effect, no exemption was available under the regulation for any oil or gas interests unless it appeared that the operating lessee would own an unencumbered 40 percent working interest in the tract at the conclusion of the sale of the issue to be offered. The result of the rule had been to require registration of some very small issues in which no substantial public interest had been involved, merely because the operating lessee at the conclusion of the offering would not own a 40 percent working interest in the tract. Accordingly, the Commission amended the requirement, effective December 12, 1952, to make it inapplicable to issues not in excess of \$30,000, provided the smallest interest separately offered is not less than \$300.

Rule 334 of Regulation B under the Securities Act of 1933, as previously in effect, provided that oil or gas interests involving noncontiguous tracts of land may be included in the same offering sheet under the regulation only if the interests offered were producing landowners' royalty interests and if certain other conditions were met. The purpose of this rule was to guard against investors being misled through the inclusion in a single offering sheet of interests in different tracts which might vary greatly in present or prospective value due to their location with reference to other tracts. However, it had been found that in certain instances the rule had operated with unnecessary stringency and had resulted in the filing of separate offering sheets with respect to nonproducing interests in different noncontiguous tracts in order to obtain the exemption. Where, for example, all of the tracts involved are located a considerable distance from any tract tested or proposed to be tested, there may be no discernible difference in the value or prospective value of the several tracts and consequently in such a case it appears appropriate to include such tracts in a single offering sheet. Accordingly, the Commission amended the rule, effective May 25, 1953, so as to provide that nonproducing landowners' royalty interests in noncontiguous-tracts may be included in a single offering sheet where it appears that all of the tracts have equal possibilities.

Revision of Regulation A-R. -- The Commission amended, effective May 25, 1953, Regulation A-R under the Securities Act of 1933, which exempts from registration under the Act certain notes secured by a first lien on real estate. The previous exemption was available only for notes secured by liens on residential

property, whereas the revised regulation applies to notes secured by liens on either residential or commercial property. The maximum amount of notes which may be offered under the revised exemption has been raised from \$25,000 to \$100,000. The revised regulation provides that the principal amount of each note to be offered thereunder shall not be less than \$500 and the total number of notes on any single property shall not exceed 125. The revised regulation also provides that the aggregate unpaid principal amount of all indebtedness secured by all liens on the property shall not exceed 75 percent of the appraised value of such property. The revised regulation, like the previous one, does not require the filing of any papers or documents with the Commission.

Other Changes

Amendment of Rule 427. -- This rule had provided that information contained in a prospectus used more than 13 months after the effective date of the registration statement should include certified financial statements as of a date not more than 12 months prior to the use of the prospectus. That requirement compelled the preparation of audited financial statements more than once a year in those cases where an offering was involved which continued beyond the 13-month period. The rule was amended effective June 3, 1953, to permit the use of unaudited financial statements as of the latest practicable date, and certified financial statements as of the end of the preceding fiscal year, if the fiscal year of the registrant has ended within 90 days prior to the use of the prospectus. In such case certified financial statements as of the latest fiscal year, when available, must be substituted for the unaudited financial statements or added to the prospectus.

Adoption of Form S-8. -- On June 16, 1953, the Commission adopted Form S-8, a simplified form for registration under the Securities Act of 1933 of securities offered pursuant to employees stock purchase plans. Many such plans provide an opportunity for the accumulation by employees of securities of the employer upon favorable terms and provide for some form of contribution by the employer for the purpose of assisting the employee to participate in the plan. In consequence, the investment decision to be made by the employee is of a substantially different character than is involved where securities are offered primarily for the purpose of raising capital.

The new Form S-8 is available to companies which file reports pursuant to sections 13 or 15 (d) of the Securities Exchange Act of 1934 and which have created stock purchase plans providing for periodic contributions by the employer for the benefit of participating employees. The form may not be used, however, unless participating employees may at any time withdraw at least the cash and securities representing their contributions, nor may it be used for the registration of securities offered primarily for the purpose of raising capital. Registration

under the new form involves the filing of a short prospectus consisting, in the main, of a brief description of the plan and the securities offered thereunder, and certified financial statements which include a summary of earnings, a balance sheet as of the close of the issuer's latest fiscal year and an income statement for such year. The employer company sponsoring the plan will be required to deliver with the prospectus a copy of the most recent annual report to stockholders and, thereafter, to transmit to employees participating in the plan copies of all material distributed from time to time to stockholders. This material, other than the prospectus, however, is not deemed to be "filed" under the Act except to the extent incorporated by reference in the prospectus.

LITIGATION UNDER THE SECURITIES ACT

Injunctive Actions

It is sometimes necessary to resort to the courts to obtain compliance with the Securities Act. Such action is generally taken when it appears that continued violations and resultant damage to the public is threatened.

A substantial number of cases requiring injunctive action relate to oil and gas and mining promotions. A characteristic illegal promotion was that involved in *S.E.C. v. Charles William Crader and Oil Hunters, Inc.* The Commission's complaint charged that a high-pressure fraudulent mail campaign to tens of thousands of persons throughout the country was being employed in the sale of stock of Oil Hunters, Inc.; that defendants made references to "200-to-1 profits" realized on investments in successful oil ventures, suggesting a similar expectation in the purchase of Oil Hunters, Inc. stock; and falsely stated that the company selected only high class drilling properties which would have a real chance of producing oil and would yield "king-size, grand-price profits" and that the drilling of a well on the company's leased properties offered possibilities for the finding of "gigantic, stratigraphic entrapments of oil" similar in size to the famed East Texas oil field. The defendants consented to a final judgment enjoining them from further violating the anti-fraud provisions of the Securities Act.

S.E.C. v. C. C. Julian Associates, Inc. and Harry Arthur Penn was another oil and gas promotion in which an extensive mail campaign was used. The complaint alleged that the selling literature being used contained incomplete, ambiguous and deceptive statements concerning services previously rendered to such persons by the defendant Penn and the opportunity for recoupment of losses and for profit through the purchase of the stock of the defendant corporation. A final judgment by consent was obtained.

Other actions brought by the Commission for injunctions for violation of the Securities Act dealt with various other types of securities. In *S.E.C. v. E. P. Floren* the Commission's complaint charged the defendant with selling shares of Baby Care Pharmacies, Inc. and Baby Care Institute, Inc. without having a registration statement in effect, and with making false representations concerning the source of the stock, the use to be made of the proceeds, the prices at which such shares could be resold in the future, and the profits to be expected from the investment. A permanent injunction was entered by consent.

In *S.E.C. v. Thomas W. MacKenzie and Automatic Telephone Dialers, Inc.*, the defendants were charged with selling MacKenzie's personally owned stock without complying with the registration provisions of the Securities Act and with making false representations concerning the ownership of the stock, the proceeds to be received by the company, the listing of the stock on a stock exchange, the extent of the development of the product, the existence of contracts for the use, production and sale of the product, and the experience of the promoter. The defendants consented to the entry of a preliminary injunction.

In *S.E.C. v. Stanford E. Phillips* a judgment was entered by consent permanently enjoining Phillips, individually and doing business as Attorneys Messenger and Process Service, from further violating the anti-fraud provisions of the Securities Act in the sale of promissory notes to finance a messenger service.

The Commission also obtained a final judgment and decree by consent permanently enjoining Evergreen Memorial Park Association and Thomas A. Morris, its president and controlling stockholder from violating the registration provisions of the Securities Act. The defendants had sold cemetery lots in wholesale quantities for investment purposes. To induce these purchases by the investing public, defendants had undertaken to resell these lots at retail on behalf of wholesale investors at stated prices which would yield large profits on said investments within relatively short periods. The court found that the transactions involved sales of securities in the nature of "investment contracts" subject to the provisions of the Securities Act.

Defendants were also required by the decree to make good their previous undertakings to resell the lots of prior wholesale investors without making any charge for the service and to repurchase non-salable lots, to deposit specified amounts of money in a perpetual care trust fund for the maintenance of the cemetery property in accordance with the requirements of applicable state law and the defendant corporation's charter and sales agreements with wholesale investors, to maintain necessary books and records in accordance with accepted accounting principles, and to submit to the Commission semi-annual reports showing compliance with the court's decree.

Injunctions were also obtained in several other cases for sales of securities without registration. Among these are S.E.C. v. R. H. Rucker and Wabash Oil Company, S.E.C. v. Silver Bell Mines Co., S.E.C. v. Francis J. Swendeman, S.E.C. v. Magar Home Products Inc., John R. Kauffman, and Thomas E. Myers, S.E.C. v. Robert L. Burch, S.E.C. v. Jack Haskins and Fred M. Holey.

Several actions brought under the Securities Act of 1933 which are discussed in the 18th Annual Report were the subject of further proceedings during the current fiscal year. In S.E.C. v. Chinchilla, Inc. an injunction was entered restraining the defendants from violation of the registration and fraud provisions of the Act. In S.E.C. v. Mines and Metals Corp. the Court of Appeals for the Ninth Circuit affirmed the order of the District Court for the Southern District of California requiring the defendant to produce certain books and records in connection with a pending Commission investigation. An application for certiorari was denied.

In S.E.C. v. Ralston Purina Company, the Commission sought an injunction prohibiting the company from selling its stock to its more than 500 employees without registration under section 5 of the Securities Act. The district court denied the injunction, holding that such sales were exempt under section 4 (1) of the Act, as not constituting a public offering, and the Court of Appeals for the Eighth Circuit affirmed. The Supreme Court reversed the action of the lower court, holding that the number of persons to whom an offering is made is immaterial, that the crucial test is whether the offerees are persons who "need the protection of the Act," that "employees are just as much members of the investing 'public' as any of their neighbors in the community." The opinion concluded with the statement that "The employees here were not shown to have access to the kind of information which registration would disclose. The obvious opportunities for pressure and imposition make it advisable that they be entitled to compliance with section 5."

Participation as Amicus Curiae

Appellate court rulings involving significant interpretations of the Securities Act were handed down during the fiscal year in two cases in which the Commission participated as amicus curiae. In Blackwell v. Bentsen a complaint, which asserted civil causes of action under section 12 (2) of the Securities Act for fraud, alleged that defendants had sold plaintiffs 20-acre tracts of purported citrus land in an 800-acre development in the Rio Grande Valley of Texas together with management contracts pursuant to which defendants undertook to cultivate and develop the acreage, and to harvest and market the crop. According to the complaint, defendants had represented that plaintiffs would be getting into an 800-acre unit which would be developed uniformly by defendants' citrus experts for the joint benefit of all investors, that defendants would take care of everything, and that plaintiffs would "only have to sit back and reap the dividends." The Court

of Appeals for the Fifth Circuit, agreeing with the views expressed by the Commission, held that the complaint alleged sufficient facts to establish that the transactions involved sales of "investment contracts," which are "securities" under the Act, and not merely sales of realty. The court ruled, also, that the alleged uses of the mails to deliver the warranty deeds and management contracts and to obtain the payments contracted for were sufficient to bring the case within the purview of section 12 (2). In *Wilko v. Swan*, a majority of the Court of Appeals for the Second Circuit, disagreeing with the Commission, upheld a compulsory arbitration provision in a form agreement between a securities firm and a customer. The court action brought by the customer against the securities firm under section 12 (2) for alleged fraud in the sale of securities, accordingly, was ordered stayed, and the customer's claim was referred to arbitration. The Commission, as *amicus curiae*, supported a petition for a writ of *certiorari* which was granted on June 1, 1953. The case was pending in the Supreme Court at the close of the fiscal year.

PART II ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 is designed to insure the maintenance of fair and honest markets in securities transactions on the organized exchanges and in the over-the-counter markets. Accordingly the Act provides for the regulation of such transactions and of matters related thereto. It requires that information as to the condition of corporations whose securities are listed on a national securities exchange shall be made available to the public and provides for the registration of such securities, such exchanges, brokers and dealers in securities, and associations of brokers and dealers. It also regulates the use of the nation's credit in securities trading. While the authority to issue rules regarding such credit is lodged in the Board of Governors of the Federal Reserve System, the administration of these rules and of the other provisions of the Act is vested in the Commission.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

At the close of the 1953 fiscal year the following 16 exchanges were registered as national securities exchanges:

American Stock Exchange
Boston Stock Exchange

Chicago Board of Trade
Cincinnati Stock Exchange
Detroit Stock Exchange
Los Angeles Stock Exchange
Midwest Stock Exchange
New Orleans Stock Exchange
New York Stock Exchange
Philadelphia-Baltimore Stock Exchange
Pittsburgh Stock Exchange
Salt Lake Stock Exchange
San Francisco Mining Exchange
San Francisco Stock Exchange
Spokane Stock Exchange
Washington Stock Exchange

Four exchanges were exempted from registration at the close of the fiscal year:

Colorado Springs Stock Exchange
Honolulu Stock Exchange
Richmond Stock Exchange
Wheeling Stock Exchange

Information pertinent to the organization, rules of procedure, trading practices, membership requirements and related matters of each exchange is contained in its registration or exemption statement, and any changes are required to be reported promptly by the exchanges. During the year the various exchanges reported numerous changes, the more significant of which included the following:

The New York Curb Exchange changed its name to the American Stock Exchange effective January 5, 1953.

The New York and American stock exchanges permitted corporations engaged in the securities business to become regular members of the respective exchanges effective May 1, 1953. Theretofore such corporations had been entitled to the privilege of becoming associate members of the American Stock Exchange. This action marked the first time in the history of the New York Stock Exchange that corporations have been eligible for membership on that exchange.

The New York and American stock exchanges each put into effect a plan to add to the breadth and liquidity of their markets by attracting blocks of securities to the exchange market. Under the plans a specialist may, subject to approval by the exchange, purchase for his own account, off the floor of the exchange, a block of a stock in which he is registered, without executing the buy orders on his book at or above the price per share paid by the specialist for the block.

The Salt Lake Stock Exchange adopted a new constitution on December 15, 1952, as a step towards strengthening the financial responsibility of its members, and to improve inspection and audit requirements. As of June 30, 1953, the formulation of new rules was still under consideration by its Board of Governors.

Disciplinary Actions by Exchanges

Each national securities exchange reports to the Commission any action of a disciplinary nature taken by it against any of its members, or any partner or employee of a member, for violation of the Securities Exchange Act or any rule thereunder, or of any exchange rule. During the year five exchanges reported disciplinary action against 33 members, member firms and partners of member firms. The actions reported included fines ranging from \$1 to \$5,000 in 18 cases, with total fines aggregating \$11,104; expulsion of 1 individual and suspension of another from exchange membership; cancellation of the registration of 6 members as specialists; and censure of individuals or firms for infractions of rules. The exchange rules violated included those pertaining to conduct inconsistent with just and equitable principles of trade, handling of customers' orders and accounts, floor trading and specialists, capital requirements, and the keeping and filing of records and reports.

REGISTRATION OF SECURITIES ON EXCHANGES

Purpose and Nature of Registration

The Securities Exchange Act provides for the filing with the Commission and the exchange of applications for registration and annual and other periodic reports disclosing pertinent information concerning each issuer having securities registered on an exchange, its capital structure and that of its affiliates, the terms of its securities, the control and management of its affairs, the remuneration of its officers and directors, and financial data.

Examination of Applications and Reports

Applications for registration of securities and periodic reports are examined by the staff of the Division of Corporation Finance to determine whether fair and adequate disclosure has been made. Where examination shows a need for correcting amendments, they are requested. The results achieved by these examinations may be illustrated by reference to a few filings reviewed during the 1953 fiscal year.

A Canadian mining company filed an application for registration to which were attached as exhibits two engineering reports containing an optimistic dollar estimate of the value of total future production based on unacceptable procedures in valuing mineral content per ton of ore and in estimating reserves. The company had not yet produced any commercial ore but was nevertheless constructing a mill costing \$1,500,000. The stock of the company, which was traded on two Canadian exchanges, had shown an extraordinary price rise, apparently resulting from the publication of such engineering reports. Objections were raised by the staff of the Commission to the reports, and the company proposed to overcome them by filing an amended application deleting the reports. However, in view of the previous widespread dissemination of the information contained in the reports the company was advised that the amended application should nevertheless indicate that the conclusions of the engineering reports were not justified by the exploratory work, should state unequivocally whether or not commercial ore reserves existed on the property and state that the construction of a mill under the circumstances would be contrary to accepted mining practice. The company was unwilling to make these disclosures, the exchange withdrew its certification of approval and the application was withdrawn.

In an application for the registration of additional shares a registrant described a merger resulting in the acquisition of the assets of another company by the issuance of preferred stock of the registrant in exchange for all of the common stock of such company, which was to be dissolved and its plant operated as a division of the registrant. The net assets to be obtained after assumption of liabilities amounted to \$1,667,000 less than the aggregate par value of the registrant's preferred stock to be issued. The registrant indicated it would charge off this difference of \$1,667,000 to earned surplus. The registrant was advised that the proposed accounting treatment appeared to be inappropriate in the circumstances since it appeared that the plan was developed primarily for the purpose of acquiring additional plant. Accordingly the registrant filed an amendment in which it was stated that the difference would be added to the cost of buildings. The registrant stated that the other company was acquired in order to obtain urgently needed building space and that the past earnings of the acquired company did not justify capitalization of any part of the consideration as having been paid for goodwill or for any other intangible. Acceptance of the originally proposed accounting would have resulted in an understatement of the assets to be acquired and thereafter in an understatement of depreciation charges, with a corresponding overstatement of income.

The balance sheet included in an application by an oil company for registration of its shares showed the stockholders' equity in the company at \$4,365,383. Comparison of this balance sheet with one as of a year earlier indicated that the property account and capital surplus had each been increased by some

\$2,100,000 during the year. In a letter of comment this apparently unjustified property write-up was questioned. Thereafter revised financial statements were prepared by a new firm of certified public accountants in which the property accounts were restated at more realistic values as of the date of inception of the company, and depletion and depreciation reserve provisions and balances were computed on the basis of revised valuations, showing the stockholders' equity at \$1,099,571, approximately one-fourth of the amount shown in the application as originally filed.

Statistics of Securities Registered on Exchanges

At the close of the 1953 fiscal year, 2,210 issuers had 3,653 security issues listed and registered on national securities exchanges. These securities comprised 2,651 stock issues totaling 3,904,577,424 shares, and 1,002 bond issues totaling \$23,509,748,966 in principal amount. These figures reflect net increases for the year of 18 issuers, 27 stock issues, 233,722,158 shares, 38 bond issues, and \$2,099,644,615 in principal amount of bonds over the corresponding amounts at the close of the 1952 fiscal year. During the fiscal year 71 new issuers registered securities on exchanges while the registration of all securities of 53 issuers was terminated.

The following table shows for the fiscal year the number of applications filed under section 12 and of reports filed under section 13 and, pursuant to undertakings contained in registration statements filed under the Securities Act, under section 15 (d) of the Securities Exchange Act:

Applications for registration of securities on national securities exchanges: 779

Annual reports: 2,959

Current reports: 13,126

Amendments to applications and annual and current reports: 1,072

MARKET VALUE AND VOLUME OF SECURITIES TRADED ON EXCHANGES

The unduplicated total market value on December 31, 1952, of all securities admitted to trading on one or more of the twenty stock exchanges in the United States was \$241,697,600,000:

[table omitted]

The New York Stock Exchange and American Stock Exchange figures are as set forth by those exchanges. There is no duplication of issues between those two exchanges, but many of the issues traded on them are also admitted to trading on one or more of the 18 other exchanges in addition to those shown for such other exchanges. The number of issues includes a few which are suspended or inactive, and whose market value, if any, is not computed.

Stocks on Exchanges

The \$140.5 billion aggregate market value of all stocks available for trading on the exchanges at the close of 1952 compared with \$129.2 billion at the close of 1951 and with \$82 billion at the close of 1948. Stocks on the New York Stock Exchange accounted for about \$53.5 billion, and on the American Stock Exchange for about \$5 billion of the increase since December 31, 1948, while the market value of stocks available for trading only on the remaining 18 stock exchanges remained about the same.

The number of stock issues listed on the New York Stock Exchange has shown a tendency to increase over the years, as contrasted with the number of issues on the other stock exchanges:

[table omitted]

New listings only on the regional exchanges are not sufficiently numerous to balance the losses of local issues while new admissions thereon of stocks also listed on one or the other of the New York exchanges continue in heavy volume. The new listings only on the regional exchanges during 1952 included 5 preferred stocks, with an aggregate market value of about \$30 million, listed on the Philadelphia-Baltimore Stock Exchange to qualify them for the investment of trust funds in Pennsylvania, and 5 common stocks whose aggregate market value was less than \$15 million. In the same period, 124 stock issues listed on the New York Stock Exchange or the American Stock Exchange were admitted to trading on one or more of the regional exchanges. The aggregates were as follows, shares and market values being computed as of December 31, 1952:

[table omitted]

Duplication in the above table amounts to 1 issue of 4,015,598 shares and \$46,681,000 market value, which appears as a new listing on one regional exchange and a new unlisted admission on another. Otherwise, the figures show the net additions of issues newly listed or admitted to unlisted trading on the regional exchanges during 1952. Of the issues shown, 109 were newly admitted to trading on 1 regional exchange, 22 on 2, 2 on 3, and 1 on 4.

The consolidation of industry into units of national importance and the growing availability of their shares for trading on both the New York and the regional exchanges have brought about a heavy concentration of trading volumes in a small proportion of the total available stock issues. At the close of 1952, 179 stocks listed on the New York Stock Exchange were also available for trading on 4 or more of the 8 largest regional exchanges: Boston, Cincinnati, Detroit, Los Angeles, Midwest, Philadelphia-Baltimore, Pittsburgh, and San Francisco. The dollar volume of stock sales on these 8 exchanges during 1952 was reported at \$1,323,000,000 or 98.6% of the total on all 18 regional exchanges. Of this \$1,323,000,000, over one-third was accounted for by 29 stocks available on all 8 exchanges, over one-half by 79 stocks available on 6 or more of the 8 exchanges, and over two-thirds by the entire 179 stocks available on 4 or more of the 8 exchanges.

Stock volumes and their percentage distribution on the stock exchanges were shown for the years 1935-51 inclusive by tables and charts on pages 41-43 of the Commission's 18th Annual Report. Comparative figures for the calendar years 1951 and 1952 and for the first six months of 1953 are set forth below.

[table omitted]

Bonds on Exchanges

The New York Stock Exchange is the principal market for bond trading on the exchanges. The relative proportion of bond volumes on that exchange has risen over the years, from less than three-quarters of the total on all the stock exchanges in 1935 to around 97% in 1952. The course of bond volumes, other than in United States Government bonds, on the New York Stock Exchange in recent years has been as follows:

[table omitted]

The "face value of bonds listed" excludes United States Government and subdivision issues, amounting, for example, to approximately \$79.8 billion United States Government and \$1.1 billion State and City of New York securities as of December 31, 1952. The annual volumes as shown exclude sales of United States Government bonds, reported at \$46.2 million on the Exchange for the decade, but include sales in the subdivision issues, of which, however, only the issue of New York City Transit Unification 3s of 1980 is active on the Exchange.

Domestic corporation bonds are the principal components of the amounts shown in the table as listed. These have risen from \$16.4 billion face value at the close of 1943 to \$19.1 billion December 31, 1952.

OVER-THE-COUNTER MARKET

An estimate of the value of stocks traded over the counter in various categories has been developed by the Commission and is referred to at page 40 of the 18th Annual Report. Supplementing this information, it has been estimated that at the close of 1952, some 3,500 domestic issuers whose stocks are traded over the counter and who reported having or appeared to have more than 300 stockholders, had outstanding stocks having a value of approximately \$28 billion, divided among \$10 billion industrial, \$7 or \$8 billion bank, \$4.5 billion utility, \$4 billion insurance and \$1.5 billion finance, real estate and miscellaneous. About 500 of these issuers had outstanding stocks in excess of \$10 millions and 34 had stocks in excess of \$100 million. These totals are exclusive of investment companies, stocks admitted to unlisted trading privileges on stock exchanges and Canadian and other nondomestic issues.

SPECIAL OFFERINGS ON EXCHANGES

The origin, mechanics and amounts of special offerings on stock exchanges have been described in previous annual reports. Current data follow:

[table omitted]

SECONDARY DISTRIBUTIONS APPROVED BY EXCHANGES

The following table shows the amounts of secondary distributions which exchanges have approved for member participation and reported to the Commission. The mechanics of such secondary distributions and amounts thereof in past years are shown in previous annual reports.

[table omitted]

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Number of Issues Admitted to Unlisted Trading

Securities are said to be admitted to unlisted trading on the stock exchanges when the admission to trading is approved by an exchange without application by or agreement with the issuer. Such admissions are governed by section 12 (f) of the Securities Exchange Act, whose respective clauses are referred to in the following text and tables.

In the tables, the "Clause 1" stocks are those admitted to unlisted trading prior to March 1, 1934, and they are shown in two categories, those which are "unlisted only" and those which are also listed and registered on a stock exchange other than that where they are admitted to unlisted trading. The "Clause 2" stocks are those admitted to unlisted trading pursuant to applications by stock exchanges conditioned on an existing listing and registration on some other stock exchange. The "Clause 3" stocks are those admitted to unlisted trading pursuant to grants of applications by stock exchanges conditioned upon the availability of information substantially equivalent to that filed in the case of listed issues. The following table, for comparative purposes, also shows the number of listed stock issues on each stock exchange.

[table omitted]

Volume of Unlisted Trading in Stocks on Exchanges

The reported volume of shares traded on an unlisted basis on the stock exchanges during the calendar year 1952 aggregated 48,931,973 or about 8 percent of the total share volume reported on the 20 exchanges.

[table omitted]

The volumes are as reported by the stock exchanges or other reporting agencies, and are less than actual in some cases, particularly with respect to the American Stock Exchange figures, which exclude odd lots and other items not reported on the stock tickers. The figures are exclusive of volumes in short-term rights. The volumes shown under Clause 3 include 11,060 shares "unlisted only" and 12,453 shares in stocks which are listed and registered on another exchange.

Applications for Unlisted Trading Privileges

Pursuant to applications filed by the exchanges under clause 2 of section 12 (f) and approved by the Commission during the fiscal year, unlisted trading privileges were extended as follows:

[table omitted]

Changes in Securities Admitted to Unlisted Trading Privileges

The usual considerable number of notifications of minor changes in securities admitted to unlisted trading was received during the fiscal year from the stock exchanges pursuant to paragraph (a) of rule X-12F-2.

Applications for continuance of trading in unlisted issues after more important changes than those contemplated under paragraph (a) of rule X-12F-2 are made under paragraph (b) thereof, and were limited during the fiscal year to 2 by the American Stock Exchange. An application with respect to stock of Simpsons, Ltd. was granted in full, and an application with respect to Arkansas Natural Gas Corporation successions was granted in part.

DELISTING OF SECURITIES FROM EXCHANGES

Securities Delisted by Application

During the fiscal year ending June 30, 1953, the Commission granted 20 applications filed by various national securities exchanges and issuers of listed securities pursuant to section 12 (d) of the Securities Exchange Act and rule X-12D2-1 thereunder to strike securities from exchange listing and registration. The applications included 12 by exchanges, covering 13 stock issues, and 8 by issuers, covering 9 stock issues of which 1 was on 2 exchanges. In many of the cases, the amount of securities available for trading had become so reduced, by reason of the concentration of holdings in the hands of controlling stockholders or the exchange into new issues, as to make continuation of listing undesirable. In other cases, such as open-end investment company stocks, exchange trading had become inactive over the years. Some of the applications by exchanges were based on the failure of issuers to file reports and their prospective liquidation.

Securities Delisted by Notification

Securities which have been paid at maturity, redeemed or retired in full, or become exchangeable for other securities, may be removed from listing and registration on a national securities exchange by the exchange filing a notification with the Commission to that effect. Notifications effecting the removal of 132 separate issues were filed and, since in some instances the same issue was removed from more than one exchange, the total number of removals, including duplications, was 164. Successor issues to those removed became listed and registered on exchanges in many cases.

In accordance with the provisions of rule X-12D2-1 (d), the American Stock Exchange removed 5 issues from listing and registration when they became listed and registered on the New York Stock Exchange.

MANIPULATION AND STABILIZATION

Manipulation

Provisions to eliminate manipulative practices in the securities markets are included in the Securities Exchange Act. The Commission's analysts continuously watch the tickers of the leading exchanges and the quotation sheets of the exchanges, newspapers and other media for unusual market activity and unexplained price deviations. Activity in the over-the-counter market is examined as it is reported in a national quotation service. Less obvious changes in price or volume are revealed by charts which are kept on all securities which have an actively quoted market.

Investigations are undertaken when unusual price movements apparently bear no relation to the published news or when unusual market behavior indicates the probability of manipulative practices. The Commission's investigations are private in order to prevent any unfair reflections upon individuals or securities.

As soon as unusual market activity is observed, all the known information regarding the security is re-examined and a decision made as to the necessity for an investigation. Investigations take two forms. The "quiz" or preliminary investigation is designed to detect and discourage incipient manipulation by a prompt determination of the reasons for unusual market behavior. When the "quiz" discloses no violations of the anti-manipulative or fraud provisions of the securities acts it is closed. If any violations are revealed, the information obtained in the "quiz" is made available to the proper division of the Commission or to the appropriate outside agency for punitive or corrective action. When facts are uncovered which require more intensive investigation, formal orders are issued by the Commission. In a formal investigation, members of the Commission staff are empowered to subpoena pertinent material and to take testimony under oath. The following table shows the number of "quizzes" and formal investigations initiated in the fiscal year 1953 and the number closed or completed during the period:

[table omitted]

The markets for securities about to be sold to the public are watched very closely. In this connection the markets for 1552 issues in the amount of \$225,275,000 offered pursuant to Regulations A and D under the Securities Act were carefully checked for market grooming. Over 500 other securities having a market value of more than a billion dollars were kept under special daily observation during the 1953 fiscal year for periods of 10 to 30 days, largely because a public offering under a registration statement was proposed with the right to stabilize reserved by the underwriter or issuer.

Stabilization

The Act vests in the Commission the right to regulate stabilizing practices. The Commission has permitted various stabilizing practices to facilitate the raising of capital. Because of the high manipulative potential inherent in stabilizing operations, however, all such operations are kept under most careful observation by the Commission.

During the fiscal year stabilization was effected in connection with registered stock offerings aggregating 29,340,046 shares with an aggregate public offering price of \$623,525,000, and bond issues having a total face amount of \$19,644,500. To accomplish this stabilization 460,635 shares of stock were purchased at a cost of \$9,429,938 and bonds having a face amount of \$103,500 were bought by the stabilizers. More than 12,000 reports of stabilizing transactions were received and examined during the year.

SECURITY OWNERSHIP OF CORPORATION INSIDERS

Description of Regulation

Section 16 (a) of the Securities Exchange Act provides that every person who is directly or indirectly the beneficial owner of more than 10 per cent of any class of equity security which is listed and registered on a national securities exchange, or who is an officer or a director of the issuer of any such security, shall file with the Commission and the exchange a statement of his beneficial ownership of all equity securities of the issuer and additional statements indicating changes in such ownership. The Public Utility Holding Company Act and the Investment Company Act contain similar provisions.

Publication of Data Contained in Reports

Recognizing that a vast majority of public stockholders do not have ready access to the statements filed with the Commission and the various exchanges, the Commission summarizes and publishes the data contained in the reports in a monthly Official Summary of Security Transactions and Holdings which is sold to interested persons.

Volume of Reports Filed and Examined

The number of ownership and transaction reports filed during the 1953 fiscal year increased by more than 1,200 over the previous year. The volume has steadily grown from 14,972 reports filed during the 1943 fiscal year to 22,333 in 1953.

The following table shows the number of reports filed during the 1953 fiscal year.

[table omitted]

Preventing Unfair Use of Inside Information

For the purpose of preventing the unfair use of information which may have been obtained by an insider by reason of his relationship to his company, Section 16 (b) of the Securities Exchange Act, 17 (b) of the Public Utility Holding Company Act, and 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by the insider from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than 6 months. The Commission is not charged with the enforcement of the civil remedies created by these provisions, which are matters for determination by the courts in actions brought by the proper parties. The Commission has participated as amicus curiae in a number of suits instituted under these provisions where questions of statutory interpretation are involved.

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS

Nature of Proxy Regulation

Pursuant to sections 14 (a) of the Securities Exchange Act, 12 (e) of the Public Utility Holding Company Act of 1935, and 20 (a) of the Investment Company Act of 1940 the Commission has adopted Regulation X-14 relating to the solicitation of proxies, consents and authorizations in connection with securities of companies subject to those statutes requiring the disclosure of certain information at the time proxies are solicited. The regulation also contains provisions enabling security holders to communicate with other security holders when management is soliciting proxies, either by arranging for the distribution of their own proxy statements or through the inclusion of their proposals in the proxy statements of management.

Copies of proposed proxy material are required to be filed with the Commission in preliminary form at least 10 days prior to the date of the proposed solicitation. Where preliminary material fails to meet the disclosure standards, the management or other group responsible for its preparation is notified informally and given an opportunity to avoid such defects in the preparation of the definitive proxy material.

Statistics Relating to Proxy Statements

During the 1953 fiscal year the Commission received material relating to 1,817 solicitations of security holders' proxies as well as "follow-up" material used in 99 of these cases. These figures show little change when compared with 1,818 solicitations and the use of "follow-up" material in 158 instances during the preceding fiscal year.

Much more detailed information about proxy solicitations has been compiled on a calendar year basis. The total number of solicitations made in 1952 was 1,803. Nearly 99 percent of these, or 1,776 were made by management and the remaining 27 by non-management groups. Of the proxy statements filed by management 45 included, as required under the regulation, 70 proposals of 29 different stockholders who were not connected with the management. In 1951 there were 40 such minority stockholder proposals.

The business of electing directors is the purpose for which proxies are most often sought. In 1952, there were 1,623 stockholders' meetings where such election was an item of business, and 160 meetings not involving such election, while the 20 remaining solicitations sought consents and authorizations which did not involve any meeting or any election of directors.

The wide range and frequency of items of business other than election of directors on which stockholders' action was sought in 1952 are shown below.

[table omitted]

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

Section 15 (a) of the Securities Exchange Act requires registration of brokers and dealers who use the mails or instruments of interstate commerce to effect transactions in securities on over-the-counter markets. Exemption from registration, however, is provided for those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. Jurisdiction to deny or revoke registration is vested in the Commission under section 15 (b) of the Act; to suspend or expel brokers and dealers from membership in a national securities association under section 15 A; and to suspend or expel from membership on a national securities exchange under section 19 (a). In proceedings ordered to determine whether any such sanction should be invoked, the respondent is given notice of the specific charges of misconduct and afforded opportunity for hearing thereon.

The following tabulations reflect certain data with respect to registrations of brokers and dealers and administrative proceedings involving the various sanctions above referred to.

[tables omitted]

Registration

The problem of registration of brokers and dealers with principal offices outside the United States raises important questions both with respect to the enforcement of civil liabilities arising out of violations of the Act and with respect to the enforcement of sanctions which the Commission may invoke against such violations. [Footnote: The Commission's investigative work with respect to the antifraud provisions of the Acts has included many investigations of mail and telephone campaigns by Canadian brokers and dealers to sell unregistered securities to residents of this country. While many of the investigations disclosed gross misrepresentations and the employment of other fraudulent schemes and devices the enforcement of criminal penalties against the wrongdoers was a "catch as catch can" matter. Criminal indictments were obtained in many instances but apprehension and arrest of those indicted was possible only when they could be found within the borders of the United States. However, following prolonged negotiations by our government an amended extradition treaty between the United States and Canada was ratified by both governments and became effective on July 11, 1952. The amended treaty permits extradition of persons indicted for securities frauds in this country.]

At the year-end 51 nonresident firms were registered, 49 of them being Canadian firms. Rights arising because of violations may be unenforceable against non-resident broker-dealers or individual partners in such firms where it is impossible to obtain service upon such persons. In order to afford to the Commission and others the same opportunity to enforce rights or duties against such persons as they have in the case of resident broker-dealers and resident partners in such firms, the Commission promulgated rule X-15B-7. [Footnote: Securities Exchange Act release No. 4825 (April 22, 1953).] This rule requires each non-resident broker or dealer, general partner, and managing agent to file with the Commission a written irrevocable consent and power of attorney, designating the Commission as an agent upon whom may be served any process, pleadings, or other papers in certain civil suits or actions brought in the United States.

The Commission also adopted four forms, designated as 7-M, 8-M, 9-M, and 10-M, to be used for the filing of irrevocable consents to service by the various persons subject to the rule.

All but two of the 49 Canadian firms mentioned above filed applications after the adoption by the Commission of Regulation D discussed at page 11, above. Fifteen of these firms became registered before the close of the year, one withdrew its application after the Commission had instituted proceedings to deny registration, and two others withdrew their applications shortly after they had been filed.

Administrative Proceedings

Four proceedings on the question of denial of registration were instituted during the year. Three of these proceedings were dismissed on the withdrawal of the applications. In the fourth, the order for proceedings charged that I. Nelson Dennis had transacted business in violation of law without being registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act, that he had sold unregistered stock of Ameranium Mines, Limited, in violation of section 5 (a) of the Securities Act of 1933, and that Dennis was enjoined under New York law from the further sale of Ameranium stock. Since Dennis admitted these allegations, the only question was whether it was necessary in the public interest to deny registration. The Commission's opinion concluded as follows:

"Experience has demonstrated that promotional appeals to our investing public made from Canada by means of the mass mailing and telephone techniques have most frequently provided a medium for over-reaching. We must approach such cases with the utmost caution and, therefore, have searched this record carefully. However, we find no showing of actual fraud has been made. We note further that the Ameranium stock distribution was applicant's first and only venture in the securities business. Applicant has not been charged with any infraction of Ontario's securities regulations, and since May 2, 1952, he has not engaged in the sale of securities in the United States. Ameranium has since filed a registration statement with us pursuant to the Securities Act covering the shares previously sold by applicant in the United States and additional shares, and this statement is now pending. Moreover, applicant has stated that, if his application for registration is permitted to become effective, he will make every effort to comply with Federal and state requirements, and to that end will retain counsel to advise him with respect to such requirements. Accordingly, we do not believe that the public interest requires denial of registration." [Footnote: Securities Exchange Act release No. 4769 (November 20, 1952).]

A total of 45 proceedings on the question of revocation of registration were disposed of during the fiscal year. In 30 proceedings registration was revoked because of the failure of the firms to file financial reports pursuant to rule X-17A-5, and 6 revocations were based on findings of fraudulent conduct.

8 After the close of the year registrations of 14 additional firms became effective; denial proceedings were instituted against 13 of the remaining applicants. Two of the latter subsequently withdrew their applications.

Two administrative proceedings decided during the year involved charges of manipulation of the market in anticipation of the distribution of an offering of stock on the over-the-counter markets. In proceedings against Floyd A. Alien & Co., Inc., the Commission found that the respondent and certain of its associates had artificially raised the price of the outstanding stock of Loven Chemical Company by publishing bids at successively higher prices and effecting purchases at such higher prices. Subsequently, respondents sold the new stock to customers at the raised prices by means of false and misleading statements. The Commission revoked the firm's broker-dealer registration and expelled it from membership in the National Association of Securities Dealers, Inc.

The other proceeding was brought against H. L. Emacio & Company, Inc. on similar charges. The Emacio firm had negotiated with Silver Crescent Mining Company for the sale of new stock of that company. In anticipation of the distribution of the new stock, the Emacio Company, through its president Emacio and another associate, acquired control of the market for the old shares and raised the market for such shares. The Emacio Company then sold the new shares at the raised prices. The Commission found that in addition to carrying out this manipulative scheme to raise the price for the purpose of distributing the new shares at the higher prices Emacio and his associate made many false and misleading statements in the sale of the stock. The Commission revoked the registration of Emacio & Company and expelled the firm from membership on the Spokane Stock Exchange.

Broker-Dealer Inspections

Under section 17 (a) of the Securities Exchange Act, which authorizes the Commission to make reasonable periodic, special, or other examinations of the books and records of brokers and dealers, the Commission makes inspections to determine whether brokers and dealers are complying with the requirements of the securities acts. During the fiscal year, the Commission's regional offices reported on 686 such inspections, 525 of which were inspections of members of the National Association of Securities Dealers, Inc. As has been the experience in previous years, a substantial number of violations of the rules and regulations were uncovered. These violations included noncompliance with the Commission's capital and hypothecation rules and with Regulation T prescribed by the Board of Governors of the Federal Reserve System. In a limited number of instances brokers and dealers were taking secret profits. As in other years, there were transactions in which the reasonableness of the price charged to the customer in relation to the current market price was open to question, and

miscellaneous violations in large number which would be difficult to classify because of their variety.

The Commission does not necessarily take formal action against a broker or dealer who appears from these inspections to be violating the Acts. If the violations appear to be inadvertent or the result of misinformation, the Commission affords the broker-dealer an opportunity to correct his practices if possible or to assure the Commission that he will not persist in them.

Investigations

Investigations of brokers and dealers may result from the inspections, complaints from customers, or information received from sources such as state securities commissions, securities exchanges and associations, and better business bureaus. After the completion of an investigation, the staff analyzes the evidence developed and where appropriate recommends that the Commission institute injunctive action, proceedings to revoke registration or to suspend or expel from membership in a national securities exchange or association, or reference to the Department of Justice for criminal prosecution. The following schedule shows the number of such investigations during the fiscal year.

[table omitted]

Rule X-17A-5 under the Securities Exchange Act requires brokers and dealers to file annually reports of their financial condition. During the 1953 fiscal year, 3,936 reports of financial condition were filed. These reports are examined and analyzed to determine whether the broker-dealer was in compliance with the capital requirements prescribed by rule X-15C3-1. If a broker-dealer is found not to comply, he is generally afforded a reasonable time in which to correct his financial condition so that it meets the requirements. If he fails to do so the Commission takes such action as may be appropriate for the protection of customers.

SUPERVISION OF ACTIVITIES OF NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Membership

The National Association of Securities Dealers, Inc. (NASD) continued as the only national securities association registered as such with the Commission. Membership increased by 84 during the fiscal year to 3,034 at June 30, 1953 as a consequence of 284 admissions to, and 200 terminations of, membership. At June 30, 1953 there were registered with the NASD as registered

representatives 35,577 individuals, including generally all officers, partners, salesmen and other persons associated with or employed by member firms in capacities which involve their doing business directly with the public. The number of individuals so registered increased by 2,524 during the fiscal year as a result of 5,127 initial registrations, 2,079 re-registrations and 4,682 terminations of registration.

Disciplinary Actions

The Commission received from the NASD, in the 1953 fiscal year, reports of final disciplinary action by the Association in 68 cases in which formal complaints had been filed against members. These cases fell into three broad categories. The first category included 45 complaints filed against various members on the grounds that they had not offered to the public, at the public offering price, shares acquired in an initial public offering. Three of these complaints were subsequently dismissed on findings by the appropriate committees that the firms concerned had not violated the Association's rules, as interpreted by the Association, designed to prevent this practice of "free riding." In the remaining 42 cases the Committees found violations by the respondent firms. One of these firms was fined \$500; the others were censured and some were also required to submit a statement pledging future compliance and observance of the Rules of Fair Practice.

The second type of case included 14 complaints against members only on charges of violations of various other rules, 2 of which were subsequently dismissed on findings that no violations had occurred. In the remaining 12 cases violations were found as alleged in the complaints and various penalties were imposed. Five members were expelled; 3 were suspended for periods of 1, 2 and 3 weeks; and 4 firms were fined an aggregate of \$2,310.

The remaining nine disciplinary actions involved complaints against members as well as their registered representatives. One such case was subsequently dismissed on findings that no violations were involved. In four cases complaints were dismissed against the member firms; but the registrations of the firms' registered representatives were revoked. In other cases one firm was fined \$1,500 and its representative \$500; another firm was fined \$1,000 and its representative \$500; another firm was fined \$1,000 and the firm and two of its representatives were suspended for 30 days. In the last of these cases fines aggregating \$15,000 were imposed upon one firm and five of its representatives; in addition the registrations of two representatives were revoked and one representative was suspended for 2 years.

The decision in this case was appealed to the Commission pursuant to the provisions of section 15A (g) of the Securities Exchange Act by Earl L. Combest

who was fined \$2,500 and suspended as a registered representative for 2 years. At the year-end, the matter was pending before the Commission.

The Commission referred to the NASD facts concerning the business practices of members which tended to indicate possible violations of NASD Rules of Fair Practice. At the beginning of the fiscal year there were seven such matters pending before the Association, and four such cases were referred during the year. Reports on the disposition of nine cases were received from the Association during the year. In two, formal complaints were filed by the Association, violations were found and penalties were imposed. The remaining seven cases were disposed of by informal means, without formal complaint procedure. Two cases were unreported at the year-end.

Commission Review of NASD Disciplinary Actions

Section 15A (g) of the Act provides that disciplinary actions by the NASD are subject to review by the Commission on its own motion or on the application of an aggrieved party. The Commission disposed of three such petitions during the year and at the year-end two were pending.

Petitions for review in one such case were filed by Geo. J. Martin Co., which had been expelled from the NASD, and by Irving A. Shayne and Alfred Shayne, two salesmen of the firm whose registrations as registered representatives had been revoked. Alfred Shayne later withdrew his petition, and the firm and Irving A. Shayne failed to perfect their appeals. Accordingly, the three petitions were dismissed.

Another review arose from the expulsion of Tyson & Co., Inc. from membership and the revocation of the registration as registered representative of Albert B. Tyson, Joseph Tyson, and Gilbert Parker. Albert Tyson filed an application for review but failed to perfect it and accordingly it was dismissed. On review of Parker's petition, the Commission concluded that he had violated designated NASD rules and that such violations constituted conduct inconsistent with just and equitable principles of trade and that the sanction imposed on him was not excessive or oppressive. The petition was therefore dismissed.

The other petition disposed of during the year was filed on behalf of Standard Bond and Share Co. and its president and controlling person, William G. Stien. The firm had been fined \$500, suspended from membership for 30 days and Stien's registration as representative of the firm was suspended for the same period. On findings that the member and its representative had engaged in business conduct inconsistent with just and equitable principles of trade and that the penalties imposed by the NASD were not excessive or oppressive, the Commission dismissed the petition.

Commission Review of Action on Membership

Section 15A (b) (4) of the Act and the by-laws of the NASD provide that, except where the Commission with due regard to the public interest approves or directs to the contrary, no broker or dealer may be admitted to or continued in membership if he or any controlling or controlled person is expelled or is currently under suspension from such an association for violation of a rule prohibiting conduct inconsistent with just and equitable principles of trade, or is subject to an order of the Commission denying or revoking his broker-dealer registration, or was a " cause" of any such order of expulsion, current suspension or denial or revocation. The Commission disposed of two petitions seeking "approval or direction" pursuant to this statutory provision during the year and at the year-end two such petitions were still pending.

Such a petition was filed by the NASD for approval of the continuation in membership of Delaware Fund Distributors, Inc. notwithstanding a disqualification arising from action by the Commission against Van Alstyne, Noel & Co., which controlled Distributors. The petition was later withdrawn, with notice to the Commission of the dissolution of Delaware Fund Distributors, Inc., and the proceeding was dismissed.

Another petition was filed by the NASD on behalf of an applicant seeking to retain membership while employing George T. Anderson as a controlled person. Anderson had been a partner of Junger, Anderson & Co. and a "cause" of the order of the Commission revoking that firm's broker-dealer registration. On review of the record, and after notice and opportunity for hearing, the Commission concluded that it was necessary in the public interest to deny the relief requested and by order disapproved the application.

CHANGES IN RULES, REGULATIONS, AND FORMS

Amendment of proxy rules. -- Effective December 11, 1952, the Commission adopted certain amendments to its proxy rules for the purpose of clarifying the rules in certain respects and providing certain new requirements where previous requirements had proved to be inadequate.

Under the amended rules, the form of proxy must include a specifically designated blank space for dating the proxy. They also prohibit the solicitation of any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

The previous rules permitted the management of a company to omit from its proxy material stockholder proposals which are submitted primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the issuer or its management. The amended rules also permit the omission of stockholder proposals submitted primarily for the purpose of promoting general economic, political, racial, religious, social, or similar causes.

The requirements with respect to showing remuneration in the proxy statement have been revised generally. Under the revised requirements, salaries, fees, and commissions may be combined with bonuses and shares in profits so as to show the aggregate remuneration for specified persons or groups. The requirements as to showing deferred remuneration have been made more explicit as to the information required.

Where action is to be taken with respect to a bonus, profit sharing, pension, retirement or other remuneration plan or with respect to the granting or extension of options, information is required to be given which will show adequately what similar provisions have already been made for the benefit of directors, officers and employees.

Amendment of Form 10. -- The instructions as to exhibits in Form 10 for registration of securities on exchanges under the Securities Exchange Act were amended, effective December 12, 1952, to simplify the requirements relating to the filing of copies of options, warrants or rights under certain circumstances. Since the exhibit requirements of Forms 8-K and 10-K are keyed to those of Form 10, the amendment also effected a similar simplification in the filing of exhibits to reports on those forms.

Amendment of Rule X-12A-4 and rescission of Form AN-4. -- Rule X-12A-4, providing an exemption from registration under section 12 of the Securities Exchange Act of 1934 for certain short term warrants, was amended, effective December 29, 1952, for the purpose of simplifying the exemption procedure. The rule as it was previously in effect required the filing with the Commission of a statement on Form AN-4. The amendment substitutes for this requirement a provision that the exchange on which the warrants are to be traded shall notify the Commission when the warrants have been admitted to dealing. Form AN-4 was rescinded. The amendment also deletes from the rule a requirement, applicable in certain cases, that the exchange's quotations of transactions in the warrants and members' confirmations to purchasers shall indicate that the security subject to the warrants is neither admitted nor in process of admission to dealing on any national securities exchange.

Amendment of Rule X-12A-5. -- Rule X-12A-5 under the Securities Exchange Act of 1934 provides that whenever by operation of law or otherwise any instrument

evidencing a security listed or admitted to unlisted trading privileges on a national securities exchange has come to evidence another security in substitution for or in addition to the original security, the substituted or additional security shall be exempt from registration pending the effective registration of, or the granting of unlisted trading privileges for, such exempted security on the exchange. Among the securities temporarily exempted under this rule are new securities, or additional amounts of the original security, resulting from the reclassification of the original security by charter amendment or the declaration of stock distributions and stock dividends, and securities resulting from reorganization plans. Securities sold for cash or securities issued under voluntary exchange offers are not entitled to the temporary exemption provided by this rule.

Previously, transactions on the exchanges in securities temporarily exempted by this rule could be made only on a "regular way" or "when distributed" basis because, by its terms, the rule was applicable only to issued securities. The rule was amended, effective March 20, 1953, so that any unissued security may be admitted to "when issued" trading on a national securities exchange provided that upon the issuance of such security trading therein would be lawful under this rule and that all necessary action, other than the filing or recording of charter amendments or other documents with the appropriate state authorities, has been taken to authorize and assure the issuance of any such security. This amendment makes it unnecessary for issuers or exchanges to effect registration under Regulation X-12D-3 on Form 2-J to permit "when issued" trading in such unissued securities. Form 2-J will continue to be used for the registration for "when issued" trading in certain unissued securities not entitled to the temporary exemption under rule X-12A-5.

Amendments to Instruction Books for Forms 12-K and 12A-K. -- The Commission adopted certain amendments to the instruction books for annual report Forms 12-K and 12A-K under the Securities Exchange Act of 1934, discontinuing the provisions of those forms which permitted companies reporting to the Interstate Commerce Commission on its Form A to file certain selected schedules of such form with their annual reports on Forms 12-K and 12A-K, in lieu of filing complete copies of their Form A reports. The Commission found that this procedure had been followed by a very limited number of companies.

Amendment of rules under Section 16. -- During the 1953 fiscal year the Commission made extensive changes in the rules issued under section 16 of the Securities Exchange Act. These changes were designed to clarify and enlarge the requirements relating to the reporting of transactions by directors, officers and 10 per cent stockholders and to grant exemptions where experience with the administration of the section indicated that exemptions were desirable. The changes made were as follows:

Rule X-16A-1 was amended to require holders of options, puts, calls, spreads and straddles to file the reports required by section 16 (a). Rule X-16A-3 was amended to require any person who is a member of a partnership which owns securities of an issuer of which he is an officer, director or 10 percent stockholder to report all holdings and all changes in the beneficial ownership of equity securities of that issuer held by the partnership. The former rule permitted the person filing the report to elect whether he should file such reports or reports reflecting his individual interest only. Rule X-16A-4 was amended in order to clarify the prior rule, and to reduce the period of time during which the exemptions specified in the rule were effective from two years to one year. Rule X-16A-8 established for the first time a complete set of instructions to guide trustees in filing reports. Rule X-16A-9 is a new rule providing an exemption for transactions in which the amounts involved are so small that there appears to be no public interest in requiring reports of the transactions when they occur. Rule X-16A-10 was adopted in order to exempt from section 16 (b) those transactions which need not be reported pursuant to the requirements of section 16 (a).

Rule X-16B-2 was amended to broaden the prior rule governing distributions of securities by providing that the exemption would be available for transactions of purchase and sale in the course of a distribution of a block of securities on behalf of a security holder not standing in a control relationship to the issuer. The prior rule was applicable only when the distribution was on behalf of the issuer or a person standing in a control relationship to the issuer. Rule X-16B-3 was amended to broaden the exemption applicable to acquisitions of stock pursuant to a bonus or similar plan so that nontransferable options might have the benefit of the rule. Rule X-16B-5 was amended in order to clarify a rule that had been the subject of many requests for interpretation. The clarification was not intended as a change in the substance of the rule.

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

Following is a summary of the more significant aspects of the civil litigation in the courts in which the Commission participated during the fiscal year.

During the fiscal year the Commission obtained a preliminary injunction against the broker-dealer firm of J. Arthur Warner and Co. and others. Defendants were alleged to have obtained the trust and confidence of customers who were unfamiliar with securities and finance by falsely representing that the customers would receive impartial investment advice with respect to the purchase and sale of securities and that the defendants would at all times act in the best interests of customers, whereas defendants grossly overtraded the accounts of the customers for the purpose of taking large commissions and large profits for the defendants, to the great financial loss of customers.

It was also charged that the defendants, without the knowledge or consent of customers, arranged for collateral bank loans to finance the purchase of additional securities for such customers, and induced the customers to sell high-grade, conservative securities, to withdraw funds from savings banks, and to sell United States savings bonds, to entrust the proceeds and funds to the defendants to purchase other securities on the false representation that they were as safe as government bonds and deposits in savings banks and to purchase specific securities on the basis of numerous fraudulent representations as to safety of principal, capital appreciation, and increased income.

At the request of the Commission, the court entered an order restraining the defendant J. Arthur Warner & Co. Inc. from permitting the withdrawal of capital from the corporation pending the further order of the court. The Commission asked the court to notify the customers of the firm, at the proper time, of the manner in which the affairs of the customers were handled by the defendants and to give the customers an opportunity to establish any claims they may have for redress.

Injunction proceedings were also instituted against Lawrence J. Raymond, Malcolm L. Saunders, and James J. MacKnight, partners of Raymond & Company, a registered broker-dealer. Defendants organized and became the sole trustees of a Massachusetts voluntary trust operating under the name of Collective Trading Fund. The customers of Raymond & Company were induced to purchase shares of the Fund on the representation that they were purchasing shares of an investment trust, the assets of which would be invested in sound, marketable securities and that the Fund was entirely separate from the partnership of Raymond & Company. Defendants commingled the assets of the Fund with the capital of Raymond & Company. The investors were not told that the capital of Raymond & Company was substantially impaired and that, without appropriating the assets of the Fund, the broker-dealer firm would be insolvent. Purported dividends were paid to shareholders of Collective Trading Fund which, the Commission charged, were a return of capital and not income. Pursuant to the Commission's request a temporary restraining order was entered and a receiver appointed for Raymond & Company and defendants were restrained from disposing of the assets of the Fund. A decree permanently enjoining Saunders and MacKnight from further violating the provisions of the statutes was entered and the case was dismissed as to Raymond, who died during the pendency of the litigation.

Failure to maintain and keep current the books and records as required by the Commission's rules and the failure to permit a representative of the Commission to have access to such books and records for the purpose of examination led to the filing of a complaint against Edward H. Martin, individually and doing

business as E. H. Martin and Co., a registered broker-dealer. In addition, the complaint charged that a report of financial condition required by the Commission's rules and filed by Martin was false and misleading in that it failed to disclose certain liabilities. Upon motion of the Commission the court entered a temporary restraining order and appointed a receiver to conserve the assets of the defendant. The defendant failed to answer the Commission's complaint and a final judgment was entered upon such default and the receivership continued.

The Commission filed a complaint against W. Earle Lutts, doing business as W. E. Lutts & Company, a registered broker-dealer, charging that the defendant had been soliciting and accepting the deposit of money and securities from customers and representing that he was ready and able to accept customers' orders and to make prompt settlement, without disclosing that his liabilities exceeded his assets and he was unable to meet his current liabilities. The complaint further charged that the defendant had not made and kept current books and records relating to his business as required by the rules of the Commission, that he submitted false financial statements to the Commission, and that he converted to his own use securities which had been entrusted to him for safekeeping. The defendant consented to the entry of a final judgment permanently enjoining him from further violations of the statute.

In *S.E.C. v. Zippin & Company*, the Commission charged that Zippin & Company, a registered broker-dealer, had engaged in a course of business which operated as a fraud and deceit in that its liabilities exceeded its assets and it was unable to meet its current liabilities, and it had made untrue and misleading statements concerning its financial condition. At the request of the Commission a temporary restraining order was entered and a receiver appointed. Subsequently, the defendant consented to the entry of the final judgment permanently enjoining the company from further violations of the statutes.

In *S.E.C. v. Stanley Pelz & Co., Inc. and Stanley A. Pete*, the complaint alleged that the defendants permitted the firm's aggregate indebtedness to exceed 2000 per centum of its net capital in violation of the Commission's rules. The defendants had been warned several times to bring the firm's financial condition into line with the Commission's requirements but failed to do so. The defendants consented to the entry of a final judgment.

In a broker-dealer revocation proceeding against Henry P. Rosenfeld and others, Samson Wallach, Sr., a salesman of Rosenfeld, had been found by the Commission to have violated the antifraud provisions of the Securities Act and Securities Exchange Act and to have been a cause of the order revoking Rosenfeld's registration. He filed a petition for review contending that the Commission had no jurisdiction to name as a respondent a salesman not registered as a broker-dealer. The Court of Appeals for the District of Columbia

sustained Wallach's petition for review. On remand the Commission dismissed the administrative proceeding as to Wallach. While the matter was in litigation, Wallach became sales manager for another registrant, Securities National Corporation. After a further proceeding the Commission, relying on the record and findings in the Rosenfeld case and certain additional evidence, revoked the registration of Securities National Corporation because of Wallach's association with it. Securities National and Wallach filed petitions with the Court of Appeals for the District of Columbia to review this action. These petitions were dismissed on procedural grounds, the court holding, among other things, that since Wallach had declined to become a party to the administrative proceeding he could not invoke the review jurisdiction of the court.

Participation as Amicus Curiae

During the fiscal year the Court of Appeals for the Ninth Circuit handed down its decision in *Fratt v. Robinson* in which the Commission participated as amicus curiae. The court, agreeing with the views expressed by the Commission, held: (1) that rule X-10B-5 under section 10 (b) of the Securities Exchange Act applies to all fraudulent and deceptive securities transactions involving the use of the mails or instruments of interstate commerce, and is not limited, as defendants contended, to transactions in securities traded on exchanges or traded over the counter by professional brokers and dealers; (2) that a private civil action for damages may be maintained by a seller of securities injured by a violation of rule X-10B-5; (3) that alleged uses of the mails to effect payment for, and to obtain delivery of, the purchased securities were sufficient under rule X-10B-5, and that it was not necessary that the mails or instruments of interstate commerce be used to transmit the particular misrepresentation complained of; and (4) that the statute of limitations reference in a rule X-10B-5 action for damages is the statute of limitations of the forum jurisdiction applicable to actions for fraud.

In *Falco v. Donner Foundation, Inc.* an action was brought pursuant to section 16 (b) of the Securities Exchange Act to recover profits resulting from certain purchases and sales of Pittsburgh Steel Company equity securities by the defendant, a 10 percent stockholder. Both the purchases and sales involved in the litigation were executed simultaneously. The stockholder plaintiff in the action computed substantial profits by adding dividends which had been declared to the price at which the securities were sold. The Commission filed a brief amicus curiae taking the position that, although the transactions were subject to section 16 (b), the prices at which they were executed gave rise to no profit. The court agreed with the views expressed by the Commission. An appeal to the United States Court of Appeals for the Second Circuit is pending.

In *Pellegrino v. Wright* the Commission argued, amicus curiae, that section 16 (b) did not impose a penalty, and that therefore the right of action survived after the

death of the defendant. The District Court for the District of Maryland agreed with this construction and refused to dismiss an action brought under that section against the estate of an officer who had engaged in short-term trading in the securities of his company.

Further proceedings were had during the 1953 fiscal year in two section 16 (b) cases discussed in the 18th Annual Report. In *Jefferson Lake Sulphur Co. v. Walet* the United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court granting judgment in the full amount claimed by the plaintiff. In *Pellegrino v. Nesbit* the United States Court of Appeals for the Ninth Circuit reversed a decision of the United States District Court for the Southern District of California which refused to permit a security holder to intervene in a section 16 (b) action. That case was remanded to the District Court for appropriate proceedings.

Kaiser-Frazer Investigation and Litigation with Otis & Co.

The Commission's investigation into the circumstances surrounding the failure of a stock offering by Kaiser-Frazer Corporation in early 1948 has resulted in an extensive series of administrative and court proceedings. Accounts of prior proceedings appear in the 15th, 16th, and 18th Annual Reports of the Commission. At the beginning of the present fiscal year there were pending before the Commission an administrative proceeding to determine whether the registration of Otis & Co. as a broker-dealer should be revoked and whether it should be suspended or expelled from the NASD, and an appeal by Otis & Co. from an order of the NASD suspending it from membership for 2 years.

After the United States District Court for the Southern District of New York had entered judgment in favor of Kaiser-Frazer in that corporation's suit against Otis & Co. for breach of its underwriting contract, the Commission sought and obtained a temporary restraining order from the United States District Court for the Northern District of Ohio restricting various activities by and with respect to Otis & Co. Shortly thereafter, Otis & Co. filed a petition in the same court for reorganization under chapter X of the Bankruptcy Act. In its order approving the reorganization petition, the court restrained all persons from commencing or continuing any actions or proceedings against the debtor. The Commission, appearing specially in its capacity as the agency charged with the administration of the Securities Act and the Securities Exchange Act, sought clarification or, if necessary, modification of this order so as to preclude any question of the propriety of its continuing the prosecution of the two administrative proceedings pending before it and the injunction action pending in the District Court. In an order dated April 7, 1952, the reorganization court construed its previous order as prohibiting the prosecution of all three proceedings, but modified the order to permit further prosecution of the Commission's injunction action. The

Commission filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit insofar as the order restrained the Commission from continuing the prosecution of the two administrative proceedings pending before it.

Before the appeal was argued, the United States Supreme Court denied a petition by Kaiser-Frazer Corporation for a writ of certiorari to review a decision by the United States Court of Appeals for the Second Circuit which reversed the judgment against Otis & Co. in the New York breach of contract action.

Thereafter the reorganization court granted Otis' motion for dismissal of the proceedings under chapter X and removed the injunction provisions contained in its order approving the petition for reorganization as modified by its order of April 7. On January 8, 1953, the Commission filed a motion in the Sixth Circuit to vacate or reverse the April 7 order of the reorganization court on the ground that the controversy was moot and, on February 2, 1953, the Court of Appeals entered an order vacating the order appealed from. On May 6, 1953, the United States District Court entered an order dismissing the Commission's action for an injunction.

Meanwhile, on March 23, 1953, the Sixth Circuit had issued its opinion affirming the approval of the settlement of the stockholders' actions which had been instituted against Kaiser-Frazer after the collapse of its stock offering in 1948.

On March 25, the Commission directed the resumption of its broker-dealer proceedings against Otis & Co. and, at the same time, ordered a further public investigation into the 1948 Kaiser-Frazer stock offering, such investigation to cover the facts and circumstances surrounding the preparation, filing and review of the registration statement. After motions by Otis & Co. in the broker-dealer proceedings to direct Commission counsel to incorporate testimony previously taken and to quash subpoenas or to dismiss the proceedings were denied, the hearings were resumed on May 5. After a brief session on that date, the hearings were adjourned until May 26 and thereafter several days of testimony were heard.

On June 10, 1953, James F. Masterson and D. Bernard Heffernan, who had been subpoenaed to appear as witnesses in the proceeding against Otis & Co., filed an action in the United States District Court for the Eastern District of Pennsylvania in which they sought to quash the subpoenas and to stay all proceedings pending the disposition of their complaint. The court issued a rule, returnable on June 24, to show cause why the application for a stay should not be allowed and ordered all proceedings to be stayed meanwhile. On June 16, the court issued an order clarifying the rule to show cause to stay only the return date of the subpoenas* served on the plaintiffs in the action. On the same date, the Commission filed a motion to dismiss the action and an answer to the rule to show cause.

PART III ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 provides for three areas of regulation of public utility holding company systems. The first embraces those provisions of the Act which require the physical integration of the public utility and related properties of a holding company system and the simplification of intercorporate relationships and financial structures of the system. The latter includes the removal of unnecessary holding company complexities, the correction of inequitable distribution of voting power among security holders, and the strengthening of the financial position of the system. The second area covers financing operations of holding companies and their subsidiaries, acquisitions and dispositions of properties and securities by such companies, their accounting practices and servicing arrangements and other intercompany transactions in holding company systems. The third includes a group of provisions of the Act designed to insure that newly created holding company or affiliate relationships shall meet prescribed standards and certain other provisions of the Act requiring a very limited degree of surveillance over exempt holding company systems.

INTEGRATION AND SIMPLIFICATION -- SUMMARY OF DEVELOPMENTS

At the beginning of the fiscal year 1953, there were forty active registered holding company systems. In addition, there were five registered holding companies which had disposed of all of their utility subsidiaries and were in the final stages of liquidation. These comprised a total of 437 companies of which 57 were predominantly holding companies, 192 were electric or gas utility companies and 188 were engaged in various other businesses. The 57 holding companies were registered as such and, in addition, three utility companies and one other company were also registered as holding companies.

By June 30, 1953 the number of active registered holding company systems had been reduced to 35. In addition there were 12 registered holding companies which no longer had any utility subsidiaries. Eight of the latter number were in process of final liquidation. The aggregate of all companies included in the foregoing totaled 385, of which 48 were holding companies, 173 were electric or gas utilities and 164 were nonutility companies.

The fiscal year 1953 witnessed substantial progress in clearing up the remaining problems under section 11 of the Act. Forty-six companies with aggregate assets of \$788 millions were divested by registered holding company systems.

[table omitted]

INTEGRATION AND SIMPLIFICATION -- INDIVIDUAL SYSTEMS

American Power & Light Co.

Since the Commission issued its order on August 22, 1942, requiring American Power & Light Co. to dissolve, numerous plans have been filed by the company under section 11 (e) of the Act for the purpose of compliance with this order. These developments are described in previous annual reports.

During the past fiscal year the company filed a plan providing for its final liquidation by means of the distribution of its remaining assets totaling approximately \$7,000,000 to the holders of its common stock, the only securities of the company remaining outstanding. These assets consisted of cash, United States Government securities and 10 percent of the outstanding common stock of Portland Gas & Coke Company. The Commission approved the plan on March 31, 1953, and on May 15, 1953, the United States District Court, District of Maine, also approved the plan and directed its enforcement. No appeal was taken.

On September 2, 1953, the company distributed to the holders of its common stock \$0.95 per share in cash, plus one share of Portland's common stock for each 43 shares of Power & Light's stock held. This resulted in the disposition by Power & Light of all of its holdings of Portland stock.

American Natural Gas Co.

On September 3, 1952, the Commission ordered hearings reconvened for the purpose of taking testimony on the question of the retention of the Milwaukee Solvay Coke Company in the American Natural Gas Company System. In its order dated December 30, 1947, approving a plan for the reorganization of United Light and Railways Company and American Light & Traction Company (now American Natural Gas Company) the Commission had reserved jurisdiction to pass upon this question, because it was anticipated that Milwaukee Gas Light Company, the immediate parent of Solvay, would convert to natural gas in which event the retainability of the coke and gas manufacturing facilities of Solvay might become questionable under the standards of section 11 (b) (1) of the Act [Holding

Company Act release No. 7951]. The matter was pending at the end of the fiscal year.

American Water Works & Electric Company, Inc.

As described in the 18th Annual Report, the United States District Court, District of Delaware, entered its order on September 17, 1952, approving and directing enforcement of the Commission's order of March 17, 1952 [Holding Company Act release No. 11095], approving the payment of a premium of \$10 per share, plus compensation for delay, on the \$6 Cumulative Preferred stock of Water Works. The company had previously liquidated and dissolved in compliance with section 11 (b). The additional payments were made on November 12, 1952.

Central Public Utility Corporation

This system had consummated four reorganization plans under section 11 (e) prior to January 1953. In brief, this accomplished the liquidation of substantial amounts of system debt, the retirement of the publicly held preferred stock of Consolidated Electric and Gas Company, a subsidiary holding company, and the recapitalization of the top holding company on a one stock basis. These plans and the United States district court enforcement proceedings in connection therewith are described in the 18th Annual Report. Following the consummation of these four plans the Commission granted applications for orders under section 5(d) of the Act declaring that Consolidated Electric and Gas Company [Holding Company Act release No. 11694]; and Christopher H. Coughlin, W. T. Crawford and Rawleigh Warner, Voting Trustees under a voting trust agreement dated August 1, 1932, for the common stock of Central Public had ceased to be holding companies [Holding Company Act release No. 11732].

During the past year Central Public Utility Corporation, the top holding company, filed another plan which provided for the distribution to its common stockholders of all of its holdings of the common stock of Central Indiana Gas Company and for the dissolution of two wholly owned subsidiaries, Central Natural Gas Corporation and Islands Gas and Electric Company [Holding Company Act release No. 11898]. Hearings were held on the plan in June 1953, but at the end of the fiscal year the matter had not been determined by the Commission.

On February 2, 1953 the Commission approved a plan under section 11 (e) which provided for the dissolution of Central Securities Transfer Company, an inactive subsidiary of Central Public [Holding Company Act release No. 11693]

Cities Service Company

Previous annual reports of the Commission have summarized the numerous proceedings under section 11 which had as their ultimate objective the disposal by Cities Service Company of all of its public utility interests. The 18th Annual Report described the plan for the reorganization of Arkansas Natural Gas Corporation ("ARKNAT"), a registered holding company subsidiary of Cities, which was approved by the Commission on October 1, 1952. Subsequently, the Commission applied to the United States District Court, District of Delaware, for an order approving and enforcing this plan.

Objections were filed with the court by the Public Common Stockholders Committee and the Class A Stockholders Committee, who attacked the Commission's findings approving the terms of the settlement of claims against Cities, particularly the claims arising out of the marketing of ARKNAT's Class A stock in the years 1929-30. The court was called upon to decide whether it was appropriate for the Commission to dispose of the claims controversy in its consideration of the amended plan rather than through the processes of litigation and whether the fairness of the settlement provided by the amended plan was supported by substantial evidence. The district court affirmed the Commission's determinations with respect to both questions and directed enforcement of the plan. Upon appeal by the Public Common Stockholders Committee, the order of the district court was affirmed by the United States Court of Appeals, Third Circuit, which pointed out in its opinion that the stockholders had not been affected adversely by the plan and that they should not be heard to complain. A petition for certiorari was denied.

In connection with the effectuation of the plan the Commission acted on a number of subsidiary matters. On May 4, 1953, the Commission approved an application of Arkansas Fuel Oil Corporation, formerly ARKNAT, to sell to the public \$23,000,000 of debentures [Holding Company Act release No. 11891]. Subsequently, due to failure of the company to receive any bids, the application was amended to propose the issuance and sale of \$23,000,000 of 60 day notes [Holding Company Act release No. 11969]. The Commission approved the amendment, and its order was approved by the district court [Holding Company Act release No. 11998].

A similar problem arose in connection with the proposed offering of \$25,000,000 principal amount of bonds by Arkansas Louisiana Gas Company, formerly a subsidiary of ARKNAT. The company offered these bonds at competitive bidding pursuant to the provisions of the original plan but rejected the two bids received because of high interest costs. Subsequently it made application to the Commission to approve the elimination of this provision from the original plan and indicated that it was considering alternative methods of obtaining funds to retire its funded debt and to finance its construction program. The Commission

approved amendments to the plan covering new financing proposals on July 22, 1953, and its order was approved by the district court.

On October 7, 1953 the Commission issued an order pursuant to section 5 (d) of the Act declaring that Arkansas Fuel Oil Corporation had ceased to be a holding company.

After the close of the fiscal year, Cities sold its entire interest of 33,746 shares of common stock of Republic Light Heat & Power Company, Inc. to National Fuel Gas Company, a nonaffiliated registered holding company, in compliance with the Commission's Order of October 12, 1944 directing Cities to dispose of its utility investments. In addition, Cities has advised the Commission pursuant to rule U-44 (c) that it had sold its entire interest in the capital stock of Tri-City Gas Company on July 16, 1953.

Cities had pending at the close of the fiscal year an application for approval by the Commission of the proposed sale by competitive bidding of its holdings in The Gas Service Company. Because of unfavorable market conditions, Cities has requested that the Commission defer action on the matter.

Derby Gas & Electric Corporation

Following the divestment by Ogden Corporation of its controlling interest in Derby Gas & Electric Corporation in 1943, Derby Corp. has functioned solely as a holding company over The Derby Gas and Electric Company, Wallingford Gas Light Company, Danbury and Bethel Gas and Electric Light Company and Derby Gas and Electric Corporation of Connecticut, all of which subsidiaries are public utilities under the laws of the State of Connecticut.

During the past fiscal year Derby Corp. filed a plan under section 11 (e) of the Act providing, among other things, for the merger of all the companies in the system into a single operating utility company, incorporated in Connecticut, whose name is proposed to be changed to The Housatonic Public Service Company. Housatonic will have authorized capital stock of \$10,000,005, divided into 666,667 shares with a par value of \$15 each, and an authorized funded debt in a principal amount not exceeding \$10,000,000. Upon completion of the merger Housatonic will have no public utility subsidiaries and therefore will not be subject to the Act. Hearings on the plan were held, and on October 9, 1953, the Commission entered an order approving the plan. The United States District Court, District of Connecticut approved and enforced the plan on November 16, 1953.

Eastern Utilities Associates

Except for increases in stock ownership in its subsidiaries, no changes have occurred in the organization of the Eastern Utilities Associates holding company system in the past fiscal year.

By order dated April 4, 1950, the Commission directed EUA either to terminate its existence or to acquire a minimum of 90 percent of the outstanding common stock of each of its subsidiaries and reclassify its common and convertible shares into a single class of stock. In the event the latter alternative was chosen, EUA was also directed to cause Blackstone Valley Gas and Electric Company, one of its subsidiaries, to dispose of its gas utility properties. As described in the 18th Annual Report, EUA elected the second alternative in its Amended Plan No. 4, which the Commission approved in its order dated December 18, 1952. The plan was approved and ordered enforced by the United States District Court, District of Massachusetts, on February 10, 1953. No appeal was taken. Subsequently EUA increased its holdings of the common stocks of all of its direct subsidiaries to amounts in excess of 97 per cent as required by the plan. To finance the acquisition of publicly held stock of one of its subsidiaries EUA borrowed \$9,000,000 from commercial banks. It is expected that these loans will be refunded with \$7,000,000 of collateral trust bonds and other funds as provided by the plan.

The plan also provided for certain supervision over the selection of the initial Board of Trustees of EUA to take office following the recapitalization of the company. However, after approval of the plan by the district court, the parties to the proceedings did not agree to the nominations to the new Board of Trustees submitted by EUA to the Commission. Accordingly, the Commission denied a supplemental application on February 26, 1953, for approval of the new Board. Subsequently, upon petition of EUA, the district court entered a further order which suspended, among other things, the operation of the plan's provision for the selection of EUA's reconstituted Board of Trustees and granted the company leave to file an amendment with the Commission proposing to increase the size of EUA's board and to omit the regular annual meeting of shareholders in 1953. The Commission's order of May 14, 1953, approving this amendment was ordered enforced by the district court.

Electric Bond and Share Company

As a result of numerous plans of reorganization, Electric Bond and Share Company had reduced its holdings by the beginning of the fiscal year to interests in four companies, Ebasco Services, Inc. (100 percent), Two Rector Street Corporation (100 percent), American & Foreign Power Company (54.6 percent), and United Gas Corporation (22.5 percent), plus other miscellaneous investments. Such plans and the proceedings before the Commission and the courts relating thereto have been summarized in previous annual reports.

On June 13, 1952, the company filed a final comprehensive plan which was designed to complete the resolution of its problems under section 11 of the Act. This plan, which provided for the transformation of Bond and Share to an investment company, was described in the 18th Annual Report. The Commission was unable to find the plan fair and equitable to the persons affected thereby and, accordingly, withheld its approval pending the filing of appropriate amendments. Among the objectionable features of the plan were the provisions for a discount of at least 25 percent on the price at which Bond and Share was to offer its holdings of United Gas stock to its stockholders, the provision for a three year period within which to distribute the United Gas stock, the absence of cumulative voting provisions in Bond and Share's charter, and a provision that Bond and Share would become exempt as a holding company pursuant to section 3 (a) (5) automatically upon completion of the proposed distribution of United Gas stock. Satisfactory amendments were filed and on February 20, 1953, the Commission approved the plan as modified.

On application by the Commission to the United States District Court, Southern District of New York, opponents of the plan contended that the Commission lacked power to permit Bond and Share to embark upon an investment program before it became entitled to an exemption under section 3 (a). The district court agreed with this view. The Commission filed a motion for reargument, after which the court ordered the proceedings returned to additional restrictions on the investment program of Bond and Share until such time as the company should have secured an exemption from the provisions of the Act and by the insertion of a commitment by Bond and Share to file and prosecute diligently an application for such exemption within a prescribed period of time following disposition of certain of its portfolio securities. The plan as modified was approved by the Commission on July 15, 1953. Shortly thereafter the district court approved the amended plan and directed its enforcement.

The plan as finally approved provides, among other things, that Bond and Share's holdings of United Gas common stock will be reduced to less than 5 percent of the total amount outstanding, that within 60 days after completion of the disposition program embodied in the plan Bond and Share shall file with the Commission an application for exemption under section 3 (a) (5), and that, during the period from the effective date of the plan to the date exemption is granted, Bond and Share will conform to the substantive requirements of the Investment Company Act of 1940 limiting its investments to those normally permitted for registered, closed-end, non-diversified investment companies. On October 5, 1953, Bond and Share distributed 892,561 shares of United Gas stock to its stockholders.

An appeal involving Bond and Share which had been pending in the United States Court of Appeals, Second Circuit, for nearly 2 years was disposed of during the fiscal year. Pursuant to plans filed in 1945 and 1946 which were approved by the Commission and ordered enforced by the district court, Bond and Share had paid to the holder of each share of its \$5 preferred stock \$100 in cash and also had delivered to each such holder a certificate evidencing the right to receive any additional amounts which the Commission or the courts might approve or direct. Subsequently, the Commission determined that no additional amounts should be paid to holders of the certificates. Appellants, a group of \$5 Preferred Stockholders of the company, had appealed from an order of the district court declaring these certificates to be void. After a protracted period of failure on the part of the appellants to prosecute the action the Commission moved successfully to dismiss the appeal.

Electric Power & Light Corporation

The Findings, Opinion and Orders of the Commission dated April 21 and May 23, 1952,³⁶ approving and denying claims for fees and expenses submitted by the numerous participants in the proceedings for the reorganization and dissolution of Electric Power & Light Corporation were described in the 18th Annual Report. Prior to the close of the preceding fiscal year, the Commission had applied to the United States District Court, Southern District of New York, for approval and enforcement of these orders. The application was opposed by several fee claimants whose claims had been allowed by the Commission in reduced amounts. The district court, in its order dated February 18, 1953, sustained the Commission's determinations. Four of the fee claimants filed notices of appeal from the district court's order with the United States Court of Appeals, Second Circuit on April 10, 1953. No decision had been rendered at the close of the fiscal year.

Engineers Public Service Company

The Commission's Findings, Opinion and Order dated March 26, 1952, approving and denying fees and expenses claimed by participants in the proceedings for the reorganization and dissolution of Engineers Public Service Company [Holding Company Act releases Nos. 11096 and 10306] was described in the 18th Annual Report. On May 8, 1952, the Commission made application to the United States District Court, District of Delaware for approval and enforcement of its order. No decision had been rendered at the close of the fiscal year.

General Public Utilities Corporation

General Public Utilities Corporation is the top holding company which emerged from the reorganization of the former Associated Gas and Electric Company

system. Steps taken in earlier years to bring about integration and simplification of this system are summarized in the 15th and 16th Annual Reports. In the 18th Annual Report there was described the order of the Commission dated December 28, 1951 [Holding Company Act release No. 10982], in which, among other things, GPU was directed to dispose of its interests in Northern Pennsylvania Power Company and its subsidiary, Waverly Electric Light and Power Company.

During the past fiscal year the GPU submitted proposals to comply with the Commission's order and also filed an application requesting that certain portions thereof be modified so as to permit the company to retain the electric properties of Northern Pennsylvania Power Company and the Waverly Electric Light and Power Company as part of its integrated electric system in Pennsylvania and New Jersey. The two proceedings were consolidated and hearings were held on September 15, 1953 [Holding Company Act release No. 12056]. The matter is pending before the Commission.

International Hydro-Electric System

The IHES system has been operated since 1944, pursuant to section 11 (d) of the Act, by Bartholomew A. Brickley as Trustee under appointment by the United States District Court, District of Massachusetts. A description of the system at the time of its registration and the earlier steps taken by the Trustee toward the eventual liquidation and dissolution of IHES and subsequent proposals to become an investment company are discussed in the 15th and subsequent annual reports.

As noted in the 18th Annual Report the Commission issued its Findings, Opinion, and Order on June 5, 1952, approving the execution by the Trustee, upon satisfactorily resolving the tax problems involved, of definitive contracts for the sale of all of the properties of Eastern New York Power Corporation ("ENYP"), a subsidiary, and the interests of IHES in two small subsidiaries. On March 12, 1953, the Trustee requested approval by the Commission of definitive contracts made by him pursuant to the order of June 5, 1952. The Trustee also requested authorization to apply the proceeds derived from the sale of the aforementioned properties and securities (i) to the retirement of ENYP's first mortgage 3% percent bonds due in 1961 in the principal amount of \$7,886,000, and (ii) to the retirement of the 30,000 shares of preferred stock of ENYP of the par value of \$100 per share or as a distribution to IHES as the holder of all of ENYP's common stock, or both, and as respects any amounts so received by IHES, to apply the same to the payment of its bank indebtedness in the principal amount of \$6,050,000. The proposal was authorized by the Commission on April 13, 1953, and approved by the United States District Court, District of Massachusetts on June 5, 1953. After the close of the fiscal year, on an appeal taken, by the

City of Plattsburg, New York, from that portion of the District Court's order which approved a contract between the Trustee for the sale of certain properties to New York State Electric and Gas Corporation, the decision of the District Court was affirmed.

Other sales of properties were approved by the Commission on April 28, 1953, and by the district court on June 16, 1953. Representatives of the Class A stockholders of IHES objected to approval of the proposal on the grounds, among other things, that the sale of the properties was no longer necessary because of changed conditions, that competitive conditions had not been maintained, and that the proposed sale price was inadequate. These objections were overruled by the court.

On September 30, 1953, after the close of the fiscal year, the Commission approved Step III of the amended plan filed by the Trustee which provided for (1) the retirement of IHES' outstanding cumulative preferred stock, \$3.50 series, \$50 par value, by the issuance to the holders of each share thereof of 5K common shares of Gatineau Power Company, together with a cash payment in an amount equal to the excess of any dividends paid on such Gatineau stock over the amount of quarterly payments in liquidation paid on the preferred stock from April 15, 1953, to the effective date of the exchange; and (2) for the nomination and election of a new board of directors of IHES. The Commission denied a petition for rehearing and related relief. Thereafter the district court approved Step III.

Interstate Power Company

Interstate Power Company (Del.) is an operating company which is also a registered holding company. It and its two subsidiaries are engaged principally in the electric utility business in Minnesota, Iowa, Wisconsin, Illinois, and South Dakota.

During the 1953 fiscal year the company has submitted proposals to the Commission for the solution of its existing section 11 problems which relate to the retainability of certain gas and transportation businesses along with its electric utility system. The Delaware company proposed, among other things, to sell its interest in its larger subsidiary, Interstate of Wisconsin, to Wisconsin Power and Light Company, a nonaffiliate. At the close of the fiscal year the matter was pending before the Commission.

Long Island Lighting Company

In 1949 the Commission approved a comprehensive plan pursuant to section II(e) providing for the consolidation of Long Island, then a registered holding company, and its two subsidiaries and for the recapitalization of the surviving

consolidated corporation. The plan was ordered enforced by the district court on February 10, 1950. A detailed description of this plan appears in the 16th Annual Report.

On February 3, 1953, the Commission issued its Findings, Opinion and Order approving and denying applications for fees and expenses claimed by the various participants in the reorganization proceedings. The committee representing the preferred stockholders of Long Island submitted claims for compensation which included an item representing expenditures incurred by the committee subsequent to the consummation of the plan in connection with a solicitation of proxies for the nomination and election of the initial board of directors of the new Long Island company. The Commission denied this request on the ground that the committee's activities regarding solicitation of proxies was unnecessary and that no valid reorganization purpose had been served thereby, since the plan itself specified the election procedures to be followed.

On February 25, 1953, the Commission filed a supplemental application with the United States District Court, Eastern District of New York, for approval and enforcement of its order. On May 11, 1953, that court entered its order approving the Commission's determinations with respect to all fee claimants except the committee. The court reversed and remanded that portion of the Commission's order which denied an allowance to the committee for reimbursement of proxy solicitation expenses. In its order the court stated that the Commission's findings of fact and conclusion of law were not supported by substantial evidence and were not arrived at in accordance with legal standards. The court added that the expenses in question arose out of the furnishing of desirable information to a substantial group of stockholders and that, accordingly, the validity of the committee's claim should have been recognized.

The Commission has filed an appeal from the decision of the district court with the United States Court of Appeals, Second Circuit.

Market Street Railway Company

Market Street Railway Company was formerly a nonutility subsidiary of Standard Gas and Electric Company. By order dated October 24, 1950, the Commission had approved a plan for the liquidation and dissolution of Market Street pursuant to section 11 (e).

On November 21, 1950, the United States District Court, Northern District of California, Southern Division, approved and directed enforcement of Step I of the plan. This step provided for the settlement of certain claims between Market Street and its affiliates, the payment of certain fees and expenses to participants in the reorganization proceedings, the payment of a partial liquidating distribution

of \$15 per share to the holders of the company's 6 percent cumulative Prior Preference Stock, and dissolution.

Step II provided for the subsequent payment of such fees and expenses in connection with the plan as might be awarded by the Commission, and the distribution of remaining cash of the company to the holders of Prior Preference Stock. On May 13, 1953, the Commission approved an amendment to Step II, which in substance provided for a second partial distribution of \$3.50 per share to the Prior Preference stockholders, the payment of fees and expenses to certain participants in the reorganization proceedings, and the distribution of the remaining cash to the Prior Preference stockholders. The amendment made no provision for severance payments to former employees of Market Street. Upon application by the Commission, the district court approved the amendment and directed its enforcement on July 3, 1953.

An appeal from an order of the Commission denying the application for fees and expenses by an attorney participant in the Market Street reorganization proceedings was terminated during the fiscal year. In its order approving the plan for liquidation of Market Street, the Commission denied the claim for fees and expenses submitted by an attorney for a stockholders' committee, who had been instrumental in affecting the settlement of intercompany claims between Market Street and Standard Gas, but whom the Commission found had lost his independence in representing his client. The district court found that the facts of the case did not warrant the denial in toto of the attorney's fees and remanded the matter to the Commission with instructions to determine the appropriate amount of such fee. The Commission appealed to the United States Court of Appeals, Ninth Circuit. On December 15, 1951, the court of appeals reversed that portion of the district court's order which related to the denial of the attorney's fee application by the Commission. After reargument of the matter, the court of appeals changed its determination and affirmed the decision of district court on December 22, 1952. No petition for a writ of certiorari was filed.

Middle South Utilities, Inc.

Middle South Utilities, Inc., a holding company organized in 1949, acquired from Electric Power & Light Company the latter's interests in Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Company, Inc. and Gentilly Development Company, Inc., a real estate company.

On March 20, 1953, the Commission issued an order under section 11 (b) (1) directing Arkansas Power to dispose of its steam business and directing Louisiana Power and Mississippi Power to dispose of certain water properties. On July 7, 1953, Gentilly was liquidated and dissolved.

Niagara Hudson Power Corporation

The final plan for consolidation and dissolution of the Niagara Hudson system, which is described in the 16th Annual Report, brought about the consolidation of the numerous companies of this system into the present Niagara Mohawk Power Corporation and the subsequent dissolution of Niagara Hudson.

In its Memorandum Opinion and Order dated January 14, 1953, the Commission authorized and directed Mohawk, as successor in interest to Niagara Hudson, to pay fees of \$428,895 and expenses of \$443,598 to various participants in the reorganization proceedings. The fees allowed several claimants were in amounts less than those requested, and the claims of others were denied. The application for additional compensation by a law firm representing three corporate holders of Niagara Hudson common stock was denied on the ground that the firm did not contribute to the developments or modification of the plan, and that the firm did not represent the common stockholders as a class. The Commission also denied in toto the application of United Corporation, the former parent of Niagara Hudson, for reimbursement of the fees and expenses paid to counsel and other experts which it had employed in connection with the proceedings. In its opinion, the Commission stated that United had a statutory duty to bring about the compliance of its subsidiaries with the standards of section 11 and for that reason United, and not its subsidiaries, should bear the expense of such compliance. The Commission also observed that compliance by its subsidiaries was a necessary prelude to compliance by United itself.

On March 12, 1953, the Commission made application to the United States District Court, Northern District of New York, for approval and enforcement of its order. The law firm and United filed objections. On September 15, 1953, the district court affirmed the Commission's order and directed its enforcement. As of October 29, 1953, no appeal had been taken.

Northern New England Company New England Public Service Company

As a result of simplification proceedings instituted by the Commission under section 11 (b) (2) New England Public Service Company ("NEPSCO") and Northern have been in the process of liquidation and dissolution. A summary of prior proceedings relating to this system is set out in the 18th Annual Report. On February 13, 1953, the Commission approved the amended plans for the final liquidation and dissolution of Northern and NEPSCO. The United States District Court, District of Maine, approved the plan and ordered it enforced on March 25, 1953. No appeal was taken. The plans provided for the distribution of NEPSCO's portfolio stocks to the holders of its preferred and common stocks in the approximate proportion of 82 percent to the preferred and 18 percent to the

common. They also provided for the acquisition by Northern, of the portfolio stocks of NEPSCO allocable to it as the owner of 32.5 percent of NEPSCO's common stock and for the distribution of its remaining assets to its single class of shareholders. Pursuant to the plans the assets of both companies, other than cash reserved for reorganization expenses, have been distributed to their respective security holders.

The North American Company

The plan for the final liquidation was described in the 18th Annual Report. Upon application by the Commission, the plan was approved and ordered enforced on December 11, 1952, by the United States District Court, District of New Jersey. No appeal was taken and the plan is in process of consummation.

Shortly before the close of the preceding fiscal year, the Commission approved a plan filed by North American pursuant to section 11 (e) providing for the dissolution of its investment company subsidiary, North American Utilities Corporation [Holding Company Act release No. 11390]. This plan was described in the 18th Annual Report. The United States District Court, District of Maryland, found the plan fair and equitable and issued its enforcement order on September 16, 1952. No appeal was taken.

Northern States Power Company (Minn.) Northern States Power Company (Del.)

Northern States Power Company (Minn.) is an operating-holding company engaged, either directly or through its subsidiaries, in the electric and gas utility business in the States of Minnesota, Wisconsin, North Dakota, and South Dakota. The system also provides steam heating, telephone and water services. Approximately 89 percent of the total consolidated operating revenues of the system are derived from sales of electricity, 9 percent from gas, and 2 percent from heating, water, and telephone services.

On September 22, 1952, the Commission instituted proceedings pursuant to section 11 (b) (1) to determine which of the electric or gas utility properties of the system constitute integrated systems and which of the nonutility businesses, if any, could be retained under the standards prescribed by the Act. Hearings were commenced January 28, 1953, and subsequently the Commission granted the company's motion that these proceedings be consolidated with those relating to the company's application for exemption as a holding company pursuant to section 3 (a) (2) which had been filed on March 5, 1953. Extensive hearings have been held in the consolidated proceedings [Holding Company Act release No. 11762].

On June 6, 1952, the Commission filed an application with the United States District Court, District of Minnesota, for approval and enforcement of its order dated April 8, 1952, approving and denying fees and expenses claimed by the participants in the various proceedings which led to the dissolution of Northern States Power Company (Del.), formerly a parent of the Minnesota company. A discussion of this order and the accompanying memorandum, findings, and opinion appears in the 18th Annual Report. The court rejected the Commission's determination as to the amount of fees to be allowed to four of the 6 claimants who had filed objections, but sustained the Commission's position as to the other 2 fee applications. The Commission and Standard Gas and Electric Company appealed from this decision to the United States Court of Appeals, Eighth Circuit. The matter was pending in the court of appeals at the close of the fiscal year.

Pennsylvania Gas & Electric Corporation

As indicated in the 18th Annual Report, the Commission on June 5, 1952, disapproved a plan which had been submitted by Pennsylvania Gas & Electric Corporation ("Penn Corp") to effect its liquidation and dissolution. In an amended plan, submitted in September 1952, Penn Corp undertook to make distributions to its stockholders in the proportions specified by the Commission. It also proposed to change the form of the allocations so as to distribute separately the common stocks of its two operating subsidiaries, North Penn Gas Company and Crystal City Gas Company. The amended plan provided that the preferred stockholders of Penn Corp would receive all the common stock of North Penn and 35 percent of the common stock of Crystal City; and that the Classes A and B stockholders of Penn Corp would receive 52 and 13 percent, respectively, of the Crystal City common stock. Penn Corp's preferred stockholders would also receive a cash payment equivalent to the accrual of dividends thereon from December 31, 1950, to the date of consummation of the plan. After further hearings, the Commission approved the plan as amended on December 15, 1952.

Upon application by the Commission to the United States District Court, District of Delaware, the amended plan was unopposed and the court approved the plan and ordered it enforced on January 27, 1953. No appeal was taken. Penn Corp's board of directors designated February 19, 1953, as the consummation date of the plan.

Republic Service Corporation

By the beginning of 1948 the Republic Service Corporation system had been reduced in size to a point where it consisted solely of five electric utility subsidiaries, all of which were organized and doing business in the State of Pennsylvania, and one service company subsidiary incorporated in Delaware.

In its order dated April 29, 1948, the Commission approved a plan filed by Republic under section 11 (e) in which the company proposed, among other things, that Republic organize a new Pennsylvania corporation to take over all of Republic's assets and liabilities and issue a single class of new common stock to Republic, which would deliver all of such stock to the holders of its own preferred stock and thereafter dissolve. The plan further provided that the new Pennsylvania corporation would apply for an exemption pursuant to section 3 (a) (1) as an intrastate holding company system. The plan was approved by the Commission and ordered enforced by the United States District Court, District of Delaware, on May 28, 1948. On August 23 of that year, before the plan had been consummated, Republic amended its plan, with the court's permission, so as to defer until not later than December 31, 1953, the organization of the new Pennsylvania corporation and thereby retain for Republic's stockholders the tax benefits accruing from certain capital loss carry-overs. The plan also provided that, in lieu of the formation of the new Pennsylvania corporation, Republic would continue in operation temporarily as a holding company and recapitalize on a one-stock basis by distributing 70,324 shares of new \$10 par value common stock to the holders of its outstanding preferred stock. The amended plan was approved by the Commission, ordered enforced by the district court by order dated September 17, 1948, and subsequently was consummated. Jurisdiction was reserved by the Commission over the formation of the new Pennsylvania corporation and related matters.

Subsequently, Republic sold 1 of its 5 electric utility subsidiaries and caused the merger of three others. At the beginning of the fiscal year 1953, the company had interests in only 3 subsidiaries: Brockway Light, Heat & Power Company, Cumberland Valley Electric Company and Republic Service Management Company.

On November 25, 1952, the Commission approved a proposal of Republic to exchange its interest in Brockway for 20,150 shares of the-common stock of General Public Utilities Corporation ("GPU"). In connection with this transaction, Republic consented to the imposition by the Commission of a condition that it dispose of the GPU stock within one year or cease to be a holding company [Holding Company Act release No. 11603].

Southern Company

As described in the 18th Annual Report the Commission approved a plan filed pursuant to section 11 (e) in which it was proposed that Birmingham Electric Company be merged into Alabama Power Company. Both companies were subsidiaries of Southern. On November 26, 1952, the United States District

Court, Eastern District of Alabama, approved the plan and ordered it enforced. No appeal was taken.

Southern Natural Gas Company

Southern Natural Gas Company operates a natural gas pipeline system extending from gas fields in Texas, Louisiana, and Mississippi to markets in Alabama, Georgia, and Mississippi.

During the past fiscal year Southern filed a plan pursuant to section 11 (e) providing for the divestment of its entire interest in Alabama Gas Corporation, which was the company's only public utility subsidiary. The plan proposed that the common stock of Alabama be distributed pro rata to the holders of the common stock of Southern at the rate of 0.24306 shares of Alabama stock for each share of Southern stock. The Commission approved the plan on March 4, 1953, and on April 8, 1953, after the distribution of Alabama stock had been completed, the Commission entered a further order pursuant to section 5 (d) declaring that Southern had ceased to be a registered holding company.

Standard Power and Light Corporation Standard Gas and Electric Company Philadelphia Company

As reported in the 18th Annual Report, Steps I and IA of the Standard Gas and Electric Company plan were approved by the Commission on October 1, 1952. Step I accomplished the retirement of Standard Gas' \$7 and \$6 Prior Preference stocks and Step IA effected the final settlement of all intercompany claims as between Standard Gas and its parent, Standard Power. These steps reflected a compromise effected among representatives of the various participants in the proceedings. These steps were approved and ordered enforced by the United States District Court, District of Delaware, on November 7, 1952, and the distributions required by the plan were made on December 1, 1952.

Previously, on July 24, 1952, the Commission had approved a plan of Standard and Philadelphia Company ("Philadelphia") for the partial liquidation of Philadelphia designed to provide Standard Gas with 1,004,958 shares of common stock of Duquesne Light Company substantially all of which was required to carry out Steps I and IA of the Standard Gas plan described above.

The compromise which made possible the consummation of Steps I and IA also covered Step II of the Standard Gas plan, pursuant to which its \$4 Cumulative Preferred stock was retired by the exchange for each share thereof of four shares of common stock of Duquesne Light Company. Subsequently, the Standard Gas plan was further amended by the filing of Steps IIA and IIB

representing the results of an agreement reached after extended discussions between representatives of Standard Gas and its stockholders and representatives of the publicly held common stock of Philadelphia, who had alleged certain acts of mismanagement of Philadelphia on the part of Standard Gas and claimed that they were entitled to better treatment than that accorded Standard Gas in the liquidation of Philadelphia. Steps IIA and IIB provided for the retirement of the publicly held common stock of Philadelphia and also proposed alternative means for furnishing to Standard Gas shares of Duquesne common stock required for the consummation of Step II of its plan. The plan, as thus amended, provided for the retirement of the publicly held common stock of Philadelphia on the basis of a distribution to them for each share of such stock of 0.885 shares of Duquesne common stock with Standard Gas receiving the balance of the net assets of Philadelphia. This treatment resulted in the public common stockholders being accorded a slightly greater participation than would have been the case if they had shared on a pari passu basis. This plan was approved by the Commission on March 13, 1953, and was approved and ordered enforced by the United States District Court, District of Delaware on April 20, 1953. No appeal was taken and the plan was consummated on April 27, 1953.

The outstanding securities of Standard Gas at June 30, 1953, consisted only of its common stock of 2,163,607 shares. There has been no final determination of its liability for Federal income and excess profit taxes for the years 1942 through 1950, and there are major items of dispute between the Treasury Department and the system companies as to the amounts of such tax liabilities. In addition, claims aggregating over \$6 million for fees and expenses for services rendered by the various participants in the proceedings involving Standard Gas and Philadelphia under section 11 have been asserted against those companies.

At June 30, 1953, Standard Gas owned all of the 5,040,440 shares of the outstanding common stock of Philadelphia, 16,903 shares of the common stock of Duquesne, 3,178 shares of the common stock of Oklahoma Gas and Electric Company and 46,834 shares of the common stock of Wisconsin Public Service Corporation. Its other assets include cash, the capital stocks of two inactive nonutility subsidiaries, a short term note of Philadelphia in the principal amount of \$2,500,000, and whatever potential value may be realized in the event of any reduction of Federal tax liabilities for past periods.

As described in the 18th Annual Report, the Commission in April 1952 approved the first major plan for the simplification of the corporate structure of the Philadelphia holding company system which provided for retirement of the 5 and 6 percent noncallable preferred stocks of the parent company. This plan was approved and ordered enforced by the United States District Court, Western District of Pennsylvania, on October 7, 1952. No appeal was taken and the plan was consummated on November 1, 1952. The next step in the simplification of

Philadelphia took the form of a plan for the retirement of the company's \$5 Cumulative Preference stock. This was approved by the Commission on December 31, 1952, and the plan was approved and ordered enforced by the United States District Court, Western District of Pennsylvania on January 30, 1953. No appeal was taken and the plan was consummated on February 2, 1953, by the exchange of 3.6 shares of Duquesne common stock for each share of Philadelphia's \$5 preferred stock.

This plan completed the retirement of Philadelphia's preferred stocks, and the company's outstanding securities at June 30, 1953, consisted of 5,040,440 shares of common stock, all of which is owned by Standard Gas, \$3,500,000 principal amount of 3% percent bank loan notes maturing August 21, 1954, and the \$2,500,000 note due to Standard Gas. Philadelphia owned 1,360,524 shares, or approximately 23 percent of the 6,000,000 outstanding shares of Duquesne common stock; 24,264 shares, or 4.41 percent of the 4 percent Cumulative Preferred stock of Duquesne, 547,678 shares, or 50.9 percent of the common stock of its nonutility subsidiary, Pittsburgh Railways Company; all of the common stock of Equitable Auto Company, a subsidiary service company; and certain real estate in the City of Pittsburgh.

The proposed sale of Philadelphia's office building in the City of Pittsburgh described in the 18th Annual Report was consummated in the spring of 1953. The building was sold to the Mellon National Bank and Trust Company and leased by the purchaser to Duquesne for a period of 35 years. The proceeds from such sale were used to discharge the mortgage on said property and to reduce Philadelphia's bank loan notes to \$3,500,000. Objections to this plan had been raised on the ground that competitive conditions were not maintained in the sale of the property. The Commission held, however, that competitive conditions had been sufficiently maintained to satisfy the requirements of the Act and it approved the plan on March 23, 1953. The United States District Court, Western District of Pennsylvania, approved the plan and directed its enforcement on April 17, 1953.

On May 18, 1953, the Commission approved a plan submitted by Standard Power for the retirement of its outstanding issue of 34,054 shares of \$7 Cumulative Preferred stock on a voluntary basis, at the redemption price and dividend arrearages aggregating \$212.82 per share, payable on the basis of three shares of Duquesne common stock and five shares of Wisconsin common stock, both at market value, plus cash. Approximately 62 percent of the preferred stock was tendered for exchange and the remainder was called for redemption in cash. Since this plan provided solely for voluntary actions by the affected parties, no application to the district court for enforcement was necessary. The remaining outstanding securities of Standard Power consist of two series of common stock and short term bank loan notes in the principal amount of \$1,500,000.

In connection with the latter plan Standard Power has advised the Commission of its intention to request a modification of the Commission's 1942 order requiring the company to liquidate and dissolve, so as to permit the company to continue in business as a registered investment company. No application or declaration in this respect has been filed with the Commission.

The United Gas Improvement Company

The 18th Annual Report contains a description of the plan for reorganization of The United Gas Improvement Company ("UGI"), which provided in substance for the transformation of UGI into a Pennsylvania operating utility company. Following approval of the plan by the Commission on September 18, 1952 and the entry of an order by the district court on November 12, 1952 directing its enforcement, the various steps of the plan, with minor exceptions, were consummated by July 31, 1953. No appeals were taken.

On September 18, 1953, UGI filed an application with the Commission pursuant to section 5 (d) requesting an order declaring that the company has ceased to be a holding company. The application was granted on October 2, 1953.

United Public Service Corporation

Application was made to the United States District Court, District of Delaware, for approval and enforcement of the plans which had been approved by the Commission in 1948 and 1952 providing for the liquidation and dissolution of United Public Service Corporation by distribution of the company's assets to its stockholders. The plan also contained detailed provisions for the location of security holders, as well as provisions designed to permit any person having a claim against the company, but as to which the plan contained no specific provision, to file proofs of such claims in the enforcement courts, and have them disposed of as the latter might direct. The United States District Court, District of Delaware, approved the plan and ordered it enforced on October 31, 1952. No appeal was taken.

Wisconsin Electric Power Company

Wisconsin Electric Power Company is an operating-holding company controlling a utility system which furnishes electricity in Wisconsin and Michigan, natural gas in Wisconsin and steam heating service in Wisconsin.

In 1950 the Commission instituted proceedings pursuant to section 11 (b) (1) to determine what properties could be retained in WEPCO's electric holding company system. No determination of this issue has been made. In the

meantime the company filed a voluntary plan pursuant to section 11 (e), which the Commission approved December 24, 1952, providing for the sale of WEPCO's subsidiary, Milwaukee Electric Railway & Transport Company, of its transportation properties which the record made in the section 11 (b) (1) proceedings clearly showed were not retainable in the system. These were to be sold to the Milwaukee & Suburban Transport Corporation, a non-affiliated company, for a consideration consisting of \$4 million cash, \$3 million principal amount of 5 percent secured promissory notes and \$3 million par value of 5 percent cumulative preference stock of Suburban Transport. In this connection the Commission authorized Milwaukee Railway to retain the securities received from Suburban Transport on a temporary basis. The sale was consummated on January 28, 1953.

The remaining problems of WEPCO under section 11 relate to the retention of certain gas and auto parking facilities with the electric business of the system. Hearings on these matters are in progress.

FINANCING OF REGISTERED PUBLIC UTILITY HOLDING COMPANY SYSTEMS

Aside from reorganizations and dispositions of properties undertaken in compliance with section 11, the financing operations of registered holding company systems have accounted for the major portion of the transactions required to be acted upon by the Commission under the Act. In spite of the continued contraction of systems as a consequence of the operation of section 11, the volume of financing by these systems in 1953 reached almost the same level as that recorded for 1952.

During the 12 months ended June 30, 1953, 311 matters were presented for determination pursuant to sections 6 and 7 of the Act, relating to the issuance of securities and assumptions of liability and alterations of rights of securities holders by registered holding companies and their subsidiaries. A total of 320 matters were disposed of during the year, including a few carried over from the latter part of the preceding year. All but 36 related to issuances of securities. In the fiscal year 1952, 352 matters were presented for determination and 374 were disposed of. All but 32 of the latter related to the issuance of securities.

The following table sets forth for the fiscal years 1952 and 1953 the volumes of securities of various types sold for cash, or issued in exchange for refunding purposes, by registered holding companies and their subsidiaries under sections 6 and 7 of the Act. Portfolio sales and issues in connection with reorganizations are excluded.

[table omitted]

The increase of 15 percent in the number of issues sold in 1953, accompanied by a 10 percent decrease in dollar volume, is accounted for principally by recurring issues of small amounts under blanket authorizations for long term construction commitments and intercompany stock purchase agreements. Of the total sales of securities of \$993,328,444 by registered holding companies and their subsidiaries in 1953, \$719,295,659 were purchased by stockholders of top holding companies and by outside purchasers. This represented the net external financing of registered systems for the year. The balance of \$274,032,785 represented direct purchases of subsidiaries' securities by their respective parent holding companies. Approximately one-half of the latter amount consisted of additions to the common equity of the subsidiaries. Nearly 83 percent of the \$145,015,261 of securities sold by holding companies were common stocks. The continuation of the high level of financing activity by registered systems during 1953 followed the pattern of the electric and gas utility industries as a whole. This is demonstrated by the following table which summarizes the volume of securities sold for cash in the past 2 years by all electric and gas utilities, including holding companies and gas transmission companies. Because of the inclusion of the last mentioned two types of companies for the first time this year, these tables are not comparable with those appearing in previous annual reports.

[table omitted]

The net external financing of \$719 million completed by registered systems in 1953 accounted for 26 percent of the total volume of financing of \$2,752 million for the entire electric and gas utility industries of the country. The following table shows the volumes of the various types of securities included in these amounts.

[table omitted]

As in previous years, registered holding company systems and the industry as a whole have continued to sell ample amounts of common stock thereby maintaining the fiscal position which has been characteristic of this business since the close of World War II.

On the basis of industry estimates of construction expenditures for 1953 and 1954, it was anticipated that the volume of permanent financing by electric and gas utilities for the fiscal year 1953 would register some increase over 1952. The projected increase in outlays for new plant facilities materialized, but sales of long-term securities to finance these additions declined slightly as noted above. The difference was made up from retained earnings and temporary borrowings. This is illustrated by the following summary table:

[table omitted]

The construction expenditures recorded for the fiscal year 1953 established a new high record and industry projections indicate a further modest increase in 1954. Consequently, it appears reasonable to expect a continuation of the high level of utility financing which has been in evidence during the past 2 years.

Until recently it has been the policy of the Commission in the administration of the Act to require that sales of additional common stock by registered holding companies be made by means of rights offerings to their common stockholders except where it could be shown that unusual circumstances were present. During the year the Commission directed its staff to undertake a detailed study of the results of several rights offerings by a group of companies subject to the Act and another group not subject to the statute. As a consequence of this reexamination of the problem the following new policy was announced: "* * * it is our view that, while there are many advantages to a rights offering, these advantages are not so conclusive as to warrant a strict policy in favor of rights as against an underwriting by competitive bidding without an offer to stockholders. Accordingly, it will be the policy * * * not to insist upon a rights offering where management can make a showing that an underwriting by competitive bidding without an offer to stockholders would be preferable." [Footnote: Letter dated April 8, 1953, from Director, Division of Public Utilities (now Division of Corporate Regulation) to each registered holding company system, by direction of the Commission.]

It is still too early to evaluate the effects of this change of policy. Subsequent to the announcement, six companies subject to the Act have offered common stock by means of rights and two have sold their shares to the public through competitive bidding.

As indicated by the following table, the rights offering procedure has been employed in the majority of common stock financings by registered holding company systems and by all other electric and gas utilities during the fiscal year 1953:

[table omitted]

At least 60 percent of all common stock offerings by the electric and gas utility industries since 1948 have been effected by rights offerings.

There have been two other observable developments in the pattern of rights offerings during 1953. The number of rights offerings undertaken without the benefit of underwriting has increased substantially in proportion to the number of underwritten transactions, and in the latter category there has been a noticeable

tendency toward omission of the additional subscription privilege. These trends are illustrated by the following table.

[table omitted]

Sales of securities by registered holding companies and their subsidiaries pursuant to sections 6 and 7 and portfolio sales by registered holding companies under section 12 (d) are required to be made at competitive bidding in accordance with the provisions of rule U-50. Certain special types of sales, including issues of less than \$1 million, short term bank loans, issues the acquisition of which have been authorized under section 10 and pro rata issues to existing security holders, are automatically exempt from the competitive bidding requirements under clauses (1) through (4) of paragraph (a) of the rule. In clause (5) of paragraph (a), the Commission retains the right to grant exemptions by order where it appears that competitive bidding is not necessary or appropriate to carry out the provisions of the Act.

A table showing numbers of issues and amounts of the various classes of securities sold at competitive bidding since the effective date of the rule and for the fiscal year 1953, is set forth below:

[table omitted]

As previously indicated, a total of \$993 million of securities were sold for cash in the fiscal year 1953 by registered holding companies and their subsidiaries. The difference of \$394 million between this amount and the \$599 million of securities sold at competitive bidding is accounted for by \$307 million of securities automatically exempt pursuant to clauses (1) through (4) of paragraph (a) of the rule and \$87 million of issues exempted by order. During the past fiscal year five issues were exempted from competitive bidding requirements by orders. One issue of bonds privately placed by Electric Energy, Inc., accounted for \$65 million of this amount. [Footnote: This was an authorization of a long term commitment to finance construction. Only small amounts have been taken down under this agreement.] The following table summarizes the numbers of issues and volumes of securities exempted in this manner from the effective date of the rule to June 30, 1953.

[table omitted]

LITIGATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT

During the fiscal year 1953 the Commission participated in more judicial proceedings involving issues arising under the Act than in any previous year. The

court proceedings numbered 44, as compared with 22 in the fiscal year 1952 and 18 in the fiscal year 1951. Of the 44 proceedings, 12 had been pending at the beginning of the year and 32 were initiated during the year. The following is a summary description of such proceedings:

Applications to district courts under section 11 (e): 26

Applications to district courts under section 11 (d): 2

Appeals from orders of district courts under section 11 (e): 6

Petitions to review Commission orders under section 24 (a): 6

Petitions to Supreme Court for writ of certiorari: 2

Proceeding in which Commission intervened: 1

Mandamus proceeding by Commission: 1

Total: 44

Thirty-two of these 44 were finally adjudicated, and in each such instance the position of the Commission was upheld. The remaining 12 cases were pending at the close of the fiscal year.

Proceedings Under Section 11 (e)

The following table summarizes the disposition by United States district courts during the fiscal year 1953 of applications for orders to enforce plans approved by the Commission pursuant to section 11 (e):

[table omitted]

Information about the cases tabulated above and the 6 additional cases pending on appeal from orders by the district courts under section 11 (e) is included in the descriptions of the progress of the various holding company system reorganizations and in the appendix tables.

Petitions To Review Orders of the Commission Pursuant to Section 24 (a)

The Commission participated in 6 proceedings during the past fiscal year which were initiated by petitions to United States courts of appeal to review its orders pursuant to section 24 (a). Three were pending at the beginning of the fiscal year and 3 were initiated during the year. One of the 6 petitions was withdrawn, 3

were dismissed and 1 was pending in the court at the close of the fiscal year. A petition for a writ of certiorari was filed with the United States Supreme Court to review the decision of the court of appeals in the sixth case.

One of the petitions involved an order of the Commission dated February 6, 1952, denying Electric Bond and Share Company relief from its previous commitment to dispose of its holdings of 27 percent of the common stock of United Gas Corporation. After extended proceedings in the United States Court of Appeals, District of Columbia Circuit, in which there were motions for intervention and motions to extend time to answer and file briefs, the petitioner ultimately filed a motion to withdraw the petition. The court granted this motion.

In a second proceeding the United States Court of Appeals, District of Columbia Circuit, dismissed a petition filed by certain dissenting stockholders of Portland Railroad Company, an indirect subsidiary of New England Public Service Company, who sought review of orders entered by the Commission in 1944 and 1951 directing termination of a lease under which Central Maine Power Company, the immediate parent of Portland, operated the latter's properties. The court of appeals pointed out that the period of appeal for the 1944 order had lapsed, and that, even if it thought it had some measure of authority to review the proceedings it would not exercise such jurisdiction because it found no abuse of discretion on the part of the Commission.

Another petition for review involved certain orders of the Commission approving a plan for the corporate simplification of The United Corporation. This plan was described in the 18th annual report. Certain stockholders of United filed a petition in the United States Court of Appeals for the District of Columbia Circuit, in which they attacked various provisions of the plan and sought enforcement in that court of other provisions which were conditioned upon district court enforcement. The court of appeals held that it had jurisdiction to review the entire order, including those provisions subject to enforcement by a district court, and on the merits affirmed the Commission's order in its entirety. Two petitions for a writ of certiorari for review of the court of appeals' decision were filed by the petitioners with the United States Supreme Court on June 27, 1953. On October 12, 1953, the Supreme Court granted certiorari, limiting the scope of its review to the question of the jurisdiction of the court of appeals.

A petition by Randolph Phillips requesting the court of appeals to set aside or modify orders of the Commission allowing and denying certain fees and expenses claimed by petitioner for services alleged to have been rendered in connection with proceedings for reorganization of The United Corporation was dismissed.

A third petition for review of an order of the Commission involving The United Corporation was pending in the United States Court of Appeals, District of Columbia Circuit, at the close of the fiscal year. In this case petitioners, who are stockholders of United, requested the Court of Appeals to set aside the order of the Commission dated May 2, 1952, approving an investment program for United under section 9 (c) (3) of the Act and its order dated June 24, 1952, approving a proposal of United to make a public offering of its entire holdings of the common stock of South Jersey Gas Company. The court ordered these proceedings stayed in part pending the conclusion of other proceedings in the same court with respect to United. As described in the 18th Annual Report the holdings of South Jersey common stock have been sold.

Another petition requested a review of the Commission's order of July 24, 1952, approving a plan for reorganization of Philadelphia Company, which provided, among other things, for a distribution of 1 share of common stock of Duquesne Light Company in exchange for 5 shares of common stock of Philadelphia. Petitioners, the 6 percent Cumulative Preferred Stockholders Protective Committee, requested the court of appeals to set aside the Commission's order. Subsequently, the petition for review was dismissed on stipulation of the parties.

Petitions to United States Supreme Court for Writs of Certiorari

Two petitions for certiorari were filed with the United States Supreme Court during the year for review of orders by United States Courts of Appeals relating to orders issued by the Commission in connection with proceedings under section 11 (e) of the Act.

In one case involving a plan for the reorganization of The United Corporation, described above, the Supreme Court granted certiorari, limiting the scope of its review to the question of the jurisdiction of the court of appeals.

The second petition arose out of an order of the Commission dated May 5, 1951, denying the claim of James F. Masterson, an attorney, for additional compensation for services in connection with the proceedings for the reorganization and dissolution of North American Light and Power Company. Following application for enforcement of that order, the United States District Court, District of Delaware, directed the Commission to grant Masterson an additional award of \$10,000, which determination was affirmed by the United States Court of Appeals, Third Circuit. On October 12, 1953, the Supreme Court denied the petition for certiorari.

Participation as Intervenor

The Commission moved and was granted permission to intervene in proceedings initiated by a complaint filed against the Long Island Lighting Company in the United States District Court, Eastern District of New York, by Ennis M. Nichols, individually and on behalf of other stockholders of the company. Among other things, the complainants sought damages in the sum of \$27,500,000 for losses alleged to have been suffered by them as a result of the consummation of a plan for the reorganization of the Long Island system in 1949 and 1950 which had been approved by the Commission and by the district court under section 11 (e). On January 22, 1953, the district court sustained the Commission's position and dismissed the action on the ground that it violated the injunction provision of the district court's order of February 17, 1950, enforcing the plan. After the close of the fiscal year, the decision of the district court was affirmed by the United States Court of Appeals for the Second Circuit.

Miscellaneous Proceedings

During the fiscal year the Commission instituted an action in the United States District Court for the Eastern District of Pennsylvania to compel the Philadelphia law firm of Morgan, Lewis & Bockius to file the informational statements which Section 12 (i) of the Act and Rule U-71 thereunder require of all persons who "present, advocate or oppose any matter affecting any registered holding company or any subsidiary company thereof" before, inter alia, the Commission or any member, officer or employee thereof. In refusing to file these statements the law firm had contended principally that Section 12 (i) is inapplicable to lawyers practicing before the Commission absent proof of "lobbying." The firm also interposed other defenses, including a claim that Section 12 (i) is unconstitutionally vague and indefinite. The proffered defenses were rejected by the District Court which granted the Commission's motion for summary judgment. Defendants appealed to the United States Court of Appeals for the Third Circuit shortly after the close of the fiscal year.

PART IV PARTICIPATION OF THE COMMISSION IN CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT, AS AMENDED

Chapter X of the Bankruptcy Act provides a procedure for reorganizing corporations (other than railroads) in the Federal courts. The Commission's duties under Chapter X are, at the request or with the approval of the court, to provide the court and investors with independent expert assistance on the various legal and financial questions that arise in the proceeding and to prepare advisory reports on plans of reorganization. The Commission has no statutory

right of appeal in a Chapter X proceeding, but it may participate in appeals taken by others.

The Commission acts in a purely advisory capacity. It has no authority either to veto or to require the adoption of a plan of reorganization or to render a decision on any other issue in the proceeding. Its recommendations are made for the benefit of the judge and the security holders, affording them its disinterested views in a highly complex area of corporate law and finance. Generally, the Commission participates only in proceedings in which there is a substantial public investor interest.

SUMMARY OF ACTIVITIES

The Commission participated during the 1953 fiscal year in 55 proceedings involving the reorganization of 80 companies with aggregate stated assets of \$561,930,000 and aggregate stated indebtedness of \$339,452,000. During the year the Commission with court approval filed notices of appearances in 4 new proceedings under Chapter X involving 7 companies with aggregate stated assets of \$7,761,000 and aggregate stated indebtedness of \$3,661,000. Proceedings involving 10 principal debtor corporations and 7 subsidiary debtors were closed during the year. At the close of the year, the Commission was actively participating in 45 reorganization proceedings involving 63 companies with aggregate stated assets of \$539,598,000 and aggregate stated indebtedness of \$326,551,000.

Problems in the Administration of the Estate

A fundamental aim of Chapter X is to make available to the court, the parties and the security holders full and accurate information regarding the debtor's affairs. The independent trustee customarily transmits to security holders, pursuant to Section 167 (5), a report on the history and financial condition of the debtor, the operation of its business, and the desirability of its continuance. Such reports enable security holders to consider suggestions for a plan of reorganization or proposed plans of others and aid the court in considering problems before it. The Commission has consulted through its staff with trustees in connection with their investigations and the preparation of their reports.

The Commission generally renders assistance to the trustee, the court and security holders in connection with the varied problems that arise in the administration of the estate. Of these, the most important have involved the discovery and prosecution of causes of action against former management or other fiduciaries who may have misused their positions of trust. In this field of activity, the Commission had occasion to express its views on several

jurisdictional aspects of reorganization law during the past year. In one case the Commission supported the contention that the Chapter X trustee had power to prosecute and the reorganization court could entertain causes of action on behalf of debenture holders against their indenture trustee, based upon alleged breaches of trust, where the debenture holders constituted only one of several classes of creditors. The Commission took the view that, since the indenture trustee had filed an accounting as well as claims against the estate based upon the balance of an unpaid promissory note and indenture trusteeship fees, the Chapter X court had summary jurisdiction in respect of the causes of action asserted by the Chapter X trustee in answers and counterclaims to the claims and accounting. The Commission's view was upheld by the District Court, and affirmed on appeal.

Another case in the same field involved the question of the jurisdiction of the Chapter X court over certain Swiss banks upon the trustee's petition for an accounting and other relief. The Commission argued that the court had summary jurisdiction over the Swiss banks because they had filed proofs of claim and received interim distributions on bonds and because of their active role in the Chapter X proceeding. The District Court dismissed the trustee's petition and on appeal the Court of Appeals for the Second Circuit held that the receipt by the banks of the interim distribution and the papers filed in that connection had conferred jurisdiction upon the reorganization court but that this jurisdiction was lost when the banks failed to file the additional proofs of claim under the terms of a so-called bar order. Petitions for certiorari are pending.

The Commission has taken the position that, absent an acute emergency, a sale of substantially all of the income-producing assets of a Chapter X debtor may and should be incorporated in a plan of reorganization. This method affords public investors the safeguards of plan procedure which would not prevail if such sales were treated as an administrative matter. In the Toy Pop Corporation case, an offeror agreed to pay the trustee a specified price for all of the debtor's remaining assets "subject to the approval of the Court." However, when the trustee filed a plan providing for a sale of the assets at public auction at not less than the agreed price, the offeror attempted to withdraw his offer. At the hearing on confirmation of the plan no other bids were made. The District Court held that the offeror could withdraw from the agreement because, until court approval, the contract lacked mutuality and was therefore not binding. On appeal, in an amicus brief, the Commission urged that the contract provision "subject to the approval of the Court" was a commitment by the offeror that the contract would be the subject of a plan providing for a public sale, which was to be subject to approval and confirmation by the court. The Commission pointed out that the holding of the District Court would expose sales plans to such contingencies as would seriously impair the effectiveness of that method of solving the problems of public investors. It was noted that sales plans commonly incorporated a definite

negotiated proposal used either as an upset price submitted for approval, acceptance and confirmation followed by a public sale, or as the opening bid of a public sale held in the course of and as part of the plan hearings, the highest offer being substituted for the original by amendment to the plan.

The Court of Appeals reversed the order of the District Court and held that the condition making the contract "subject to the approval of the Court" could not be held to require approval of the agreement "without exposing the property to public bidding for a better price." The Court of Appeals stated that in view of section 216 (10) a contract of sale entered into with a Chapter X trustee, subject to the approval of the court "foreshadows, if it does not presuppose, competitive bidding usually at a public auction."

Activities with Respect to Allowances

The Commission makes specific recommendations to the courts respecting allowance for fees and expenses. The Commission itself receives no fees or expenses from estates in reorganization and is primarily concerned with the fairness of the result to the parties and the public investors.

In one case during the past year where appeals were taken from an order of the District Court making certain allowances, the Commission argued that the fees awarded were excessive in view of the limited size of the estate, the small amounts realized by creditors and the amount of services required, and that the allocation of fees was unfair in that the awards to certain representatives of security holders and creditors were so low in relation to the benefits performed as to be contrary to the aims of the statute to encourage contributions by security holders and creditors. The Commission also pointed out that the District Court's awards were not based upon specific findings. The Court of Appeals remanded the matter to the district judge for specific findings.

In another case the district judge in a detailed opinion acknowledged the assistance rendered by the Commission in the evaluation of the services rendered by the various applicants. The court observed that, although not conclusive, the detailed statement of the Commission indicated a "careful study ... and a reasonable valuation of the services rendered," and that it consequently should be given "great weight."

Consummation of Plan

The Commission gives detailed scrutiny to the corporate charters, bylaws, trust indentures, and other instruments which are to govern the internal structure of the reorganized debtor. In general the Commission strives to assure to investors

the inclusion of protective features and safeguards which its experience has shown to be desirable.

Another matter with which the Commission has been concerned in connection with the consummation of plan of reorganization is the problem of unexchanged securities. The Commission has been anxious to assure that all security holders obtain the new securities or cash distributable to them under the plan of reorganization. Chapter X provides that a period of not less than five years following the final decree may be fixed by the judge within which security holders may make the exchange called for by the plan, after which they are barred from any participation. After some experience with the operation of this provision the Commission concluded that in the larger cases five years may be too short a period and that a longer period would be more appropriate, depending upon the facts.

The Commission has requested the courts to make provision in the final decree for diligent efforts by trustees to locate missing security holders. The Commission has also recommended that before the bar date is permitted to become effective reports should be filed of efforts made to locate such security holders, and if adequate efforts have not been made, the time be extended. In several cases, the extension of time granted by the court has been efficacious in reducing the number of security holders who fail to make the exchange. In some cases, exchanges of securities were complete, or nearly so, as a result of the activities of the Commission.

PART V ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

PURPOSE OF TRUST INDENTURE REGULATION

The Trust Indenture Act of 1939 requires that bonds, notes, debentures, and similar securities publicly offered for sale, except as specifically exempted by the Act, be issued under an indenture which meets the requirements of the Act and has been duly qualified with the Commission. The Act operates by requiring the inclusion in indentures to be qualified of specified provisions which provide means by which the rights of holders of securities issued under such indentures may be protected and enforced. These provisions relate primarily to the corporate trustee which must possess designated standards of eligibility and qualification so as to provide reasonable financial responsibility and to minimize conflicting interests. The Act outlaws exculpatory provisions used in the past to eliminate all liability of the indenture trustee and imposes on the trustee, after

default, the duty to use the same degree of care and skill as a prudent man would use in the conduct of his own affairs.

QUALIFICATION PROCEDURE

Provisions of the Trust Indenture Act were drafted so as to integrate this regulation closely with the requirements of the Securities Act. Registration pursuant to the Securities Act of securities to be issued under a trust indenture subject to the Trust Indenture Act is not permitted to become effective unless the indenture conforms to the requirements of the latter Act, and necessary information as to the trustee and the indenture must be contained in the registration statement. In the case of securities issued in exchange for other securities of the same issuer and securities issued under a plan approved by a court or other proper authority which, although exempted from the registration requirements of the Securities Act, are not exempted from the requirements of the Trust Indenture Act, the obligor must file an application for the qualification of the indenture, including a statement of the required information concerning the eligibility and qualification of the trustee.

The Commission's work of examination and qualification of indentures during the 1953 fiscal year is shown in tabular form below.

[table omitted]

The nature and number of documents containing additional material relating to trust indentures which were also filed with the Commission and examined by the staff during the 1953 fiscal year for compliance with the statutory standards are shown below.

[table omitted]

PART VI ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 provides for the registration and regulation of investment companies, that is, companies engaged primarily in the business of investing, reinvesting, and trading in securities. The Act requires, among other things, disclosure of the finances and investment policies of these companies in order to afford investors complete information with respect to their activities, prohibits such companies from changing the nature of their business or their investment policies without the approval of their stockholders, bars persons guilty

of security frauds from serving as officers and directors of such companies, regulates the means of custody of the assets of investment companies, prohibits underwriters, investment bankers, and brokers from constituting more than a minority of the directors of such companies, requires management contracts to be submitted to security holders for their approval, prohibits transactions between such companies and their officers and directors except with the approval of the Commission, regulates the issuance of senior securities of such companies, and prohibits pyramiding of such companies and cross-ownership of their securities. The Act requires face amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

COMPANIES REGISTERED UNDER THE ACT

As of June 30, 1953, 369 investment companies were registered under the Act, and it is estimated that on that date the aggregate value of their assets was approximately \$7,000,000,000. This represents an increase of approximately \$200,000,000 in such valuation over the corresponding total at the beginning of the 1953 fiscal year. During the nearest comparable period for which data are available, the 12 months ended March 31, 1953, about 216 registered open-end management and closed-end management investment companies reported to the Commission sales to the public of approximately \$764,000,000 of their securities and redemptions and retirements of approximately \$219,000,000, leaving a net investment by the public in such companies of approximately \$545,000,000, compared with a corresponding net investment for the preceding 12-month period of approximately \$425,000,000.

The investment companies registered at June 30, 1953, are classified as follows:

Management open-end: 166

Management closed-end: 100

Unit: 87

Face amount: 16

Total: 369

TYPES OF INVESTMENT COMPANIES REGISTERED DURING THE FISCAL YEAR

During the 1953 fiscal year, 17 new investment companies registered under the Act, of which 8 were open-end management companies (companies which redeem their shares on presentation by the stockholders) and 6 were closed-end management companies (in which the shareholder can realize on his security only by selling it in the open market). Two unit type companies and one face amount company were also registered.

Of the 8 open-end management companies which registered under the Act during the 1953 fiscal year 2 were organized to invest primarily for income consistent with the greatest possible safety of principal, 1 was organized expressly to seek capital appreciation with a lesser emphasis upon income, and 1 was unique in that it proposed to subject up to 25 percent of its investment securities to "puts and calls." Of the 6 closed-end companies which registered during the year, 2 were organized to provide media for investment of American funds in industry in the State of Israel and 2 were industrial companies which disposed of their business assets and employed the proceeds in security investments. The 1953 fiscal year marked the first registration with the Commission since 1941 of a face amount certificate company, a type of investment company selling investment contracts by the terms of which a specified sum is agreed to be paid to the investor if he makes stipulated monthly payments over a period of years.

APPLICATIONS FOR REGISTRATION OF CANADIAN INVESTMENT COMPANIES

While foreign investment companies are not forbidden under the Investment Company Act from purchasing and selling investments in this country, they must obtain an order by the Commission permitting them to register under the Act in order to sell their own securities in the United States. Such an order may be issued by the Commission only if it finds that "by reason of special circumstances, it is both legally and practically feasible effectively to enforce the provision of the title against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors." During the 1953 fiscal year certain applications were pending on behalf of investment companies incorporated under the laws of Canada seeking authority to register under the Act and to sell their securities in this country. These applications present complex legal and other problems, the resolution of which involves many questions of public policy and the protection of investors.

SELLING LITERATURE

During 1950 the Commission promulgated a Statement of Policy as to various types of statements commonly employed in the sale of shares of open-end investment companies which it would thereafter regard as misleading. In giving effect to this policy the Commission has been greatly aided by the National Association of Securities Dealers, Inc. The Association with the assistance of the Commission's staff has been engaged in the preparation of a book of interpretations and explanations of the meaning of such Statement of Policy and what is permissible and not permissible thereunder. It is believed that the publication of such a book will do much to simplify the work of explaining and interpreting the Statement of Policy.

During the fiscal year the Commission's staff continued its exploration with the National Association of Securities Dealers of the permissible scope under the Securities Act of so-called "institutional literature" of open-end investment companies, that is, advertisements, circulars and other written material which describe open-end investment companies generally without naming any particular company. Much of this literature has made extravagant and misleading claims in respect of the merits of investment in such companies. Discussions have centered upon the possibility of a rule to be promulgated by the Commission which would permit advertising by brochures, describing such companies, their types and purposes in a factual manner, before the solicitation of a purchase by an investor, in order to enable the investor to appraise these companies generally prior to any offer to purchase the securities of a specific company.

STATISTICAL DATA

The number of documents filed under the Act by registered investment companies, and changes occurring in the number of such companies, during the fiscal years ended June 30, 1952 and 1953 are tabulated below:

[table omitted]

APPLICATIONS FILED

One of the functions of the Commission in its regulation of investment companies is to determine whether applications for exemption filed under various provisions of the Act meet the statutory standards. During the fiscal year a total of 71 applications were filed under the various provisions of the Act, including 24 seeking exemption of proposed transactions between investment companies and affiliates and 18 seeking a determination that the applicant had ceased to be an investment company within the meaning of the Act. Since there were 42

applications pending at the beginning of the year, a total of 113 applications required examination and consideration by the Commission during the year. Sixty-four were disposed of and 49 were pending at the close of the year. The various sections of the Act under which these applications were filed, and the number disposed of in each category, are shown in the following table.

[table omitted]

During the 1953 fiscal year the Commission reviewed its previous position that section 17 of the Act did not apply to mergers and consolidations of affiliates of investment companies. That section, generally speaking, prohibits purchases and sales of securities and other property between affiliates of registered investment companies and such investment companies or their controlled companies unless the Commission by order finds the transaction to be fair and consistent with the policies of the investment companies concerned and the purposes of the Act. In *Matter of Phoenix Securities Corporation*, 9 S.E.C. 241 (1941), the Commission had previously determined that mergers and consolidations were not "sales" or "purchases" within the scope of section 17 and were therefore outside the jurisdiction of the Commission even though they are effected by affiliates of, or concern the assets of, registered investment companies or their affiliates. This decision was based primarily upon the Commission's previous interpretations of the word "sale" in its administration of the Securities Act. However, in *Matter of E. I. duPont de Nemours and Company*, Investment Company Act release No. 1837 (1953), decided during the 1953 fiscal year, the Commission reexamined its previous position and came to the conclusion that, because of the essentially different scheme and purpose of the regulation imposed by the Investment Company Act, the public interest and the protection of investors demanded a construction of section 17 which would require the approval by the Commission of the merger and consolidation of companies affiliated with or controlled by investment companies.

One of the more complex applications under the Act was filed in connection with the merger of Capital Administration Company, Ltd. into Tri-Continental Corporation, involving section 17 (a) as to the merger itself (the companies being affiliated) and section 18 (d) as to the issuance of additional warrants of Tri-Continental in connection with the merger. The chief problem was the fairness of the issuance of specified amounts of common stock and warrants of Tri-Continental for the Class A and Class B stocks of Capital Administration, which had unique provisions. The Commission, in granting the requested exemptions, found the terms of the merger reasonable and fair and permitted the issuance of additional warrants necessary for consummation of the plan. [Footnote: Investment Company Act release No. 1845 (March 6, 1953).]

LITIGATION UNDER THE INVESTMENT COMPANY ACT OF 1940

On December 8, 1952, the Commission filed a complaint in the United States District Court for the Southern District of New York charging certain individuals, directors and officers of three registered investment companies, with gross misconduct and gross abuse of trust pursuant to section 36 of the Investment Company Act and violations of sections 12 (d), 17 (a) and 18 of that Act. The complaint seeks the removal of these individuals from their positions as officers and directors, an injunction against further violations of the Act, and the appointment of a receiver to reorganize and liquidate one or more of these investment companies. Certain preferred stockholders have intervened in support of the Commission's complaint. An answer was filed on behalf of the defendants, admitting virtually all the factual allegations of the complaint but denying the legal conclusions. *S.E.C. v. Home and Foreign Securities Corporation, et al.*, S.D.N.Y., Civil Action No. 80-382.

The Commission's complaint alleges that, contrary to their fiduciary duty, the individual defendants have managed the assets of the investment companies in such manner as to yield no substantial income, and no reasonable expectation of income, for the payment of dividends on the preferred stocks in the foreseeable future and so as to increase unfairly and disproportionately the risks and burdens of these preferred stocks. It is further alleged that the individual defendants have caused the investment companies and their subsidiaries to engage in excessive borrowing and the pyramiding of control and to enter into transactions in violation of the Investment Company Act, with consequences prejudicial to the interests of public security holders of these investment companies. The defendants, the complaint alleges, have benefited from their position as members of the management of these companies by enlarging and perpetuating their control over the investment companies and of the subsidiary companies, from which the individual defendants receive substantial salaries.

PART VII ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

The Investment Advisers Act of 1940 requires the registration as investment advisers of persons engaged for compensation in the business of advising others with respect to securities. The Commission is empowered to deny registration to or revoke the registration of any adviser who, after notice and opportunity for hearing, is found by the Commission to have been convicted or enjoined because of misconduct in connection with securities transactions or to have made false statements in his application for registration. The Act makes it unlawful for investment advisers to engage in practices which constitute fraud or

deceit, requires investment advisers to disclose the nature of their interest in transactions executed for their clients, prohibits profit-sharing arrangements, and prevents assignment of investment advisory contracts without the client's consent.

[table omitted]

Of the registered investment advisers 263 represented in their applications that they engage exclusively in supervising their clients' investments on the basis of the individual needs of each client. The services of 381 others are chiefly through publications of various types. A total of 235 investment advisers are registered also as brokers and dealers in securities. Most of the remainder offer various combinations of investment services.

During fiscal 1953, the Commission instituted proceedings under the Investment Advisers Act to revoke the registration of Amleto Gudenzi and under the Securities Exchange Act to revoke his broker-dealer registration. The Commission found that respondent and his son, who was employed in respondent's business as manager, were permanently enjoined by a decree of the Supreme Court of the State of New York from engaging in or continuing certain conduct and practices in connection with the purchase and sale of securities and that his son had been convicted of a felony involving the purchase and sale of securities arising out of the conduct of the broker-dealer and investment advisory business of respondent. Both the injunction and the conviction were based on misappropriations of securities and funds of customers by the son, to whom respondent had given a blanket power of attorney. The registrations of Gudenzi as an investment adviser and a broker-dealer were revoked.

PART VIII OTHER ACTIVITIES OF THE COMMISSION

COURT PROCEEDINGS

Civil Proceedings

At the beginning of the 1953 fiscal year there were pending in the courts 19 injunctive and related enforcement proceedings instituted by the Commission to prevent fraudulent and other illegal practices in the sale of securities. During the year, 22 additional proceedings were instituted and 28 cases were disposed of, leaving 13 proceedings pending at the end of the year. In addition the

Commission participated in a large number of reorganization cases under Chapter X of the Bankruptcy Act, in 23 proceedings in the district courts under section 11 (e) of the Public Utility Holding Company Act, and in 16 miscellaneous actions, usually as amicus curiae, to advise the court of its views regarding the construction of provisions of statutes administered by it which were involved in private lawsuits. The Commission also participated in 39. appeals. Of these, 10 came before the courts on petition for review of an administrative order, 10 arose out of corporate reorganizations in which the Commission had taken an active part, 4 were appeals in actions brought by or against the Commission, 7 were appeals from orders entered pursuant to section 11 (e) of the Public Utility Holding Company Act, and 8 were appeals in cases in which the Commission appeared as amicus curiae.

Complete lists of all cases in which the Commission appeared before a Federal or State court, either as a party or as amicus curiae, during the fiscal year, and the status of such cases at the close of the year, are contained in the appendix tables.

Certain significant aspects of the Commission's litigation during the year are discussed in the sections of this report devoted to the statutes under which the litigation arose.

Criminal Proceedings

The statutes administered by the Commission provide for the transmission of evidence of violations to the Attorney General, who may institute criminal proceedings. The Commission, largely through its regional offices, investigates suspected violations and, in cases where the facts appear to warrant criminal prosecution, prepares detailed reports which are forwarded to the Attorney General. Commission employees familiar with the case often assist the United States attorneys in its presentation to the grand jury, the conduct of the trial, and the preparation of briefs on appeal. The Commission also submits parole reports prepared by its investigators relating to convicted offenders. Where an investigation discloses violations of statutes other than those administered by the Commission, the Commission advises the appropriate Federal or State agency.

Indictments were returned against 2,184 defendants in 505 cases developed by the Commission prior to July 1, 1953. These figures include 23 defendants in 14 cases in which indictments were returned during the 1953 fiscal year. At the close of the fiscal year, of 468 cases disposed of as to 1 or more defendants, convictions had been obtained in 409 cases, or over 87 percent, against a total of 1,179 defendants. [Footnote: The 59 remaining cases, which resulted in acquittals or dismissals as to all defendants, included a number where the indictments were dismissed because of the death of defendants involved, s One

of these cases is still pending as to one defendant.] Convictions were obtained of 19 defendants in 12 cases during the fiscal year.

In addition, two defendants in one case were found guilty of criminal contempt for violating an injunctive decree and in two other cases the parole of one defendant and conditional release of another were revoked as a result of Commission investigations. [Footnote: Another criminal contempt case against a single defendant was pending at the close of the year.]

A judgment of conviction was affirmed on appeal in one case as to one defendant and the convictions of two defendants were reversed for trial errors in two other cases, but convictions were obtained in both of these cases upon retrial. [Footnote: One defendant entered nolo contendere plea, the other, who was found guilty after the end of the fiscal year, has appealed again.] After the close of the fiscal year, the convictions of seven defendants in another case were all sustained on appeal.

As in prior years, the criminal cases developed and prosecuted during the fiscal year covered a wide variety of fraudulent conduct. They included frauds relating to mining and oil and gas ventures, insurance company promotions, the operation of purported investment plans, the promotion of inventions and new businesses and the manipulation of securities on a national stock exchange, as well as fraudulent practices on the part of securities brokers and dealers and their representatives and an investment adviser. In a number of fraud cases, the defendants also were charged with willfully violating the registration provisions of the Securities Act.

Convictions for the fraudulent sale of securities in connection with oil and gas ventures were obtained in *U.S. v. Floyd J. Wilson* (N. D. Tex.) and *U.S. v. Joseph Popkins, et al.* (W. D. Tenn.). Wilson and Popkins entered pleas of guilty and were sentenced to prison terms of 5 and 3 years, respectively. The defendants in these cases were charged with making false representations concerning ownership of the oil and gas leases involved, drilling operations, oil producing potentialities of the properties, value of the securities being sold and numerous other matters.

Other oil and gas promotions in which indictments are pending are *U.S. v. George F. Vasen* (N. D. Ill.); *U.S. v. Ben H. Frank* (W. D. Okla.); *U.S. v. Ralph Frank Hamilton* (D. Mont.); *U.S. v. Melton E. Lightfoot* (S. D. Fla.); and *U.S. v. Francis N. Campbell* (N. D. Ill.)

In the Vasen case, which is said to involve the second deepest well in existence, the well having reached a depth of 20,450 feet, it is charged that the defendant made misrepresentations such as that the well was going through an "Atlantic

Ocean of Oil," that geologists believed that the producing formation extended completely across the state of Mississippi and possibly up to Pennsylvania, and that the oil sands encountered assured production of thousands of barrels of oil per day. The Frank case includes charges of misrepresentation concerning a so-called "magnetic logger" device which was held out to investors as insuring 100 percent accuracy in the location of oil pools. In the Hamilton and Lightfoot cases, the defendants are charged with misrepresenting to investors, among other things, the likelihood of returns on their investments and the use which was to be made of the funds obtained from them. In the Campbell case, the indictment, among other things, charges the defendant with employing the fraudulent "Ponzi" technique, in that, in order to induce investors to make additional investments, he caused to be returned to them as "dividends" a portion of their prior investments.

The "Ponzi" device also was employed in U.S. v. Peter E. Picotte (E. D. Mo.), where the defendant was sentenced to a 5 year prison term for the fraudulent sale of notes in connection with the promotion of an insurance business financing scheme. In U.S. v. Floyd W. Beck et al. (W. D. Mo.), where prison terms of 4 years and 3 years were imposed on two defendants and a third defendant was placed on probation for 3 years for the fraudulent sale of preferred and common stock of United Insurers Service Company of Missouri, a corporation falsely described, by the defendants as an insurance company.

The defendant in U.S. v. Theodore E. Lobman (N. D. Ill.) entered a plea of guilty of charges that he fraudulently sold stock and other securities relating to spurious profit-sharing plans purportedly controlled by him. Fictitious profit-sharing opportunities also are included as part of the fraudulent scheme charged in the indictment pending in U.S. v. Hardy Joseph Owens et al. (S. D. Fla.). The defendants are alleged to have established dummy corporations whose capitalization consisted of worthless checks and represented that they were engaged in negotiating many business transactions in which investors might profitably participate, when, in fact, such negotiations were either non-existent or were not being carried on in good faith with any intent to consummate them. In U.S. v. LeRoy Williams Boss (S. D. Okla.), another pending case, the indictment charges that in the sale of stock of Gulf Coast Oil Processing, Inc., the defendant made false representations concerning the establishment and financing of a tung oil plant through funds purportedly available from the defendant, the Reconstruction Finance Corporation and money obtained from investors.

Fraud in the sale of stock of the American Patent Protective Association, Inc., and the Association for Promotion of Patented Articles, Inc., and other securities is charged in the pending indictment in U.S. v. Adolph F. von Soden et al. (D. Nev.), which involved the alleged promotion of a "Dust Collector and Air Purifier," a "Ribbon-Reinking device," a "Tweezer-Lite" and other patented devices purportedly owned by the Association for Promotion of Patented Articles, Inc.

A gold mining promotion, involving the sale of stock of Yankee Mines, Inc. resulted in conviction of all three defendants in U.S. v. Troy E. Becker et al. (D. Idaho). Becker and his co-defendants entered pleas of guilty to fraud charges which included alleged misrepresentations concerning the availability of ore deposits on the properties controlled by Yankee Mines, Inc. and the use to be made of the proceeds received from investors, as well as other matters. The defendants were sentenced to 3 year suspended prison terms and placed on probation for 5 years.

An alleged manipulation of the stock of Universal Laboratories, Inc. is involved in the pending indictment in U.S. v. David L. Shindler et al. (S.D.N.Y.). The defendants are charged with effecting on the New York Stock Exchange a series of transactions creating actual and apparently active trading in and raising the price of the common stock of Universal Laboratories, Inc., for the purpose of inducing others to buy that stock.

A conviction for fraudulent conduct on the part of a broker-dealer was obtained in U.S. v. Kenneth B. Hill (D. Mass.). Hill entered a plea of guilty to an information charging him with the sale of forged securities and the filing of a false financial statement with the Commission. In U.S. v. Russell K. Barnes (S. D. Cal.), the defendant, a securities salesman for a broker-dealer firm, pleaded guilty to a fraud indictment which charged him with converting funds received from customers for the purchase of securities and with paying fictitious dividends and profits to such customers for the purpose of concealing his conversions.

The indictment pending in U.S. v. J. Arthur Warner et al. (D. Mass.) charges the broker-dealer firm of J. Arthur Warner & Company, Inc. (now known as Doubling Company, Inc.), and certain of its representatives with having engaged in a course of business which operated as a fraud and deceit upon the firm's customers. Among other things, the indictment charges that the defendants obtained the trust and confidence of persons inexperienced in securities matters who were induced to become customers of the firm and that, contrary to the best interests of these customers, the defendants overtraded and "churned" their customers' accounts for the purpose of increasing their own commissions, fees, and profits.

The first criminal convictions for violation of the antifraud provisions of the Investment Advisers Act of 1940 were obtained during the fiscal year in U.S. v. Howard C. Hageman et al. (S.D.N.Y.). Hageman and two corporate codefendants entered pleas of guilty to charges that they employed a scheme to defraud their investment advisory clients. Hageman was sentenced to a two year prison term. The corporations were each fined nominal amounts. According to the indictment, the defendants, under the pretext of rendering impartial

investment advice to their clients, induced them to purchase the stock of Hageman Properties, Inc., on the basis of false representations concerning the value of the assets owned by the corporation, the profitableness of its operations, its financial condition and other matters; and also concealed from them that the defendant Hageman had suffered substantial losses in connection with the operation of various of the properties transferred by him to Hageman Properties, Inc., had organized this corporation in an attempt to salvage his previous unsuccessful financial operations and had transferred these properties to it at prices greatly in excess of the cost of such properties to him.

In the Matter of Francis D. Graves and Earl E. Brown (E. D. Wash.), both respondents were found guilty of criminal contempt for violating an injunctive decree, entered March 5, 1951, enjoining them from further violations of the registration and antifraud provisions of the Securities Act. The respondents entered pleas of guilty to charges that, in contempt of the decree, they had continued to sell interests in certain mining and timber leases in Idaho by means of untrue statements relating to such matters as the ownership of the leases, the use to be made of the proceeds received from the sale of interests and the amount and value of the ore on the properties.

Another criminal contempt action is pending in U.S. ex rel. SEC v. E. Randall Henderson (E. D. Mich.). Henderson is alleged to have continued to sell a variety of unregistered oil securities to residents of Tennessee, Arkansas, Kentucky, and Indiana, in violation of an injunctive decree prohibiting him and others from selling fractional undivided interests in oil and gas rights and like securities without such securities being registered with the Commission under the Securities Act.

On appeal, a conviction for the fraudulent sale of securities in the promotion of an allegedly new type of lawnmower was affirmed in *Bobbroff v. U. S.*, 202 F. 2d 389 (C. A. 9, 1953). In two other appellate cases, *Price v. U. S.*, 200 F. 2d 652 (C. A. 5, 1953), and *Henderson v. U. S.*, 202 F. 2d 400 (C. A. 9, 1953), (petition for rehearing by appellant on basis of other alleged errors denied, 204 F. 2d 126) convictions were reversed for certain trial errors, but in each of these cases the defendants were convicted upon retrial. In the Price case, after reversal of his conviction, the defendant was fined \$5,000 upon his plea of nolo contendere to charges that he violated the registration provisions of the Securities Act in the sale of investment contracts involving Texas oil and gas lease assignments. The defendant in the Henderson case, upon retrial after the close of the fiscal year, was again found guilty by a jury of violating the mail fraud statute in connection with sale of fractional undivided interests in oil and gas rights relating to certain Louisiana properties. Henderson, who was sentenced to a five year prison term and fined \$1,000. has appealed again.

Subsequent to the close of the fiscal year, judgments of convictions of all seven defendants were sustained on appeal in *Llanos et al. v. U. S.*, 206 F. 2d 852 (C. A. 9, 1953). This case involved a scheme to defraud residents of the Territory of Hawaii, principally plantation laborers, in connection with the sale of securities issued by the defendants.

COMPLAINTS AND INVESTIGATIONS

Each of the Acts administered by the Commission contains provisions authorizing investigations of possible violations thereof. These investigations are conducted primarily by the regional offices under the administrative supervision of the principal office which also, when possible, makes available members of its staff to assist in the more complex investigations.

Investigations are classified as preliminary or docketed. A preliminary investigation is initiated when information is received indicating a possible violation of one of the Acts and is usually conducted by telephone inquiries, interviews or a limited amount of correspondence. This frequently will disclose either that no violation has occurred, or that there may have been an inadvertent violation through misunderstanding of the law. The inquiry in many cases serves to educate inadvertent violators and to bring about compliance before any damage or loss results to the investing public. Should the preliminary investigation reveal a wide-spread public interest or the likelihood of a substantial violation, the case becomes docketed and a full scale investigation is undertaken.

The Commission is authorized, under the various Acts, to issue subpoenas and to delegate this power to its employees. An officer designated by the Commission in a particular case may issue a subpoena requiring the production of books, records, and other documents for examination, and may require the attendance of witnesses to testify under oath, which the officer is empowered to administer. This delegation is made by the Commission in specific instances through the issuance of an order, limited to the persons named therein as officers and to the purposes of the particular investigation, and only upon a showing to the Commission that necessary evidence cannot be otherwise obtained. During the fiscal year 56 such orders were entered.

Upon completion of an investigation, a report is prepared in the regional office which is transmitted to the principal office with the recommendation of the Regional Administrator for the institution of appropriate action, or for closing the investigation if the evidence does not appear to warrant action by the Commission. These reports and recommendations are reviewed in the principal office before being presented to the Commission.

The statutes administered by the Commission provide for civil proceedings to enjoin violations, reference of evidence to the Attorney General where the evidence warrants criminal prosecution, and administrative proceedings with respect to registered securities and broker-dealers. In addition to those mentioned, the Commission also refers evidence of violations of other federal statutes and state laws to appropriate federal or state authorities. During the fiscal year, references were made to other authorities in 44 instances.

The following table reflects the investigative activities of the Commission during the fiscal year:

[table omitted]

SECTION OF SECURITIES VIOLATIONS

The Commission maintains in the Office of the General Counsel a Section of Securities Violations for assistance in the enforcement of the various statutes which it administers and to provide a further means of preventing fraud in the purchase and sale of securities. This Section has developed files which serve as a clearing house for information concerning persons who have been charged with violations of various Federal and State securities statutes which the Section maintains. The specialized information in these files has been kept current through the cooperation of the United States Post Office Department, the Federal Bureau of Investigation, parole and probation officials, State securities commissions, Federal and State prosecuting attorneys, police officers, Better Business Bureaus, and members of the United States Chamber of Commerce. By the end of the 1953 fiscal year these records contained data concerning 58,211 persons against whom Federal or State action had been taken in connection with securities violations.

During the past year alone additional items of information relating to 4,387 persons were added to the records of this Section, including information concerning 1,692 persons not previously identified therein.

Extensive use is made of this clearing house of information. During the past year, the Commission received 3,330 securities violations letters or reports and dispatched 2,236 communications to cooperating agencies.

ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

The several Acts administered by the Commission provide that dependable, informative financial statements, which disclose the financial status and earnings history and potentialities of a corporation or other commercial entity, shall be made a part of registration statements, applications for registration, and periodic reports required to be filed with the Commission.

The Acts administered by the Commission and rules adopted thereunder provide that the financial statements required to be filed with the Commission shall be certified by independent public accountants. The value of certification by qualified accountants has been conceded for many years, but the requirement as to independence, long recognized and adhered to by some individual accountants, was for the first time authoritatively and explicitly introduced into statutes. Out of these provisions and the administration thereof by the Commission there have grown concepts of accountant-client relationships that have strengthened the protection afforded investors.

The Commission has prescribed uniform systems of accounts for companies subject to the provisions of the Holding Company Act, has adopted rules under the Securities Exchange Act governing accounting and auditing of securities brokers and dealers, and has promulgated rules contained in a single, comprehensive regulation, known as Regulation S-X, which govern the form and content of financial statements filed in compliance with the various Acts. [Footnote: Adopted February 21, 1940 (Accounting Series release No. 12); revised December 20, 1950 (Accounting Series release No. 70).] These regulations are implemented by the Accounting Series releases, of which about 75 have been issued, designed to make public from time to time opinions on accounting principles for the purpose of contributing to the development of uniform standards and practice in major accounting questions. The rules and regulations thus established, except for the uniform systems of accounts, prescribe the accounting to be followed only in certain basic respects. In the large area not covered by such rules the Commission's principal reliance for the protection of investors is on the determination and application of accounting principles and standards which are recognized as sound and which have attained general acceptance.

Changes and new developments in financial and economic conditions affect the operations and financial status of the several thousand commercial and industrial companies required to file statements with the Commission. The Commission, therefore, must be informed of changes and new developments in these fields and must make certain that the effects thereof are properly reported to investors. The Commission's accounting staff therefore engages in study and research designed to establish and maintain appropriate accounting procedures and practices. Furtherance of these activities requires constant contact and cooperation between the staff and accountants both individually and through

such representative groups as, among others, the American Accounting Association, the American Institute of Accountants, the Controllers Institute of America, and the National Association of Railroad and Utilities Commissioners, as well as other governmental agencies.

During the year the Commission found it necessary to give consideration to a change in procedure recommended by the American Institute of Accountants with respect to the accounting for options granted by corporations to their employees and officers to purchase stock of such corporations. These option arrangements, which have been adopted by an increasing number of industrial companies filing financial statements with the Commission, are found in a variety of forms. While some of the plans have given the optionees the unrestricted right to exercise the options immediately, others have required that the optionees remain in the employ of the company for a specific period before they have the unrestricted right to exercise the options, and still others have been granted the right to purchase a specified number of shares each year over a period of years provided the optionees are in the employ of the company upon each such option date.

Prior to 1950 many of these plans fixed the purchase price at substantially less than the market price of the stock optioned at the date the option was granted. Because of the change in the income tax law in 1950 with respect to the taxability of optioned stock, many corporations have changed their methods of granting options. Some of the plans adopted since that date continue to set the option price at varying amounts under the market price, but in most instances the option price is substantially the same as market.

The fact that such plans afford benefits to the participating employees which are susceptible of monetary expression has been recognized in court decisions and in the varying treatments which have been accorded such options under the Internal Revenue Code. Under these circumstances the Commission has required financial statements filed with it to reflect amounts corresponding to the benefit to the optionees as charges against income of the issuer in the period or periods in which the optionees first obtained the unrestricted right to exercise their options, a procedure concurred in by the accounting profession, as indicated by Accounting Research Bulletin No. 37, issued in November 1948 by the American Institute of Accountants. As of a recent date this bulletin was revised to indicate that the date on which an option is granted is the date that should be used in determining such compensation and that the amount of compensation to be recorded in the accounts of the corporation should be the excess of the fair value of the optioned stock over the option price as at that date.

In view of the revision of Accounting Research Bulletin No. 37, the Commission deemed it necessary and appropriate to give consideration to the adoption of a

rule requiring a corporation which grants options to its officers and employees to acquire its capital stock, thereby incurring costs in the form of compensation to the optionees, to account for such costs, at the time the optionees have complied fully with the terms of the option, by charging corporate income with an amount equal to the fair value of the stock over the option price at that date. This would continue in effect the procedure the Commission had required in the past.

The Commission announced its intention of promulgating such a rule in a public release and invited all interested persons to express their views thereon. After further consideration of the question in the light of the comments received the Commission deemed it inappropriate to prescribe a procedure for determining the amount of cost, if any, of these stock options to be reflected in profit and loss or income statements filed with the Commission. However, in order that investors may be apprised of the monetary significance of the concessions made by registrants to officers and employees through the granting of stock options, the Commission, on November 3, 1953, adopted rule 3-20 (d), to be added to Regulation S-X, which requires full and complete disclosure of all stock option arrangements in financial statements filed with the Commission. [Footnote: Accounting Series release No. 76.]

During the fiscal year the Commission issued its Findings, Opinion and Order in a proceeding instituted under rule II (e) of its Rules of Practice against Haskins & Sells, a firm of certified public accountants, and Andrew Stewart, a partner in that firm. The Commission found that respondents had failed to devote the care and inquiry required by the circumstances in connection with the preparation and certification of balance sheets for use in a registration statement filed by Thomascolor, Incorporated, grossly overstating intangible assets and attributing to apparently potentially productive items material amounts which should have been shown as promotion services. The Commission concluded that it was necessary to deny respondents the privilege of practicing before the Commission for a period of ten days.

OFFICE OF OPINION WRITING

The Office of Opinion Writing aids the Commission in the preparation of findings, opinions, and orders promulgated by the Commission in contested and other cases arising under statutes administered by it. These statutes provide for a wide variety of administrative proceedings which require quasi-judicial determination by the Commission. Formal opinions are issued in all cases where the matter to be decided, whether substantive or procedural, is of sufficient importance to warrant a formal expression of views.

The Office of Opinion Writing is an independent staff office which is directly responsible to the Commission. It receives all assignments and instructions from and makes recommendations and submits its work to the Commission directly. In the preparation of opinions assigned to the Office of Opinion Writing, the members of this office do not consult with members of the operating division actively participating in the proceedings and it is an invariable rule that those assigned to prepare such an opinion must not have had any prior participation in any phase of the proceedings with respect to which the opinion is to be prepared. Commission experts are from time to time consulted on technical problems arising in the course of the preparation of opinions and findings, but these experts are never individuals who have participated in the development of the case.

The findings of fact, opinions, and orders adopted and promulgated by the Commission serve as an aid and guide to the bench and bar. With minor exceptions (e. g., certain opinions dealing with requests for confidential treatment) all are publicly released and distributed to representatives of the press and persons on the Commission's mailing list.

The creation of the Office of Opinion Writing as an independent staff unit in 1942 was based on the view that the exercise of the Commission's adjudicatory functions in many types of cases made it appropriate that it be assisted in that function by members of its staff who were independent of units engaged in investigation or prosecution of cases. The desirability of this arrangement was subsequently given express recognition in specific provisions of the Administrative Procedure Act, which in certain types of cases requires that there be a separation between quasi-prosecutory functions and quasi-judicial functions. The existence of the Office of Opinion Writing thus facilitated the Commission's compliance with the separation of function requirements contained in that Act.

In addition to its primary function, the Office of Opinion Writing is given assignments of a general nature which are not inconsistent with the objective of the separation between the investigatory and quasi-judicial functions, for example, supervising the preparation of the Commission's annual report to the Congress.

INTERNATIONAL FINANCIAL AND ECONOMIC MATTERS

During the fiscal year registration statements covering \$198,275,539 of securities issued by foreign issuers, government and private, were filed under the Securities Act. Of this amount \$184,710,539 represented Canadian offerings,

and the balance of \$12,565,000 represented the offerings of two private foreign issuers.

The Commission had representation on the Staff Committee of the National Advisory Council on International Monetary and Financial Problems, and on the United Nations Economic Committee of the Department of State. The Commission furnished information to other departments of government and to the International Bank for Reconstruction and Development concerning the effect of a Brazilian decree governing treatment of United States investors in that country.

Consultations were held on a proposed law for the treatment of foreign investors to be adopted by the government of Greece, and on a law for the modification of securities proposed by the government of the Federal Republic of Germany. The Commission's Foreign Economic Adviser has also consulted with the Office of Alien Property with respect to Japanese and German bonds which had been vested by that agency.

In September 1952 a delegation representing the government of Japan informed the Commission of the progress in the settlement of Japan's prewar bonded debt and sought information as to the requirements applicable to new bonds to be offered under the settlement.

On February 27, 1953, negotiations for the settlement of the prewar external German debts, in which the Commission had participated through representation on the Interdepartmental Committee on German Debts, were concluded by the signing of the Agreement on German External Debts. This Agreement and other agreements with the Federal Republic of Germany were forwarded to the Senate for ratification on April 10, 1953, and referred to the Committee on Foreign Relations. The Commission's Foreign Economic Adviser testified before that Committee.

After discussions in which the Commission participated, the German government enacted on August 25, 1952, a law for the Validation of German Foreign Currency Bonds. Thereupon representatives of the Commission and the State Department prepared drafts of the implementing ordinance, and of the agreement between the United States and Germany regarding the validation of German dollar bonds. These drafts were discussed with representatives of the financial community so that implementation of the German validation law would be adapted to the practice of United States securities markets. Validation procedures are necessary to prevent the sale or the settlement of German dollar bonds previously purchased for retirement, but which had disappeared when the Soviet armed forces occupied Berlin in 1945. To prevent the sale of these looted bonds in the United States markets, the Commission on two occasions during the

fiscal year publicly renewed its request that brokers and dealers refrain from dealing in German dollar bonds until the establishment of validation procedures and the filing of appropriate reports with the Commission.

The then Chairman of the Commission headed a mission to Germany early in 1953 to discuss (1) resumption of trading in German securities on United States markets, especially the requirements of registration and the filing of information under the Securities Act and the Securities Exchange Act; (2) extension by the German Federal Republic of the bar dates for validation of German securities denominated in reichsmarks; and (3) problems relating to the application in the United States of German law for validation of securities denominated in foreign currencies. Following these discussions the implementing ordinance under the German Validation Law for German dollar bonds was approved by the two governments and, following informal consultation with the Foreign Relations Committee of the Senate, the Executive Agreement regarding validation of German dollar bonds was signed in Bonn on February 27, 1953. On June 9, 1953, the Validation Board for German Dollar Bonds announced the opening of its offices at 30 Broad Street, New York City. Holders of German dollar bonds may present them to that Board for validation.

During the fiscal year the Department of State and the Commission renewed discussions of the proposed treaty for the validation of Austrian dollar bonds.

A member of the Commission acted as an adviser to the United States delegation at the Annual Meeting of the Board of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund held in Mexico City in September 1952.

The International Bank in October 1952 offered in the United States \$60 million 3 1/2 percent bonds due October 15, 1971. The bonds were offered at 98 by an underwriting group of 139 members. It is reported that purchases of this issue were made by persons in 34 states and the District of Columbia and in 8 foreign countries. Domestic purchases accounted for 65 percent of the total issue and were made principally by savings banks, life insurance companies, and pension and trust funds. During the year the Bank also offered 50 million Swiss franc 3 1/2 percent bonds due 1962. These bonds were offered in Switzerland in November 1952 at a price of 98%. In the distribution of these issues of bonds, the Bank made available a prospectus giving information about the Bank's structure and operation. It also filed with the Commission, pursuant to Regulation BW adopted by the Commission under the amendment to the Bretton Woods Agreements Act, information comparable to that which would be required if its securities had been registered under the Securities Act and the Securities Exchange Act.

The Commission does not at this time recommend any change in the exempt status of securities of the International Bank.

CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

The Commission is empowered to grant confidential treatment, upon application by registrants, to certain types of information which would otherwise be disclosed to the public in applications, reports, or other documents filed under Acts administered by the Commission. Accordingly, rule 485 under the Securities Act provides that information as to material contracts, or portions thereof, filed as a part of a registration statement will be held confidential by the Commission if it determines that disclosure would impair the value of the contracts and is not necessary for the protection of investors. Other rules prescribe the holding of information confidential where disclosure thereof would be detrimental to the national security and under other circumstances.

The number and disposition of applications for confidential treatment pending during the year under specified statutes are tabulated below.

[table omitted]

The total of 121 applications filed during the year compares with a total of 145 filed in the preceding year.

STATISTICS AND SPECIAL STUDIES

The Commission has a considerable amount of financial data concerning American corporations accumulated in connection with its administrative functions and publishes certain statistical series, which are used by the Congress, other governmental departments, investment and financial institutions, and the general public. The statistical series which have been prepared during the last fiscal year are described below.

CAPITAL MARKETS

All New Securities Offerings

The Commission has continued its monthly series on new securities offerings which is published in the Statistical Bulletin, and a quarterly series which is published in release form and contains a brief analysis of the data. These

statistics show the volume and character of all new securities offered for cash sale in the United States, including both registered and unregistered securities, and public and private offerings.

According to these data, corporations offered for cash sale during the fiscal year securities having a value of \$9 billion, the largest amount of new issues in any year since 1929, and exceeding the amount offered in the 1952 fiscal period, which was the previous record volume in recent years, by \$800 million. These figures are exclusive of sales by investment companies and other issues sold continuously, such as special offerings to employees. Thus the figures differ from statistics of issues effectively registered under the Securities Act shown in other sections of this report. There are other important differences as well. For example, the series on offerings includes only issues offered for cash sale for the account of issuers, includes not only issues publicly offered but also those privately placed, and includes other issues exempt from registration under the Securities Act, such as intrastate offerings and railroad securities. The statistics on new cash offerings are given in tables 2 through 4 of the appendix, and more details on the coverage of the series appear in the footnotes to the tables. The chart on page 114 shows the classification of all new corporate offerings according to type of security, public and private offering, and uses of net proceeds.

The \$9.4 billion of corporate securities offered in the 1953 fiscal year compares with \$8.6 billion in the 1952 fiscal year and \$6.7 billion in the 1951 year. The amount of net proceeds from securities offerings designated for plant and equipment expenditures by all companies totaled \$6.0 billion while the amount used to supplement working capital was \$2.1 billion. In addition, \$1.2 billion was to be used for refunding outstanding securities, repayment of bank loans and other purposes.

[charts omitted]

Of total corporate securities issued in the 1953 period, 58 percent was publicly offered and 42 percent privately placed. Private placements reached a new record for such transactions, totaling \$4.0 billion. Separate statistics on private placements of corporate issues, classified by type of security and industry of issuer, appear in appendix table 2, part 4, while comparisons of the volume of public and private offerings are given in appendix table 4.

Including both public and private offerings, debt financing by corporations amounted to \$7.5 billion, preferred stock issues, \$500 million, and common stock, \$1.4 billion. The distribution of offerings among the various industry groups was as follows: manufacturing, 34 percent; electric, gas and water, 30 percent; financial (exclusive of net sales by investment companies) and real estate, 14

percent; communication, 8 percent; and the balance of 14 percent composed of issues in the railroad, other transportation, commercial and miscellaneous categories.

The noncorporate securities included \$14.2 billion of U.S. Government securities, \$4.5 billion of state and local securities, \$300 million of Federal agency securities and \$200 million foreign government issues.

Issues Registered Under Securities Act of 1933

Statistics of all securities registered under the Securities Act of 1933 are published at quarterly intervals in the Statistical Bulletin, and a discussion of the data for the fiscal year ended June 1953 appears in part I of this report. In addition, appendix table 1 presents information on the number and volume of registrations by months and also classifies the issues registered according to method of distribution, industry of issuer, purpose of registration, and use of net proceeds.

Investment Companies

Data are published quarterly in the Statistical Bulletin for over 200 management investment companies registered under the Investment Company Act of 1940. The statistics include purchases and sales of their own securities, portfolio changes, and aggregates of securities and assets, segregated by open-end and closed-end types. Sales, net of repurchases, of the issues of these companies amounted to half a billion dollars in the fiscal year ended June 1953, approximately the same as in the preceding fiscal year.

Cost of Flotation

Data are collected on the costs of selling securities, including issues registered under the Securities Act and issues placed privately. These data cover commissions and fees of investment bankers and other expenses incurred in marketing securities, such as fees to attorneys, accountants, taxes, printing expenses, etc.

STOCK MARKETS

Statistics are regularly compiled and published in the Statistical Bulletin on the market value and volume of sales on registered and exempted securities exchanges, round-lot stock transactions on the New York exchanges for accounts of members and nonmembers, odd-lot stock transactions on the New York exchanges, special offerings and secondary distributions. Figures on round-

lot and odd-lot stock transactions are also published weekly with the release on stock market indexes.

The indexes of stock market prices were continued during the 1953 fiscal year. These indexes are based upon the weekly closing market prices of 265 common stocks listed on the New York Stock Exchange, and are composed of seven major industry groups, 29 subordinate groups, and a composite group. These data are published in the Statistical Bulletin and are also released weekly.

SAVING STUDY

The Commission compiles and releases at quarterly intervals estimates of the volume and composition of individuals' saving in the United States. The study shows aggregate value of saving in each quarter and also the form in which the saving was made such as investment in securities, expansion of currency holdings, bank deposits, etc.

The estimates show that during the fiscal year ended June 30, 1953 individuals saved more in liquid form than at any time since the end of the war, the amount totalling \$17.1 billion. Individuals added \$8.4 billion to their equity in life insurance and government pension reserves, such as Social Security funds, increased their currency and bank deposits by \$7.4 billion, made net purchases of securities totalling \$8.2 billion and in addition, increased their shares in savings and loan associations by \$3.5 billion. During the same period individuals added substantially to their debt, increasing mortgage debt by \$6.3 billion and other debt by \$4.1 billion.

PLANT AND EQUIPMENT EXPENDITURES OF U.S. BUSINESS

The Commission, with the Department of Commerce, continued the joint series of quarterly releases on the plant and equipment expenditures of United States business other than agriculture. Shortly after the close of each quarter these releases present industry totals on the actual capital expenditures of that quarter and anticipated expenditures for the next two quarters. In addition, a survey is made at the beginning of each year of the plans of business as regards expansion during that year. These data have provided an index of present and future activity in the capital markets and of business in general.

The survey indicates that during the fiscal year ended June 1953, American business, exclusive of agriculture, spent a record amount of \$26.9 billion for expansion of plant and new equipment. According to their plans at mid-1953, manufacturing companies expected to make plant and equipment expenditures

of \$12.7 billion in the calendar year 1953, about 6 percent above the 1952 amount. A larger increase was expected in the expenditures of nondurable goods industries than of manufacturers of durable goods as compared with 1952.

FINANCIAL POSITION OF CORPORATIONS

Working Capital Position

The series of quarterly releases on the working capital position of all United States corporations, exclusive of banks and insurance companies, was continued. These releases show the principal components of current assets and current liabilities and an abbreviated analysis of the sources and uses of corporate funds. These data are important in measuring the liquid position of the corporate segment of the economy taken as a whole.

At the end of June 1953, the net working capital of United States corporations reached a record of \$88.2 billion. At that date corporations held \$29.2 billion of cash and \$19.2 billion of United States Government securities, these together amounting to 52.3 percent of their current liabilities.

Balance Sheet and Income Statements

The Commission, with the Federal Trade Commission, continued the joint series of quarterly industrial financial reports, which were developed as an extension of the working capital series. Complete balance sheet data and an abbreviated income account have been published for manufacturing companies since the first quarter of 1947. Data are shown for various size groups of corporations and for minor industry groups. The financial report program includes data on profits.

RECOMMENDATIONS FOR FURTHER LEGISLATION

The Commission has under study a number of legislative proposals relating to the Acts it administers which have been received from various groups in the field of securities and finance. These legislative proposals are largely concerned with technical changes in these Acts. It is expected that these proposals shortly will be submitted to the Executive Office of the President and to the appropriate Congressional committees for consideration.

PERSONNEL

As of June 30, 1953, the personnel of the Securities and Exchange Commission consisted of the following:

Commissioners (2 vacancies): 3

Staff:

Headquarters office: 502

Regional offices: 268

Total: 773

During the fiscal year 1953, a further reduction in its appropriation compelled the Commission to reduce its staff from 866 to 773. This was accomplished by reduction in force and by not filling vacancies which arose through normal turnover. This reduction continued a downward trend which has seen average employment drop to a figure which is less than half of what it was in 1941. Since June 30, 1950, the Commission has reduced its payroll by 225 persons, or 22.5 percent. The appropriation for the 1953 fiscal year permitted an average employment of 814 and in fiscal 1954, the Commission's appropriation will allow an estimated average employment of 750. As is apparent from the preceding discussions of the work of the Commission, these decreases in personnel have not been accompanied by commensurate decreases in duties.

To increase the efficiency and economy of operations, the Commission effected several organizational and operating changes in the fiscal year 1953.

In May 1953, the Commission separated the administration of its regulatory functions under the Investment Company Act of 1940 from the administration of the disclosure and reporting requirements of that Act by transferring the regulatory functions from the Division of Corporation Finance to the Division of Public Utilities, which was redesignated the Division of Corporate Regulation. Reductions in the staff of the Division of Corporation Finance suggested the desirability of a redistribution of the workload within the Commission in order to ensure that the analysis of registration statements covering new security offerings and new listings on securities exchanges be conducted as expeditiously as possible.

In June 1953 the Commission transferred from the Division of Corporate Regulation to the Office of the General Counsel the responsibility for conducting judicial proceedings before the district courts with respect to the enforcement of orders approving reorganization plans and other orders of the Commission under the Public Utility Holding Company Act.

During the fiscal year 1953, the Commission was able to effect further economies in the operation of its duplicating facilities by renting special reproduction equipment.

On February 4, 1953, the Commission adopted a comprehensive regulation restating the ethical principles which govern the conduct of members and employees and former members and employees of the Commission. The regulation, which represents in large part a consolidation of rules which had been in existence during prior years, includes a general statement of policy following essentially language used by a Subcommittee of the Senate Committee on Labor and Public Welfare in its report on Ethical Standards in Government, and in the related bill, S. 2293, 82nd Cong., 1st Sess., 1951. The regulation also deals more specifically with limitations on outside or private employment, securities transactions, disclosure to superiors of personal interests which might conflict with official duties, negotiation for private employment by persons interested in matters pending before the Commission, and practice before the Commission by former members and employees of the Commission.

FISCAL AFFAIRS

Appropriation and Expenditures

The following is a summary of the appropriation and expenditures for the fiscal year 1953 as compared to the fiscal year 1952:

[tables omitted]

Fees are turned over to the General Fund of the Treasury and are not available for expenditure by the Commission.

PUBLICATIONS

Publications issued during the fiscal year include:

The Work of the Securities and Exchange Commission, August 12, 1952.

Monthly Statistical Bulletin.

Bound Volumes Nos. 20, 21, 22, and 23 of Commission's Decisions and Reports.

Twelve monthly issues of the Official Summary of Securities Transactions and Holdings of Officers, Directors, and Principal Stockholders.

The Eighteenth Annual Report of the Commission.

List of Securities Traded on Exchanges under the Securities Exchange Act of 1934, as of December 31, 1952.

List of Companies Registered under the Investment Company Act of 1940, as of December 31, 1952.

Registered Public Utility Holding Companies, June 30, 1952.

Quarterly Financial Report, U.S. Manufacturing Corporations. (Jointly with Federal Trade Commission). First, third and fourth quarters 1952.

Quarterly Financial Report, U.S. Wholesale and Retail Trade. (Jointly with Federal Trade Commission). 1950-1951 and third and fourth quarters of 1952.

Working Capital of United States Corporations, Quarterly.

Volume and Composition of Saving, Quarterly.

New Securities Offered for Cash, Quarterly.

Plant and Equipment Expenditures of U.S. Corporations, Quarterly. (Jointly with Commerce Department).

INFORMATION AVAILABLE FOR PUBLIC INSPECTION

The Commission maintains Public Reference Rooms at the headquarters office in Washington, D. C., and at its Regional Offices in New York City and Chicago, Ill.

Copies of all public information on file with the Commission contained in registration statements, applications, declarations and other public documents are available for inspection in the Public Reference Room in Washington. During the fiscal year 2,284 persons made personal visits to the Public Reference Room seeking public information and an additional 22,196 requests for registered public information and copies of forms, releases and other material of a public nature were received. Through the facilities provided for the sale of reproductions of public information, 1,743 orders involving a total of 119,081 page units were filled and 673 certificates attesting to the authenticity of copies of Commission records were prepared. The Commission also mailed 381,659 copies of publications to persons requesting them.

There are available in the New York Regional Office copies of recent filings made by companies which have securities listed on exchanges other than the New York exchanges and copies of current periodical reports of many other companies which have filed registration statements under the Securities Act of 1933. During the fiscal year, 10,319 persons visited this Public Reference Room and more than 7,300 telephone calls were received from persons seeking public information and copies of forms, releases and other material. In the Chicago Regional Office there are available copies of recent filings made by companies which have securities listed on the New York exchanges.

Copies of recent prospectuses used in the public offering of securities registered under the Securities Acts are available in all Regional Offices, as are copies of active broker-dealer and investment adviser registration applications and Regulation A Letters of Notification filed by persons or companies in the respective regions.

Copies of certain reports filed with the Commission are also available at the respective national securities exchanges upon which the securities of the issuer are registered.

PUBLIC HEARINGS

The following public hearings were held by the Commission under the Acts indicated during the fiscal year:

Securities Act of 1933: 4

Securities Exchange Act of 1934: 23

Public Utility Holding Company Act of 1935: 36

Investment Company Act of 1940: 4

Formal hearings pursuant to Rule II (e) of the Rules of Practice: 2

Total: 69