29th ANNUAL REPORT
of the
SECURITIES AND EXCHANGE COMMISSION

For the Fiscal Year Ended June 30, 1963

SECURITIES AND EXCHANGE COMMISSION
Headquarters Office
425 Second Street NW.
Washington, D.C. 20549

COMMISSIONERS

January 6, 1964

WILLIAM L. CARY, Chairman
BYRON D. WOODSIDE
MANUEL F. COHEN
JACK M. WHITNEY II

ORVAL L. DuBOIS, Secretary

LETTER OF TRANSMITTAL
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SIR : On. behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Ninth Annual Report of the Commission covering the fiscal year July 1, 1962 to June 30,1963, 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; Section 3 of the Act of June 29, 1949, amending the Bretton Woods Agreement Act; and Section 11 (b) of the Inter-American Development Bank Act. Respectfully,

WILLIAM L. CARY,
Chairman.

THE PRESIDENT OF THE SENATE,

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

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COMMISSIONERS AND STAFF OFFICERS
(As of January 4, 1962)

Commissioners

WILLIAM L. CARY of New York, Chairman -- Term Expires June 5, 1966

BYRON D. WOODSIDE of Virginia -- Term Expires June 5, 1967

MANUEL F. COHEN of Maryland -- Term Expires June 5, 1968

JACK M. WHITNEY II of Illinois -- Term Expires June 5, 1964

Secretary: ORVAL L. DuBOIS

Staff Officers

EDMUND H. WORTHY, Acting Director, Division of Corporation Finance.
ROBERT BAGLEY, Associate Director.

ALLAN F. CONWILL, Director, Division of Corporate Regulation.
SOLOMON FREEDMAN, Associate Director.
GORDON HENDERSON, Associate Director.
WALTER WERNER, Director, Office of Program Planning.

RALPH S. SAUL, Director, Division of Trading and Markets.
IRVING M. POLLACK, Associate Director.

PHILIP A. LOOMIS, Jr., General Counsel.
DAVID FERBER, Associate General Counsel.
WALTER P. NORTH, Associate General Counsel.

ANDREW BARR, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing.
W. VICTOR RODIN, Associate Director.

WILLIAM E. BECKER, Management Analysis Officer.

FRANK J. DONATY, Comptroller.

ERNEST L. DESSECKER, Acting Records and Service Officer.

HARRY POLLACK, Director of Personnel.

ARTHUR FLEISCHER, JR., Executive Assistant to the Chairman

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey. -- Llewellyn P. Young; John J. Devaney, Associate Regional Administrator, 225 Broadway, New York, N.Y., 10007

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine. -- Philip E. Kendrick, Federal Building, Post Office Square, Boston, Mass., 02109

Region 3. Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and that part of Louisiana lying east of the Atchafalaya River. -- William Green, Suite 138, 1371 Peachtree Street, NE., Atlanta, Ga., 30309

Region 4. Illinois, Indiana, Iowa, Kansas City (Kansas), Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin. -- Thomas B. Hart, Bankers Building, Room 630, 105 West Adams Street, Chicago, Ill., 60603

Region 5. Oklahoma, Arkansas, Texas, and that part of Louisiana lying west of the Atchafalaya River, and Kansas (except Kansas City). -- Oran H. Allred, United States Courthouse, Room 301, Tenth and Lamar Streets, Fort Worth, Texas, 76102

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah. -- Donald J. Stocking, Room 802, Midland Savings Building, 444 17th Street, Denver, Colo., 80202

Region 7. California, Nevada, Arizona, Hawaii. -- Arthur E. Pennekamp, Room 821, Market Street, San Francisco, Calif., 94103

Region 8. Washington, Oregon, Idaho, Montana, Alaska. -- James E. Newton, 9th Floor, Hoge Bldg., 705 Second Ave., Seattle, Wash., 98104

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia. -- Alexander J. Brown, Jr., Room 302, 310 Sixth Street NW., Washington, D.C., 20549

Branch Offices

Cleveland, Ohio, 44113. -- Room 1628, Standard Building, 1370 Ontario Street.

Detroit, Michigan, 48226. -- Room 1503, Washington Boulevard Building, 234 State Street. Houston, Texas, 77002. -- Room 2226 Federal Office and Courts Building, 515 Rusk Ave.

Los Angeles, Calif., 90028. -- Room 309 Guaranty Building, 6331 Hollywood Blvd.

Miami, Fla., 33132. -- Room 1504, 51 SW., First Ave.

St. Louis, Mo., 63103. -- Room 4266A Federal Building, 1520 Market Street.

St. Paul, Minn., 55101. -- Room 1027, Main Post Office and Customhouse, 180 East Kellogg Blvd.

Salt Lake City, Utah, 84000. -- Room 1119, Newhouse Building, 10 Exchange Place.

COMMISSIONERS

William L. Cary, Chairman

Chairman Cary was born in Columbus, Ohio, on November 27,1910. He received an A.B. degree in 1931 and an LL.B. degree in 1934 from Yale University and an M.B.A. degree from the Harvard Graduate School of Business Administration in 1938. He is a member of Phi Beta Kappa and Phi Delta Phi. Following admission to the Ohio bar in 1934, he was associated with a Cleveland law firm for 2 years. Upon completion of 2 years of graduate study at the Harvard Graduate School of Business in May 1938, he joined the legal staff of the Securities and Exchange Commission where he served for nearly 2 years in the General Counsel's Office and the Reorganization Division. He served as a Special Assistant to the Attorney General in the Tax Division of the Department of Justice from March 1940 until January 1942, and as Counsel, Office of Coordinator of Inter-American Affairs, in Rio de Janeiro until January 1943. After World War II service with the U.S. Marine Corps Reserve and the Office of Strategic Services in Rumania and Yugoslavia, he became a lecturer in finance and law at the Harvard Graduate School of Business Administration (1946-47). From 1947 to 1955, he served as professor of law at Northwestern University School of Law, except for service as Deputy Department Counselor for Procurement, Department of the Army, during the Korean War, and at Columbia University School of Law from 1955 to March 1961. He is co-author of several books in the corporate field, and until his appointment served as special counsel to a New York law firm. He took office as a member of the Securities and Exchange Commission on March 27, 1961, for the term expiring June 5, 1961. His appointment also covered the succeeding 5-year term ending June 5, 1966. He was designated Chairman of the Commission.

Byron D. Woodside

Commissioner Woodside was born in Oxford, Pa., in 1908, and is a resident of Haymarket, Va. He holds degrees of B.S. in economics from the University of Pennsylvania, A.M. from George Washington University, and LL.B. from Temple University. He is a member of the bar of the District of Columbia. In 1929 he joined the

staff of the Federal Trade Commission, and in 1933, following the enactment of the Securities Act of 1933, was assigned to the Securities Division of that Commission which was charged with the administration of the Securities Act. Commissioner Woodside transferred to the Securities and Exchange Commission upon its establishment by the Securities Exchange Act of 1934. In 1940 he became Assistant Director and in 1952 Director of the Division (now Division of Corporation Finance) responsible for administering the registration and reporting provisions of the Securities Act, Securities Exchange Act, the Trust Indenture Act of 1939, and, in part, the Investment Company Act of 1940. For 14 months commencing in May 1948, he was on loan to the Department of the Army and assigned to duty in Japan as a member of a five-man board which reviewed reorganization plans of Japanese companies under the Occupation's decartelization program; and beginning in December 1950, he served 17 months with the National Security Resources Board and later with the Defense Production Administration as Assistant Deputy Administrator for Resources Expansion. He took office as a member of the Securities and Exchange Commission on July 15, 1960, for the term of office expiring June 5, 1962, and was reappointed effective June 5,1962, for the term expiring June 5,1967.

Manual F. Cohen

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

Jack M. Whitney II

Commissioner Whitney was born in Huntington Beach, Calif., on May 16, 1922. He attended Millsaps College in Jackson, Miss., for 2 years, and Northwestern University School of Commerce, from which he received a B.S. degree in 1943. From 1943 to 1946, he was on active duty in the U.S. Naval Reserve, achieving the rank of Lieutenant (junior grade) in the Supply Corps. He was graduated from Northwestern University School of Law in 1949 with the degree of J.D. In law school he was an editor of the law review, and he is a member of Beta Gamma Sigma and Order of the Coif. Following graduation he became associated with the Chicago law firm of Bell, Boyd, Marshall & Lloyd, of which he was a member at the time of his appointment to the Commission. His practice was primarily in the field of corporate finance. He took office as a member of the Commission on November 9,1961, for the term ending June 5,1964.

PART I
IMPORTANT DEVELOPMENTS DURING THE YEAR

Special Study of Securities Markets

Fiscal year 1963 was a particularly notable one for the Commission by virtue of the substantial completion of the Special Study of Securities Markets, which was first undertaken, at the direction of Congress, in September 1961. The Study's Report was transmitted to Congress in three segments, on April 3, July 17, and August 8, 1963. As stated by the Commission in transmitting the final segment, the Report "is clearly the most thorough examination of the securities markets since the early 1930s. Size alone is but a poor measure of its importance and achievement. The Report would have high usefulness if only for its orderly presentation of basic facts about the markets. More importantly it offers a foundation for regulatory and industry actions for a long period to come."

In its 13 chapters totaling some 3,000 pages, the Report provides a detailed catalog of practices involved in the operation of the securities industry and markets, as well as developments and problems in their regulation and self-regulation. A brief summary of the content of the Report will indicate the breadth of the subject matter reviewed by the Special Study.

Chapter I of the Report, after describing briefly the purposes and methods of study and the general nature of recommendations arrived at, sets forth general data highlighting the growth of the securities industry in the postwar period, which was an important reason for the Study and provides the background for many of the subjects explored. Chapters II and III are concerned with the broad range of persons and business entities engaged in the securities business -- broker-dealers, salesmen, salesmen's supervisors, and persons engaged in giving investment advice. The first of this pair of chapters examines the standards and controls relating to their entry into and removal from the business; and the second, their activities and responsibilities in the course of that business and the related

controls. Chapter IV deals with primary and secondary distributions of securities to the public, with particular emphasis on new issues and briefer review of other specific areas such as the disclosure requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934, unregistered distributions, intrastate offerings, and real estate securities.

Chapters V, VI, VII, and VIII extensively explore the functions, structures, and problems of markets in which securities are traded after their distribution. Chapter V is a general introduction to this group of chapters. Chapter VI covers the exchange markets, with special attention to the most important of these, the New York Stock Exchange. The chapter reviews the functions and activities of various specialized categories of members, particularly specialists, odd-lot brokers and dealers, and floor traders, and also deals with the subjects of short selling and commission rate structures. Chapter VII discusses the over-the-counter markets, their vast and heterogeneous character, their wholesale and retail components, the quotations systems, and present controls over all of them. Chapter VIII then examines various interrelationships among trading markets, including patterns of distribution of securities among exchange and over-the-counter markets, institutional participation in various markets, over-the-counter trading in listed securities, and the regional exchanges as "dual" and primary markets.

Chapter IX reviews the legal requirements and standards in respect of reporting, proxy solicitation and "insider" trading which are applicable to issuers of securities in public hands, contrasting those relating to securities listed on exchanges with those relating to over-the-counter securities and emphasizing the need for legislation in the latter area. It also considers problems in the dissemination of corporate publicity by issuers of both kinds of securities. Chapter X deals with the purposes, effects, and enforcement of securities credit and margin regulations and some inconsistencies and anomalies of the present regulatory pattern. Chapter XI is concerned with certain aspects of open-end investment companies ("mutual funds") which are for the most part covered neither by the recent industry study conducted by the Wharton School of Finance and Commerce nor by continuing inquiries of the Commission's Division of Corporate Regulation. It contains the results of an investor survey and also specifically treats with selling practices, contractual plans, and certain problems in connection with fund portfolio transactions. Chapter XII deals with the self-regulatory pattern which is largely unique to the securities industry. It evaluates the regulatory functioning of the New York Stock Exchange, the American Stock Exchange, the principal regional exchanges, the National Association of Securities Dealers, Inc. ("NASD"), and certain quasi-regulatory agencies, notes the absence of self-regulatory organizations in certain areas, and assesses the role of the Commission in relation to all of them.

The market break of May 1962 was thought to merit separate examination as a major market phenomenon, and also afforded an opportunity to study certain aspects of the securities markets, already studied under more normal conditions, in the circumstances of

a precipitous decline. The results of this study are set forth in Chapter XIII, the final chapter of the Report.

The Commission's judgment on the state of the securities markets and their regulation was summarized in its transmittal letter accompanying the first segment of the Report: "At the outset we emphasize that, although many specific recommendations for improvements in rules and practices are made in the Report of the Special Study, the report demonstrates that neither the fundamental structure of the securities markets nor of the regulatory pattern of the securities acts requires dramatic reconstruction. .. At the same time the Report makes very clear that important problems do exist, grave abuses do occur, and additional controls and improvements are much needed."

The Report points up many shortcomings in investor protection, of various kinds and degrees, and makes 175 specific recommendations for their correction. In transmitting the Report to Congress, the Commission stated that "we do not embrace every recommendation as our own, but we do accept them as a sound point of departure for proposals to the Congress, for rule-making by the Commission and by the self-regulatory agencies, and for discussions with the industry." The Commission's letters of April 19, and July 23,1963, to Chairman Oren Harris of the House Interstate and Foreign Commerce Committee and Chairman A. Willis Robertson of the Senate Banking and Currency Committee, and its transmittal letter to Congress of August 8, 1963, stated the Commission's response to each of the Study's recommendations.

As stated, the Study Report is a basic informational document. Among other things, it describes for the first time, in an organized and complete fashion, the operation of the current over-the-counter market, and the impact of the New York Stock Exchange minimum commission rate schedule on the securities markets. In addition, the Report provides an over-all review of the operation of self-regulation.

Secondly, the Study and its Report have been and will be a springboard for both industry and regulatory action. The Study's impact has already been felt in many ways. Even while still in progress, it stimulated an extensive self-examination by various segments of the securities industry, most notably the self-regulatory agencies. As a result, these agencies have made a number of improvements in rules and practices, which may be in whole or part attributed to the Study. Thus, the American Stock Exchange followed up its reorganization, as reported in last year's annual report, by a number of beneficial changes. It substituted a staff system for the self-perpetuating standing committees of Exchange members, substantially augmented its staff and adopted higher listing and delisting standards. The Exchange also took disciplinary action against various members and allied members whose activities had been discussed in the January 1962 staff report on the Exchange. In sum, the Exchange has now instituted a responsible regulatory system as a basis for meeting its obligations under the Securities Exchange Act. The New York Stock Exchange has also made a substantial number of significant improvements. Qualification standards applicable to various classes of members and member-firm employees were

raised. The rules covering market letters were strengthened and the procedures for review of these letters by the Exchange were improved. The Exchange staff was increased to strengthen the capacity for self-regulation. The NASD also increased its staff and expanded its surveillance activities. It is now undertaking a complete review of its by-laws, rules, and organizational structure, which is expected to result in more effective organization and operation.

The second result of the Special Study Report has been the Commission's legislative program, submitted to Congress in June 1963. [Footnote: The Commission's proposals were submitted to the Committee on Banking and Currency of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. On June 4, 1963, three identical bills embodying the Commission's proposals were introduced in the Congress. S. 1642 was introduced (by request) in the Senate by Senator A. Willis Robertson, Chairman of the Senate Committee on Banking and Currency; H.R. 6789 was introduced in the House of Representatives by Representative Oren Harris, Chairman of the Committee on Interstate and Foreign Commerce, House of Representatives, and H.R. 6793 was introduced by Representative Harley O. Staggers, Chairman of the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives.] Following hearings before a subcommittee of the Senate Banking and Currency Committee on a bill embodying the Commission's proposals, during which the broad purposes of the legislative program were strongly endorsed by all segments of the securities industry, the bill was passed by the Senate on July 30,1963. As of December 1963, hearings had been held by a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives on the two bills introduced in the House of Representatives.

The proposed legislation, in its broadest terms, has two major purposes. The first is to improve investor protection in the over-the-counter market, primarily by extending to investors in over-the-counter securities the fundamental protections which under existing legislation are generally afforded only to investors in securities listed on an exchange. Briefly, these protections are as follows: A company listing its securities on an exchange must file a registration statement containing material information regarding its business and must keep such information current by periodic reports; security-holders whose votes are solicited must be furnished with a proxy statement, which must contain adequate and accurate information; and corporate "insiders" must report their securities transactions and are liable to the company for short-swing trading profits. The proposed legislation would extend these protections to investors in over-the-counter companies having more than 750 shareholders (500 shareholders at a subsequent date) and more than $1 million in assets. The second purpose of the proposed legislation is to strengthen qualification standards for entrance into the securities business and controls over those already in that business, again with emphasis on the over-the-counter market. The principal proposed changes in this area would include the following: All over-the-counter broker or dealer firms would be required to be members of a registered securities association, in order to bring them within the self-regulatory scheme. Registered securities associations would be

required to adopt rules, subject to Commission approval, establishing standards of training, experience and competence for members and their employees and to establish capital requirements for members. In addition, the rigidity of the present statutory scheme for disciplining violators, which does not provide for direct Commission action against individual wrongdoers connected with a broker or dealer, or expressly authorize the Commission to impose useful intermediate sanctions against a registered firm short of revoking its registration, would be removed by permitting action against the individual in lieu of proceeding against the entire firm, and by authorizing the imposition of intermediate sanctions such as temporary suspension or censure. The authority of a national securities association to act directly against offending individuals would also be clarified.

A major part of the Study's recommendations can be implemented under existing legislation, through the rule-making powers of the Commission or the self-regulatory agencies. At the present time, the Commission and the industry are actively engaged in considering the Study's recommendations and analyzing the problems discussed by the Study Report. Because of the vast number of recommendations, the Commission has thought it necessary to select out certain priority items which will be given first attention. To this end, the recommendations have been divided into two main groups. The first, those of particular concern to specific self-regulatory agencies, have been taken up with the affected exchange or the NASD and agreement has been reached on the subjects to be given first attention. Thus, in the exchange area, priority designation has been given to the proposals relating to odd-lot dealers, floor traders, specialists and automation. Further, the Commission and the NASD are giving first priority in the over-the-counter market to the quotation systems, the "markup" policy, execution of retail transactions and the strengthening of the organization and structure of the NASD itself.

The other major group of recommendations are those of concern to the securities industry as a whole, transcending the particular interest of any one self-regulatory agency. These have already been discussed with the members of the Industry Advisory Committee. The Committee is designating appropriate subcommittees to consider such vital matters as selling practices, the establishment of minimum capital requirements, and rules relating to the conduct of those who distribute securities.

The priority groups include those matters which in the Commission's opinion warrant immediate attention. As a practical matter, not all 175 specific recommendations can be implemented immediately and simultaneously. But those recommendations not receiving first priority are being neither discarded nor neglected. A considerable amount of work has already been done on a number of them; it is expected that in a reasonable period of time they will all receive full attention and action by the Commission and its staff.

The Commission has taken steps to reorganize its personnel for the implementation of the Study's recommendations. Thus, a new Office of Program Planning was created, with the initial task of assisting and advising the Commission with respect to the implementation

program. The Division of Trading and Exchanges was renamed the Division of Trading and Markets and was reorganized. Many of the Special Study's personnel have been assigned to these units, as well as to other staff offices, and they are playing an important role in the implementation program.

The Special Study recommended that the Commission more fully exercise its powers of oversight and supervision over the self-regulatory agencies. Accordingly, a new office within the Division of Trading and Markets, the Office of Regulation, has been created and assigned the general responsibility of overseeing the operations of the self-regulatory agencies. At the same time, the Commission has strengthened and instituted important oversight programs, including an increased schedule of examinations of the exchanges and of the NASD and in general securing more information about their operations.

As has been noted, the securities industry and the various self-regulatory agencies have already taken many important and significant steps which should have the effect of raising investor protection. The Commission itself has issued a proposed rule, based on the Study's recommendations, which would require financial statements in annual reports transmitted to stockholders not to be materially misleading in light of the reports filed with the Commission, and, as of December 1963, consideration was being given to other possible proposed rules. Furthermore, out of the very intensive and active scrutiny and examination of rules and practices stimulated by the Special Study Report and now being conducted by the Commission, the self-regulatory agencies and the securities industry itself, it can be anticipated that many additional important changes in rules and practices can be adopted, which will contribute to the improvement of investor protection.

Enforcement Activity

As described in more detail in other parts of this report, the Commission continued to pursue a vigorous enforcement program during the fiscal year in an effort to combat fraudulent and other illegal practices in securities transactions. The Commission, as in the past, took action on all available fronts -- civil, criminal and administrative. Thus, 121 injunction or related court enforcement proceedings were instituted by the Commission during the year, a larger number than in any previous year. Six hundred and twenty-two investigations of securities transactions involving possible violations of the anti-fraud or other provisions of the securities acts were instituted. Forty-nine cases were referred to the Department of Justice for criminal prosecution. A striking example of the complexity which criminal cases in this field may assume, and the extent of the investigative work which must necessarily precede the actual prosecution of such cases, is presented by United States v. Garfield, in which, after the longest trial in the history of Federal criminal prosecutions (some 11 months), the defendants were convicted in February 1963 of manipulating the market price of the common stock of United Dye and Chemical Corporation and fraudulently distributing unregistered shares of such stock through "boiler-rooms." At the conclusion of the trial, the judge commented that "there never was a case that was proved to the hilt the way this case was proved." He commended two

members of the Commission's staff for their investigative efforts, stating that "it is evident that they performed Herculean labors by way of investigation and ferreting out the facts."

During the year 1,534 broker-dealer inspections were conducted, and broker-dealer registrations were revoked in 75 cases. Inspections were completed with respect to 219 investment advisers, and 5 investment adviser registrations were revoked. Examinations or investigations were initiated in 20 cases to determine whether stop order proceedings should be brought with respect to registration statements filed under the Securities Act of 1933, and investigations were instituted in 19 cases to determine whether other information filed with the Commission was accurate and adequate. Orders which suspended the exemption from registration provided for small security issues were issued in 53 instances.

The fiscal year also saw a further increase in the Commission's inspection program under the Investment Company Act of 1940. During the year, 84 inspections of investment companies were completed, as compared to a total of 165 inspections conducted in all prior years since the inception of the program in 1957, and 52 inspections during the 1962 fiscal year. Chiefly as a result of information obtained through inspections, 29 investigations were commenced, and 9 civil actions were instituted. The inspection and investigation program produced rather dramatic results in certain instances in terms of tangible benefits to investment companies or their shareholders. In one instance, where it appeared that an investment company's investment adviser, a broker-dealer, had taken improper brokerage commissions in executing securities transactions for the company, a settlement was agreed upon which will result in the return of more than $200,000 to the company. In another instance, where an inspection and investigation revealed that promoters had used a company and its wholly-owned subsidiary, a registered investment company, as a means of financing other corporations controlled by them, and had committed numerous violations of the Securities Act of 1933 and the Investment Company Act of 1940, the Commission's staff negotiated a settlement which provided, among other things, for a return of about $250,000 to public shareholders.

Registration of New Security Offerings

Continuing the trend set since the severe market break of May 1962, fiscal year 1963 saw a considerable reduction, by contrast with recent years, in the number of registration statements filed under the Securities Act of 1933 for public offerings of securities. A total of 1,159 statements was filed during the year, representing a dollar amount of $14.7 billion. The lower number of filings enabled the Commission's staff to reduce the processing period substantially. The median number of days elapsing from the date of filing to the date of the staff's letter of comment, with respect to registration statements which became effective during the year (excluding certain investment company filings), was 27 during the 1963 fiscal year as compared with 57 days in the preceding year. A total of 1,157 statements in the amount of $14.8 billion became effective during the year.

The chart below portrays the dollar volume and number of registrations with respect to securities which became registered during the fiscal years 1935 through 1963.

[table omitted]

PART II
LEGISLATIVE ACTIVITIES

The Commission's major activity relating to legislation during the fiscal year 1963, namely, the preparation and submission of its legislative program based on the recommendations of the Special Study of Securities Markets, has already been discussed in some detail in the preceding part of this report.

Additionally, Chairman Gary testified before Subcommittee No. 2 of the Committee on the District of Columbia, House of Representatives, in favor of H.R. 4200, a bill to provide for the regulation of the business of selling securities in the District of Columbia and for the licensing of persons engaged in that business. Chairman Gary also appeared before the Legal and Monetary Affairs Subcommittee of the Committee on Government Operations, House of Representatives, to discuss the relation of the Federal securities laws to certain aspects of the Comptroller of the Currency's revised Regulation 9, particularly the expansion, as contemplated by that regulation, of the power of national banks to commingle funds for investment management and the relation of the Federal securities laws to the provisions of the Self Employed Individuals Tax Retirement Act of 1962. In addition, Chairman Gary discussed the problem of the exploitation of elderly citizens in securities transactions and the Commission's responsibility in that area in hearings before the Special Committee on Aging, United States Senate. Commissioner Cohen testified before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary with respect to S. 1664, a bill to establish a Permanent Administrative Conference.

During the fiscal year the Commission and its staff analyzed or commented on 49 bills and other legislative matters referred by various committees of the Senate and House of Representatives and the Bureau of the Budget.

PART III
REVISION OF RULES, REGULATIONS, AND FORMS

As previously noted, the Report of the Special Study of Securities Markets recommended, among other things, changes in the Commission's rules in various areas. Even aside from the Special Study and its implementation, the Commission maintains a

continuing program of reviewing its rules, regulations and forms in order to determine whether any changes are appropriate in the light of changing conditions, methods and procedures in business and in the financial practices of business, and in the light of the experience gained in the administration of the statutes administered by it. Certain members of the staff are specifically assigned to this task, but changes are also suggested, from time to time, by other members of the staff who are engaged in the examination of material filed with the Commission, and by persons outside of the Commission who are subject to the Commission's requirements or who have occasion to work with those requirements in a professional capacity such as underwriters, attorneys and accountants. With a few exceptions provided for by the Administrative Procedure Act, proposed new rules, regulations and forms and proposed changes in existing rules, regulations and forms are published in preliminary form for the purpose of obtaining the views and comments of interested persons, including issuers and various industry groups. These views and comments are carefully reviewed by the staff and by the Commission and are very helpful in revealing the manner in which proposed changes will operate. [Footnote: The rules and regulations of the Commission are published In the Code of Federal Regulations, the rules adopted under the various Acts administered by the Commission appearing in the following parts of Title 17 of that Code:
Securities Act of 1933, pt. 230.
Securities Exchange Act of 1934, pt. 240.
Public Utility Holding Company Act of 1935, pt. 250.
Trust Indenture Act of 1939, pt. 260.
Investment Company Act of 1940, pt. 270.
Investment Advisers Act of 1940, pt. 275.]

During the 1963 fiscal year, the Commission made a number of changes in its rules, regulations and forms, and published in preliminary form various proposed changes. The changes made during the year and those pending at the end of the year are described below.

Proposed Rule 156

During the fiscal year the Commission invited public comments on a proposed rule relating to transactions involving certain group annuity contracts. The proposed rule, to be designated Rule 156, would define as "transactions by an issuer not involving any public offering" in Section 4 (1) of the Securities Act, transactions which are exempted from the Investment Company Act of 1940 by Rule 3c-3 under that Act. Rule 3c-3, which was recently adopted, exempts from the provisions of the Investment Company Act transactions by any insurance company with respect to certain group annuity contracts providing for the administration of funds held by such company in separate accounts established and maintained pursuant to state law. It has been represented to the Commission that these contracts are individually negotiated with employers who are able to fend for themselves. The proposed new rule provides that transactions of the character referred to therein shall come within the rule only if the transaction is not solicited by

advertising which, insofar as it relates to a separate account group annuity contract, does more than identify the insurance company, state that it is engaged in the business of writing separate account contracts and invite inquiries in regard thereto. The rule provides, however, that disclosure in the course of direct discussion or negotiation of such contracts would not be prohibited. The proposed rule would provide an exemption only from the provisions of Section 5 of the Act and would not, therefore, afford any exemption from the anti-fraud provisions of the Act.

Proposed Rules 402A and 440

The Commission announced that it has under consideration two proposed new rules relating to the registration of securities by foreign issuers other than foreign governments.

Section 6 (a) of the Securities Act requires that where a registrant is a foreign or territorial person, the registration statement shall be signed by its duly authorized representative in the United States. This signature is in addition to the signatures required where the registrant is a domestic issuer. Under Section 11 of the Act, an authorized representative may be liable to persons purchasing the securities offered pursuant to the registration statement. In order for this provision to operate effectively for the protection of investors, it is essential that the authorized representative be a person having a reasonable degree of responsibility. In the past, efforts have been made to meet the requirement that the registration statement be signed by an authorized representative in the United States by organizing a dummy corporation solely for that purpose. Other devices may similarly be used to evade the intent and purpose of the requirement. The proposed new Rule 402A would require that where the registrant is a foreign person other than a foreign government, the authorized representative in the United States shall meet certain qualifications designed to insure that there will be in this country a person against whom investors may have recourse in appropriate cases.

The proposed new Rule 440 would require that where the registrant, any of its directors or officers, any selling security holder or any underwriter is a nonresident (other than a foreign government or a political subdivision thereof), it shall furnish to the Commission a consent and power of attorney authorizing the Commission to accept service of process in connection with civil actions arising out of the offering or sale of the registered securities. The purpose of this rule is to make it easier for purchasers of the registered securities to obtain service of process upon foreign issuers and their insiders in connection with civil actions instituted in the courts in this country.

The proposed rules were still under consideration at the close of the year.

Adoption of Revised Form S-8

During the fiscal year the Commission adopted certain amendments to Form S-8 which is the form authorized for use in registering securities under the Securities Act to be offered

pursuant to certain stock purchase, savings or similar plans, and for registering the interests in such plans where such registration is required.5 In addition to certain changes designed to simplify and clarify the form in certain respects, Form S-8 was amplified to permit use of the form for securities other than "equity" securities and for securities to be offered pursuant to restricted stock options.

THE SECURITIES EXCHANGE ACT OF 1934

Proposed Amendments to Rule 3a12-3

Rule 3a12-3 exempts the securities of certain foreign issuers from the operation of Sections 14 (a) and 16 of the Securities Exchange Act. During the fiscal year, the Commission announced that it has under consideration certain proposed amendments to Rule 3a12-3 and invited public comments. The rule, as amended, would provide that no exemption is available for voting trust certificates where the voting trustee is or, if there is more than one, at least one-half of the voting trustees are citizens or residents of the United States, or if any person or persons controlling such voting trustee or trustees are citizens or residents of the United States.

A further amendment of the rule would take out of the exemption from Sections 14 (a) and 16 of the Act certain issuers organized in a foreign country. These would include (i) companies which have their principal executive offices in the United States and which have a substantial portion of their assets in, or derive a substantial portion of their gross revenues from sources in, the United States; (ii) companies which have the major portion of their assets in, or derive the major portion of their gross revenues from sources in, the United States; (iii) companies the majority of whose directors are citizens or residents of the United States; and (iv) companies more than 50 percent of whose voting securities are owned by residents of the United States.

This matter was pending at the end of the fiscal year.

Adoption of Rule 10b-9

There have been instances where persons distributing securities have represented that such securities were being offered on an "all-or-none" basis when, because of ambiguities in the contractual arrangement, it was not clear whether the conditions for a completed offering would be met if persons were found who agreed to purchase all of the securities within the specified time, but the underwriter did not succeed in collecting the purchase price for all of the securities. Rule 10b-9 was adopted to deal with this type of situation. The rule makes it a "manipulative or deceptive device or contrivance," as used in Section 10 (b) of the Act, for any person, in connection with the offer or sale of a security, to make any representation to the effect that the security is being offered or sold on an "all-or-none" basis unless the security is part of an offering being made on the condition that

all or a specified amount of the purchase price will be promptly refunded to the purchaser if all of the securities being offered are not sold at a specified price within a specified time and the total amount due to the seller is not received by him by a specified date. The rule would also prohibit a representation to the effect that the security is being offered or sold on any other basis under which all or part of the amount paid will be refunded to the purchaser if all or part of the securities are not sold, unless the security is part of an offering being made on the condition that all or a specified part of the amount paid will be promptly refunded if a specified number of units are not sold at a specified price within a specified time and the total amount due to the seller is not received by him by a specified date.

Proposed Rule 10b-10

During the fiscal year, the Commission invited public comments on a proposed rule relating to representations concerning the sale or redemption of certain securities.8 The proposed rule, to be designated Rule 10b-10, would provide that it shall constitute a manipulative or deceptive device or contrivance within the meaning of Section 10 (b) of the Act for any person, in connection with the offering or sale of any equity security, to make any representation to the effect that (1) the offering price of such security is based upon and varies with the current value of its proportionate share of the assets of the issuer, or (2) such security is or will be redeemable at the option of the holder at a price which is based upon and varies with the current value of such proportionate share, unless substantially all of the assets of the issuer consist of cash, cash items and securities (other than mortgages and other liens on and interests in real estate) for which market quotations are readily available and which are readily marketable.

This matter has become of particular interest in connection with proposals by certain real estate investment companies to offer redeemable securities. However, the proposed rule as drafted would apply to any company seeking to offer securities in the manner or of the character described in the rule. One purpose of the rule is to prohibit the offering of securities on the basis of the value of their proportionate share of the assets of the company in cases where the nature of the company's assets is such that it is impossible to determine their value with sufficient precision to compute the offering price of the securities on that basis. The rule would also prohibit the offering of securities of a company as "redeemable" securities when the assets of the company are such that their value cannot be precisely determined for the purpose of redemption and are not sufficiently liquid to make possible their conversion into cash for the purpose of redeeming the securities.

A number of comments were received in regard to the proposed rule and the rule was being considered in the light of such comments at the end of the fiscal year.

Proposed Amendments to Rules 13a-15 and 15a-15 and Form 7-K

Rules 13a-15 and 15d-15 require certain real estate companies to file with the Commission pursuant to Sections 13 and 15 (d) of the Securities Exchange Act quarterly reports with respect to distributions to shareholders. Form 7-K is the form prescribed for such reports. At the time of adoption of these rules and form, the Commission announced that it would consider all views and comments submitted with respect thereto by interested persons and would make such changes, if any, as it might deem necessary or appropriate in the light of such views and comments.9 Accordingly, after consideration of a number of comments submitted by interested persons, the Commission, during the fiscal year, invited public comments on certain proposed amendments to Rules 13a-15 and 15d-15 and Form 7-K.

The rules as proposed to be amended would require the filing of quarterly reports on Form 7-K by real estate investment trusts and by real estate companies which as a matter of policy or practice make distributions to shareholders from sources other than current or retained earnings. Other real estate companies would be required to file reports with respect to quarters in which a distribution is made from a source other than current or retained earnings. It is proposed to amend Form 7-K to eliminate the two-column reporting now required and to clarify the language of the items of the form so as to simplify the preparation and filing of the required reports.

This matter was pending at the close of the fiscal year.

Adoption of Rule 15a-21 and Form 11-K; Amendment to Form 10-K

During the fiscal year, the Commission adopted regulations governing the filing of annual reports, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, relating to employee stock purchase, savings and similar plans.

A new Form 11-K was adopted for use in filing annual reports with respect to such plans. A new Rule 15d-21 provides that separate annual and other reports need not be filed with respect to any plan if the issuer of the stock or other securities offered to employees through the plan files annual reports on Form 10-K or U5S and as a part of such reports furnishes the information, financial statements and exhibits required by Form 11-K and if it furnishes to the Commission copies of any annual report submitted to employees in regard to the plan. A new general instruction was added to Form 10-K which specifies the procedure to be followed where an issuer elects to file information and documents pursuant to Rule 15d-21.

Proposed Rule 16b-9

Section 16 (b) of the Securities Exchange Act provides for the recovery, by or on behalf of the issuer of equity securities registered on a national securities exchange, of short term trading profits realized by directors, officers and principal security holders of the issuer. The Commission is authorized to exempt from Section 16 (b) transactions not

comprehended within the purpose of that Section. During the fiscal year, the Commission invited public comments on a proposed new Rule 16b-9 which would exempt from the operation of Section 16 (b) certain acquisitions of shares of stock in exchange for similar shares of stock of the same issuer.

The proposed rule would exempt any acquisition of shares of stock of an issuer in exchange for an equal number of shares of another class of stock of the same issuer pursuant to a right of conversion under the terms of the issuer's certificate of incorporation, for the purpose or in contemplation of a public sale which in fact occurs. The exemption would be available only if .the shares surrendered and those acquired in exchange therefor evidence the same rights and privileges except that the shares surrendered may, in the discretion of the board of directors, receive a lesser cash dividend than the shares for which they are exchanged. The exemption would be further conditioned upon there being no other acquisitions of securities of either class within 6 months before or after the exempted transaction. The exemption would apply to any such acquisition occurring either before or after the effective date of the rule, except that it would not affect judgments rendered prior to the effective date.

Proposed Amendments to Form 8-K

Form 8-K is the form prescribed for current reports filed pursuant to Sections 13 and 15 (d) of the Securities Exchange Act. During the 1962 fiscal year, the Commission announced that it had under consideration certain proposed amendments to the form and invited public comments. The amendments are designed to require prompt reporting of material changes affecting a company or its affairs when it appears that they are of such importance that reporting should not be deferred to the end of the company's fiscal year. The amendments relate to matters such as the pledging of securities of the issuer or its affiliates under such circumstances that a default will result in a change in control of the issuer, changes in the board of directors otherwise than by stockholder action, the acquisition or disposition of significant amounts of assets otherwise than in the ordinary course of business, interests of management and others in certain transactions, and the issuance of debt securities by subsidiaries. This matter was still under consideration at the close of the year.

Adoption of Rule 3c-3

During the fiscal year, the Commission adopted a new Rule 3c-3. The rule exempts from the provisions of the Act transactions of insurance companies with respect to certain group annuity contracts providing for the administration of funds held by an insurance company in a separate account established and maintained pursuant to legislation which permits the income, gains and losses, whether or not realized, from assets allocated to such account to be credited to or charged against such account without regard to other income, gains or losses of the insurance company.

It is contemplated that employers would make payments to such accounts as a means of accumulating the funds required to discharge their obligations under pension plans to provide their employees with annuities in fixed-dollar amounts upon their retirement. It is also contemplated that the assets allocated to such a special account would be invested free of the usual restrictions applicable to investment by insurance companies in common stocks. Under the type of pension contract which would utilize such special accounts, the risk of market fluctuation of equities occurs only during the accumulation period and is on the employer. The annuity which will be provided for a retired employee is not affected by market fluctuations.

Although the insurance companies may not be acting as trustees, the arrangements for utilization by employers of such special accounts maintained by insurance companies would be similar to arrangements excepted from the definition of investment company pursuant to Section 3 (c) (13) of the Act, relating to accounts maintained by bank trustees for the investment of funds which employers have set aside to meet their obligations under qualified pension plans.

The exemption provided by the rule is available only if the following requirements are met: the pension plan must meet the qualification requirements of Section 401 of the Internal Revenue Code or the requirements for deduction of the employer's contribution under Section 404 (a) (2) of the Code whether or not the employer deducts the amounts paid for the contract under such Section; must cover at least 25 employees as of the plan's initiation date; must not provide for payment of retirement benefits measured by the investment results of the assets allocated to the segregated account; and must not permit the allocation to the separate account of any payment or contribution by employees.

Amendment of Rule 30a-1

The Commission also adopted certain amendments to Rule 30d-1 under the Investment Company Act of 1940. This rule relates to reports required to be furnished to stockholders of management companies pursuant to Section 30 (d) of the Act.

Paragraph (a) of the rule previously required the first report of a registered management company to be made as of a date not later than the close of the fiscal year or half-year first occurring on or after December 31, 1940. Since that date no longer has any significance, this provision has been amended to provide that the first such report shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the Act is filed with the Commission.

Another amendment to paragraph (a) provides that, with certain exceptions, reports shall be mailed to stockholders within 45 days (rather than within 30 days, as previously required) after the date as of which the report is made. The procedure for securing an extension of time in certain cases has also been simplified.

Paragraph (b) of the rule has been amended to provide expressly that the financial statements included in such reports for the company's fiscal year shall be certified by independent public accountants. The rule has been consistently construed to require such certification and the amendment merely makes the requirement explicit.

Amendments to Rules 31a-1 and 31a-2; Adoption of Rule 31a-3

Rules 31a-1 and 31a-2, which relate to the records to be maintained and preserved by registered investment companies, certain majority-owned subsidiaries, and other persons having transactions with registered investment companies, were amended during the fiscal year to prescribe with greater specificity and detail the records of securities transactions required to be kept, and to require the keeping of certain memoranda and documents not previously required.17 At the same time, a new Rule 31a-3 was adopted, which sets forth certain requirements in circumstances where the records specified in Rules 31a-1 and 31a-2 are prepared or maintained by others on behalf of the person required to maintain them.

PART IV
ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is primarily a disclosure statute designed to provide investors with material facts concerning securities publicly offered for sale by an issuing company or any person in a control relationship to such company by the use of the mails or instrumentalities of interstate commerce, and to prevent misrepresentation, deceit, or other fraudulent practices in the sale of securities generally. Disclosure is obtained by requiring the issuer of such securities to file with the Commission a registration statement which includes a prospectus containing significant financial and other information about the issuer and the offering. The registration statement is available for public inspection as soon as it is filed. Although the securities may be offered after the registration statement is filed, sales may not be made until the registration statement has become "effective." A copy of the prospectus must be furnished to each purchaser at or before the sale or delivery of the security. The registrant and the underwriter are responsible for the contents of the registration statement. The Commission has no authority to control the nature or quality of a security to be offered for public sale or to pass upon its merits or the terms of its distribution. Its action in permitting a registration statement to become effective does not constitute approval of the securities, and any representation to a prospective purchaser of securities to the contrary is made unlawful by Section 23 of the Act.

DESCRIPTION OF THE REGISTRATION PROCESS

Registration Statement and Prospectus

Registration of any security proposed to be publicly offered may be effected by filing with the Commission a registration statement on the applicable form containing the prescribed disclosure. Generally speaking, when a registration statement relates to a security issued by a corporation or other private issuer, it must contain the information, and be accompanied by the documents, specified in Schedule A of the Act; when it relates to a security issued by a foreign government, the material specified in Schedule B must be supplied. Both schedules specify in considerable detail the disclosure which should be made available to an investor in order that he may make a realistic appraisal of the company and the securities and thus exercise an informed judgment whether to buy the security. In addition, the Act provides flexibility in its administration by empowering the Commission to classify issues, issuers and prospectuses, to prescribe appropriate forms, and to increase, or in certain instances vary or diminish, the particular items of information required to be disclosed in the registration statement as the Commission deems appropriate in the public interest or for the protection of investors. The Commission has prepared special registration forms which vary in their disclosure requirements so as to provide maximum disclosure of the essential facts pertinent in a given type of case while at the same time minimizing the burden and expense of compliance with the law.

In general, the registration statement of an issuer other than a foreign government must describe such matters as the names of persons who participate in the direction, management, or control of the issuer's business; their security holdings and remuneration and the options or bonus and profit-sharing privileges allotted to them; the character and size of the business enterprise, its capital structure, past history and earnings, and its financial statements, certified by independent accountants; underwriters' commissions; payments to promoters made within 2 years or intended to be made; the interest of directors, officers and principal stockholders in material transactions; pending or threatened legal proceedings; and the purpose to which the proceeds of the offering are to be applied. The prospectus constitutes a part of the registration statement and presents the more important of the required disclosures.

Examination Procedure

Registration statements are examined by the staff of the Division of Corporation Finance for compliance with the standards of accurate and full disclosure. The registrant is usually notified by an informal letter of comment of any material respects in which the statement appears to fail to conform with the applicable requirements and is afforded an opportunity to file correcting or clarifying amendments. In addition, the Commission has power, after notice and opportunity for hearing, to issue an order suspending the effectiveness of a registration statement if it finds that material representations are misleading, inaccurate or incomplete. In certain cases, such as where the deficiencies in a registration statement appear to stem from careless disregard of applicable requirements

or from a deliberate attempt to conceal or mislead, a letter of comment is generally not sent and the Commission either institutes an investigation to determine whether stop-order proceedings should be instituted or immediately institutes stop-order proceedings. Information about the use of this "stop-order" power during 1963 appears below under "Stop-Order Proceedings."

Time Required to Complete Registration

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

During the 1963 fiscal year, 985 registration statements became effective.1 The number of calendar days which elapsed from the date of the original filing to the effective date of registration for the median registration statement was 52, compared with 78 days for 1,646 registration statements in fiscal year 1962, and 55 days for 1,389 registration statements in fiscal year 1961. The number of registration statements filed during fiscal year 1963 was 1,159, as compared with 2,307 and 1,830 in fiscal years 1962 and 1961, respectively.

The following table shows by months during the 1963 fiscal year the number of calendar days for the median registration statement during each of the three principal stages of the registration process, the total elapsed time and the number of registration statements effective:

[table omitted]

VOLUME OF SECURITIES REGISTERED

During the fiscal year 1963, a total of 1,157 statements in the amount of $14.8 billion became fully effective under the Securities Act of 1933. This was a decrease of 37

percent in number of statements and 24 percent in dollar amount from the record registrations of the preceding fiscal year. The chart on page 9 shows the number and dollar amounts of fully effective registrations from 1935 to 1963.

These figures cover all registrations which became fully effective, including secondary distributions and securities registered for other than cash sale, such as exchange transactions and issues reserved for conversion. Of the dollar amount of securities registered in 1963, 80 percent was for account of issuer for cash sale, 12 percent for account of issuer for other than cash sale and 8 percent for account of others, as shown below.

[table omitted]

The $11.9 billion of securities to be offered for cash sale for account of issuer represented a decrease of $4.4 billion, or 27 percent, from the previous year. This was due chiefly to a decrease of almost $4.3 billion in common stock, debt securities declining by only $140 million. Debt securities made up $4.4 billion of the 1963 volume, preferred stock $270 million and common stock $7.2 billion. Of issues for cash sale, most of the common stock, 88 percent, was to be offered over an extended period, including investment company issues, stock to be issued under employee purchase plans and stock called for by warrants and options. Appendix Table 1 shows the number of statements which became effective and total amounts registered for each of the fiscal years 1935 through 1963, and contains a classification, by type of security, of issues to be offered for cash sale on behalf of the issuer during those years. More detailed information for 1963 is given in Appendix Table 2.

Corporate issues scheduled for immediate offering following effective registration amounted to $5.1 billion, a decrease of $1.2 billion from the previous year. Of the total, electric, gas and water companies registered $2.3 billion of securities, about the same amount as in the preceding 2 years. The total for communication companies was $1.1 billion, exceeding the volume registered in fiscal year 1962 by 35 percent. All other groups, except for the extractive industry, registered lower amounts for immediate offering. The decline was greatest for manufacturing companies with $850 million of issues in 1963 compared with $1.8 billion in 1962. Issues registered for offering over an extended period amounted to $6.5 billion, as against $9.7 billion in fiscal year 1962.

[table omitted]

Of the $5.1 billion expected from the immediate cash sale of corporate securities for the account of issuer in 1963, 73 percent was designated for new money purposes, including plant, equipment and working capital, 17 percent for retirement of securities and 10 percent for all other purposes including purchases of securities.

REGISTRATION STATEMENTS FILED

During the 1963 fiscal year, 1,159 registration statements were filed for offerings of securities aggregating $14.7 billion, as compared with 2,307 registration statements filed during the 1962 fiscal year for offerings amounting to $21.6 billion. This represents a decrease of 49.8 percent in the number of statements filed and 32 percent in the dollar amount involved.

Of the 1,159 registration statements filed in the 1963 fiscal year, 357, or 31 percent, were filed by companies that had not previously filed registration statements under the Securities Act of 1933. Comparable figures for the 1962 and 1961 fiscal years were 1,377, or 60 percent, and 958, or 52 percent, respectively.

From the effective date of the Securities Act of 1933 to June 30,1963, a cumulative total of 22,854 registration statements has been filed under the Act by 10,863 different issuers, covering proposed offerings of securities aggregating over $240 billion.

Particulars regarding the disposition of all registration statements filed under the Act to June 30,1963, are summarized in the following table:

[table omitted]

STOP ORDER PROCEEDINGS

Section 8 (d) provides that, if it appears to the Commission at any time that a registration statement contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may institute proceedings looking to the issuance of a stop order suspending the effectiveness of the registration statement. Where such an order is issued, the offering cannot lawfully be made, or continued if it has already begun, until the registration statement has been amended to cure the deficiencies and the Commission has lifted the stop order.

The following table shows the number of proceedings under Section 8 (d) of the Act pending at the beginning of the 1963 fiscal year, the number initiated during the year, the number terminated and the number pending at the end of the year.

Proceedings pending at beginning of fiscal year. Proceedings initiated during fiscal year_____

[table omitted]

Two of the proceedings which were terminated during the fiscal year through the issuance of stop orders are described below:

The Richmond Corporation. -- The registrant, a District of Columbia corporation organized in 1959, engages in various phases of the real estate business, including the ownership of undeveloped acreage, income-producing properties, and promissory notes secured by mortgages and deeds of trust. It filed a registration statement covering a proposed offering of 142,858 shares of 10 cent par value common stock at $7 per share, 36,500 common stock purchase warrants to be sold to the underwriter at 1 cent per warrant, and 36,500 shares of common stock reserved for issuance upon exercise of the warrants.

The Commission instituted proceedings under Section 8 (d), and the registrant stipulated certain facts and consented to the entry of a stop order. Following are some of the more important deficiencies in the registration statement:

The Commission found the registration statement to be materially deficient in failing to disclose that various officers and directors of the registrant were engaged, through companies similar to the registrant which they control, or in person, in competitive real estate activities which involved potential conflicts of interest with the business purposes of the registrant. The Commission accordingly concluded that the statement in the prospectus that "There are no business relations between the Board members or officers or promoters which are competitive with, or in conflict with the business purposes of the company," was materially false and misleading.

The managing underwriter named in the registration statement, a sole proprietorship, was organized February 14, 1961. Its owner's only prior experience in the securities business was as a securities salesman between May and December 1960. The firm's only experience as an underwriter was in connection with two proposed offerings neither of which involved securities of real estate investment companies. One of these offerings was deregistered shortly after the registration statement became effective. In the other offering, made pursuant to a claimed exemption from registration under Regulation A under the Act, the firm acted together with co-underwriters and sold 30,000 shares at $2 per share. The Commission held that the limited experience of the underwriter was a material factor bearing on the success of the offering and that the failure to disclose it was a material omission.

The Commission's opinion stated that the underwriter's investigation of registrant's business was so limited in nature that he did not exercise the degree of care necessary for and required of an underwriter to satisfy himself as to the accuracy and adequacy of the prospectus. His investigation consisted of (1) visits to two of the registrant's three tracts of land, (2) an examination of a list of registrant's stockholders and (3) the obtaining of a credit report on the registrant's president. As to all other matters in connection with the registration statement, the underwriter apparently relied only on representations of the registrant's management. The Commission referred to a report, which preceded the passage of the Act, in which the Congress recognized that the high standards of honesty,

care and competence required of fiduciaries were responsibilities assumed by reputable investment bankers.4 The Commission also cited various provisions in the Securities Act and the Securities Exchange Act which imposed upon underwriters a responsibility to conform to those standards upon pain of severe civil liability or revocation of broker-dealer registration.

Doman Helicopters, Inc. -- The registrant was organized in 1945 for the purpose of developing certain inventions in the field of helicopter rotor construction. It had never engaged in any substantial manufacturing activity and had never earned a profit. Its financial history had been marked by continual difficulties and by the repeated conversion of creditors' rights into common stock positions. Its future plans were predicated on a proposed helicopter to be called the D-10B, which was intended to be a variant of an earlier model, two prototypes of which had been sold to and tested by the Defense Department. After testing these earlier prototypes and after making an extensive study of the registrant's rotor system, the Department of Defense had found "no significant advantages in the Doman rotor system over other types."

On April 19, 1962, registrant filed a registration statement with respect to 681,971 shares of its common stock to be offered to the public without the aid of underwriters. At that time its liabilities were in excess of its assets and its shares had a book value of minus 30 cents per share. This book value would have increased to 55 cents per share if all of the shares covered by the registration statement had been sold at the proposed offering price. Purchasers would therefore have suffered a substantial immediate dilution, the benefit of which would have inured entirely to the existing stockholders.

The cover page of the prospectus stated that the shares were being offered as a speculation and referred the reader to a section headed "The Company," which summarized the registrant's poor financial history and stated that it was then insolvent, but which made no reference to the dilution aspects of the offering, to the fact that there was no D-10B in existence, or to the history of the registrant's dealings with the Defense Department. Elsewhere in the prospectus a passing reference was made to the registrant's unsuccessful efforts to secure military markets for its helicopters. But neither the nature of those efforts, which had in fact been strenuous and persistent, nor the Department's adverse action with respect to them was disclosed. The prospectus spoke of the D-10B as though it were an existing helicopter and claimed that it was superior to other helicopters without ever disclosing that it had never been flown, tested or even assembled in prototype form. The prospectus claimed that the registrant's hingeless rotor system was superior to other devices, stated that it was the "only fully developed and proven helicopter design concept" that did not involve the use of hinges, and implied that the system was protected by an elaborate patent structure. It did not disclose the fact that the system had never been subjected to normal day to day usage and made no mention of the fact that two of the registrant's competitors were developing hingeless rotor systems, something that the registrant's patents did not preclude them from doing. Moreover, during the course of the stop order proceedings the registrant conceded that hingelessness

was not in itself meaningful and that the discussion of hingelessness in the prospectus was incomplete.

The Commission issued a stop order that suspended the effectiveness of the registration statement. It found that there was no adequate factual foundation for the registrant's claims with respect to the merits of the D-10B and its hingeless rotor system. The failure to disclose the facts that the Department of Defense had found registrant's hingeless rotor system to be devoid of any special merit was held a material omission. The registrant argued that it was under no duty to disclose the Defense Department findings because the persons who made them were biased and incompetent and because it did not intend to sell to the military. The Commission disagreed, holding that: "Irrespective of the correctness of the Department's conclusions, they constitute a determination by the technical staff and responsible authorities of the largest single purchaser of helicopters that for their purposes registrant's rotor system has no special merit. Such determination was a significant adverse factor, and the failure to disclose it rendered the prospectus misleading."

The Commission also found, among other deficiencies, that the prospectus "presented an incomplete and distorted portrayal of the complex of risk elements involved," that "it was essential that the speculative aspects of registrant's business and the dilution aspects of the offering be set forth and described concisely and lucidly at the very outset of the prospectus under an appropriate caption directing attention to the fact that special risks are present," and that neither the heading "The Company" used in the body of the prospectus nor the statement on its cover page that the securities were offered as a speculation was sufficient to serve that purpose.

Registrant argued that the registration statement against which the proceeding was directed was a mere "preliminary filing," which it had always intended to amend, contended that the proceeding had been prematurely brought since no letter of comment had been sent by the Commission's staff, and asked the Commission to deem the registration statement to have been superseded by an amended registration statement filed while the hearings were in progress. The Commission held that registrant's "preliminary filing" concept had no statutory basis, that "registrants are under a duty to make every effort to see to it that their initial filings measure up to the standards prescribed by the Act," and that letters of comment were merely informal administrative aids "developed . . . for the purpose of assisting those registrants who have conscientiously attempted to comply with the Act," which are "not generally employed where the deficiencies appear to stem from careless disregard of the statutes and rules or a deliberate attempt to conceal or mislead or where the Commission deems formal proceedings necessary in the public interest." With respect to the assertedly curative amendment that had been filed after the institution of the proceeding, the Commission pointed out that it considers such amendments only when it is of the opinion that such consideration will be in the best interests of investors and of the public. It concluded that this was not such a case in view of the serious character of the deficiencies, the large amount of the registrant's stock

outstanding and held by approximately 8,000 public investors, the fact that the misleading information in the registration statement had been a matter of public record on which investors might have relied, and the further facts that the registrant had done nothing to advise its stockholders and investors generally of the misleading character of the information in the registration statement, and that the amendment was itself misleading and inadequate.

EXAMINATIONS AND INVESTIGATIONS

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

[table omitted]

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

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

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

Rule 234: Exemption of first lien notes.

Rule 235: Exemption of securities of cooperative housing corporations.

Rule 236: Exemption of shares offered in connection with certain transactions.

Regulation A: General exemption for United States and Canadian issues up to $300,000.

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

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

Under Section 3 (c) of the Securities Act, which was added by Section 307 (a) of the Small Business Investment Act of 1958, the Commission is authorized to adopt rules and regulations exempting securities issued by a company which is operating or proposes to operate as a small business investment company under the Small Business Investment Act. Acting pursuant to this authority, the Commission has adopted a Regulation E which exempts upon certain terms and conditions limited amounts of securities issued by any small business investment company which is registered under the Investment Company Act of 1940. This regulation is substantially similar to the one provided by Regulation A adopted under Section 3 (b) of the Act.

Exemption from registration under Section 3 (b) or 3 (c) of the Act does not carry any exemption from the civil liabilities for false and misleading statements imposed upon any person by Section 12 (2) or from the criminal liabilities for fraud imposed upon any person by Section 17 of the Act.

Exempt Offerings Under Regulation A

The general exemption under Section 3 (b) is embodied in Regulation A, Rules 251-263 under the Act, which permits a company to obtain needed capital not in excess of $300,000 (including underwriting commissions) in any 1 year from a public offering of its securities without registration, if the company complies with certain requirements. Secondary offerings by control persons are limited under the regulation to $100,000 in a year for any one such person, but a total of $300,000 for all such persons and the issuer. Regulation A requires that the issuer file a notification supplying basic information about the company, certain exhibits, and an offering circular which must be used in offering the securities. However, in the case of a company with an earnings history which is making an offering not in excess of $50,000 an offering circular need not be used. A notification is filed with the Regional Office of the Commission in the region in which the company has its principal place of business.

During the 1963 fiscal year, 517 notifications were filed under Regulation A, covering proposed offerings of $101,040,982, compared with 1,065 notifications covering proposed offerings of $237,238,600 in the 1962 fiscal year. Included in the 1963 total were 34 notifications covering stock offerings of $3,819,980 with respect to companies engaged in the exploratory oil and gas business, 21 notifications covering offerings of $5,035,410 by mining companies and 16 notifications covering offerings of $3,414,548 by companies featuring new inventions, products or processes.

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

[table omitted]

Suspension of Exemption

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

During the 1963 fiscal year, temporary suspension orders were issued in 53 cases, which, added to the 31 cases pending at the beginning of the year, resulted in a total of 84 cases for disposition. Of these, the temporary suspension order was vacated in 2 cases and became permanent in 55: in 27 by lapse of time, in 20 by withdrawal of the request for hearing, and in 8 after hearing. Thus, there were 27 cases pending at the end of the fiscal year.

One of the cases disposed of during the year is summarized below to illustrate the type of misrepresentations and other noncompliance with the regulation which led to the issuance of suspension orders.

General Aeromation, Inc. -- General Aeromation filed a notification and offering circular under Regulation A in March 1960, relating to a proposed public offering of 84,450 shares of common stock at $3 per share. The company proposed to develop and market a self-powered vehicle, invented by Henry J. Wiebe, the issuer's president, and named "Romatt," which was designed to transport aircraft to and from various airport locations such as hangars and runways. One version of the vehicle was designed for commercial use and another for military use. The offering circular included a letter from the issuer's patent attorney to the effect that the Air Force and commercial airlines were "desperately" in need of ground handling equipment, and the circular stated that the device had been checked by competent industry sources, that no satisfactory ground equipment of comparable nature was available, and that no direct known competition existed employing the Romatt method of moving heavy aircraft on the ground. The offering circular projected a military market of up to 1,000 Romatt-type vehicles and stated that the issuer expected to market or lease a considerable number of units to commercial airlines "as they are manufactured and . . . tested."

In its order suspending the exemption for this offering, the Commission held that these representations were false or misleading.6 It found that, at the time of filing, both commercial and military aircraft were being handled by specially designed ground equipment which was considered to be reasonably adequate. During 1958, the Air Force had issued a request for proposals for the development of ground equipment which would meet certain performance specifications, but several proposals submitted by Wiebe and the issuer had been rejected. There was no tangible evidence of prospects of acceptance of the vehicle for commercial use, and at the time of the filing, no commercial model had been completed, tested or demonstrated in actual operation.

The Commission stated that, regardless of whether the issuer in good faith believed in the merits and potential success of its product, it must make an adequate, accurate and fair presentation of all material factors so that public investors may be able to decide for themselves whether to invest. It further stated that the presentation of an optimistic picture of the issuer's prospects, though qualified by certain general concessions, but without disclosure of significant adverse information, created a materially misleading picture even though individual representations in another context might not be objectionable.

The Commission rejected certain evidence proffered by the issuer after the recommended decision of the hearing examiner and exceptions thereto had been filed, which assertedly reflected certain favorable developments. It pointed out that its findings were based on the deficiencies of the offering circular at the time it was filed and that subsequent developments could not remedy prior misstatements and failures to state adverse material facts.

In addition to the misstatements discussed above, the Commission found that there were a number of other misstatements in the offering circular, that the aggregate offering price exceeded $300,000, and that offering circulars were mailed out earlier than permitted.

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1963, 231 offering sheets and 2-i8 amendments thereto were filed pursuant to Regulation B and were examined by the Oil and Gas Section of the Commission's Division of Corporation Finance. During the 1962 and 1961 fiscal years, 229 and 261 offering sheets, respectively, were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during the fiscal years 1961-63. The balance of the offering sheets filed became effective without order.

[table omitted]

Exempt Offerings Under Regulation E

Regulation E provides a conditional exemption from registration under the Securities Act of 1933 for securities of small business investment companies which are licensed under the Small Business Investment Act of 1958, or which have received the preliminary approval of the Small Business Administration and have been notified by the Administration that they may submit an application for such a license.

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

Regulation E provides for the suspension of the exemption in particular cases if the Commission finds that any of the terms and conditions of the regulation have not been met or complied with.

During the 1963 fiscal year, one notification was filed under Regulation E, covering a proposed offering of $264,000, and became effective.

Exempt Offerings Under Regulation F

Regulation F provides an exemption from registration under the Securities Act for assessments levied upon assessable stock and for delinquent assessment sales in amounts not exceeding $300,000 in any one year. It requires the filing of a simple notification giving brief information with respect to the issuer, its management, principal security holders, recent and proposed assessments and other security issues. The Regulation requires a company to send to its stockholders, or otherwise publish, a statement of the purposes for which the proceeds from the assessment are proposed to be used. If the issuer should employ any other sales literature in connection with the assessment, copies of such literature must be filed with the Commission.

During the 1963 fiscal year, 35 notifications were filed under Regulation F, covering assessments of $937,425. Regulation F notifications were filed in three of the nine regional offices of the Commission: Denver, San Francisco and Seattle. Underwriters were not employed in any of the Regulation F assessments.

Regulation F provides for the suspension of an exemption thereunder, as in Regulation A, where the Regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the Regulation or in accordance with prescribed disclosure standards.

One Regulation F filing was temporarily suspended in the fiscal year 1963. No hearing was requested and none was ordered by the Commission, with the result that the suspension order became permanent on the 30th day after its entry.

PART V
ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 provides for the registration and regulation of securities exchanges and the registration of securities listed on such exchanges and it establishes, for issuers of securities so registered, financial and other reporting requirements, regulation of proxy solicitations and requirements with respect to trading by directors, officers and principal security holders. The Act also provides for the registration and regulation of national securities associations and of brokers and dealers doing business in the over-the-counter market, contains provisions designed to prevent fraudulent, deceptive and manipulative acts and practices on the exchanges and in the over-the-counter markets and authorizes the Federal Reserve Board to regulate the use of credit in securities transactions. The purpose of these statutory requirements is to ensure the maintenance of fair and honest markets in securities transactions on the organized exchanges and in the over-the-counter markets.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

As of June 30, 1963, 14 stock exchanges were registered under the Exchange Act as national securities exchanges:

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

Four exchanges were exempted from registration by the Commission pursuant to Section 5 of the Act:

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

Disciplinary Action

Each national securities exchange reports to the Commission disciplinary actions taken against any member, member firm, or person connected therewith, for violation of any rule of the exchange, of the Securities Exchange Act, or of any rule or regulation thereunder. During the year 9 exchanges reported 75 cases of such disciplinary actions, including imposition of fines ranging from $50 to $5,000 in 34 cases, with total fines aggregating $58,350; the suspension from membership of 4 member firms and 15 individuals, 2 of whom also had their specialist registration revoked; the expulsion of 3 individual members and 1 allied member; the revocation of the registration of 1 member as an odd-lot and round-lot dealer; and the censure of a number of individuals and firms. Various other sanctions were imposed against registered representatives and other employees of member firms.

REGISTRATION OF SECURITIES ON EXCHANGES

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

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

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

Section 13 requires issuers having securities registered on an exchange to file periodic reports keeping current the information furnished in the application for registration. These periodic reports include annual reports, semi-annual reports, and current reports. The principal annual report form is Form 10-K which is designed to keep up-to-date the information furnished in applications filed on Form 10. Semi-annual reports required to be furnished on Form 9-K are devoted chiefly to furnishing mid-year financial data. Current reports on Form 8-K are required to be filed for each month in which any of certain specified events have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings and important changes in the issuer's capital securities or in the amount thereof outstanding.

Statistics Relating to Registration of Securities on Exchanges

As of June 30, 1963, a total of 2,417 issuers had 4,048 classes of securities listed and registered on national securities exchanges, of which 2,835 were classified as stocks and 1,213 as bonds. Of these totals, 1,359 issuers had 1,578 stock issues and 1,135 bond issues listed and registered on the New York Stock Exchange. Thus, 56 percent of the issuers, 56 percent of the stock issues and 94 percent of the bond issues were on the New York Stock Exchange.

During the 1963 fiscal year, a total of 195 applications for registration of classes of securities on exchanges was filed. Securities were listed and registered for the first time by 115 issuers; the registration of all securities of 103 issuers was terminated.

The following table shows the number of reports filed during the fiscal year pursuant to Section 13 of the Exchange Act and those filed under Section 15 (d) of the Act by issuers obligated to file reports by reason of having publicly offered securities effectively registered under the Securities Act of 1933. As of June 30, 1963, there were 2,827 such issuers, including 297 that were also registered as investment companies under the Investment Company Act of 1940. The table also includes the number of annual reports, quarterly reports and reports to stockholders filed by issuers subject to the reporting requirements of Section 30 of the Investment Company Act.

[table omitted]

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1962, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $486,633,613,000.

[table omitted]

The New York Stock Exchange and American Stock Exchange figures were reported by those exchanges. There was no duplication of issues between them. The figures for all other exchanges, which are based on Commission compilations, represent the net number of issues appearing only on such exchanges, excluding the many issues which were also traded on one or the other of the New York exchanges. The number and market value of issues as shown exclude those suspended from trading and a few others for which quotations were not available. The number and market values as of December 31, 1962, of preferred and common stocks separately were as follows:

[table omitted]

The 3,047 stock issues included over 9.9 billion shares of which over 9.4 billion were included in the 2,802 issues listed on registered exchanges.

The New York Stock Exchange has reported aggregate market values of all stock thereon monthly since December 31, 1924, when the figure was $27.1 billion. The American Stock Exchange has reported December 31, totals annually since 1936. Aggregates for stocks exclusively on the remaining exchanges have been compiled as of December 31, annually by the Commission since 1948.

[table omitted]

Fiscal Year Share Values and Volumes

The aggregate market values of all stocks on the exchanges as of June 30 annually, and the volumes of shares traded on the exchanges in years to June 30, have been as follows:

[table omitted]

The June 30 values were as reported by the New York Stock Exchange and as estimated for all other exchanges. Volumes included shares, warrants and rights. Comprehensive statistics of volumes on exchanges are included among the appendix tables in this Annual Report. Aggregate market values over the years are not strictly comparable, since they do not indicate to what extent changes are due to new listings, mergers into listed companies, removals from listing, and the like.

Foreign Stock on Exchanges

The market value on December 31,1962, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about $12.7 billion, of which $10.7 billion represented Canadian and $2.0 billion represented other foreign stocks. The market values of the entire Canadian stock issues were included in these aggregates. Most of the other foreign stocks were represented by American Depositary Receipts or American shares, only the outstanding amounts of which were used in determining market values.

[table omitted]

The number of foreign stocks on the exchanges has declined somewhat in recent years, owing principally to a reduction on the American Stock Exchange from 152 in 1956, to 127 in 1962. Trading in foreign stocks has fallen from 42.4 percent of the reported share volume on this Exchange in 1956, to 18.1 percent in 1962.

Trading in foreign stocks on the New York Stock Exchange represented about 3.4 percent of the reported share volume thereon in 1956, and about 3 percent in 1962.

Reported volumes in foreign shares during 1962 consisted of about 43.5 million Canadian shares and 12.5 million other foreign shares on the American Stock Exchange and about 10 million Canadian shares and 19 million other foreign shares on the New York Stock Exchange. While the share volume on the American exceeded that on the New York Stock Exchange, it would appear that in view of higher average share prices, the latter Exchange had a greater dollar volume in foreign shares.

Comparative Exchange Statistics

The number of stocks on the New York and American Stock Exchanges has continued to increase, while the aggregate number of stocks exclusively on the other exchanges has continued to decline, in recent years.

[table omitted]

Aggregate share values on the New York Stock Exchange have represented an increasing proportion of total share values on all the exchanges, at least since 1948, when our series on total share values on the exchanges was established.

[table omitted]

The ratio of share volume on the regional exchanges to the total on all exchanges has declined over the years. The regional exchange percentage of dollar volume has remained fairly constant. In the following presentation, shares, warrants and rights are included. Annual data since 1935 are shown in appendix table 10.

[table omitted]

Comparative Over-The-Counter Statistics

So far as can be ascertained from the standard securities manuals and from, reports to the Commission, there were, as of December 31, 1962, about 4,458 stocks with 300 holders or more, of about 4,136 domestic companies, which were quoted only in the over-the-counter market. These stocks had an aggregate market value of about $90.1 billion, including $23.4 billion for bank stocks, $21.0 billion for insurance stocks, and $45.7 billion for industrial, utility, and other miscellaneous stocks. Registered investment companies are not included in this compilation.

Ownership of over-the-counter stocks tends to be more concentrated in officers, directors, and other controlling persons than in the case of listed securities, and in some instances the concentration is heavy.

[table omitted]

In addition to the stocks mentioned above, there is a large number of actively quoted stocks of companies so small as not to require continuous reporting to the Commission, and whose coverage by the standard securities manuals is generally limited to brief announcements of the circumstances of the offerings. Their number was in excess of 1,000 on December 31, 1962, at which time they constituted about 25 percent of the actively quoted stocks in the National Quotation Bureau services. These stocks may be presumed to have over 300 holders each. There is a further indeterminate number of stocks with over 300 holders, inactively quoted or not publicly quoted. So far as can be ascertained, these are for the most part stocks of small companies.

A comprehensive view of the number of securities quoted over the counter at any one time is afforded by data supplied by the National Quotation Bureau, which is the principal purveyor of over-the-counter quotations in the United States. The following table shows the number of stocks quoted in the daily service and the corresponding aggregate number of dealer listings, as reported for a day around January 15th annually.

[table omitted]

About half of the stocks show substantial concentration of dealer listings, including both bids and offers. Many of the remainder are quoted only on the bid side, indicating sporadic dealings. Some are listed on domestic or Canadian stock exchanges.

Reporting Under Section 15 (d)

Issuers reporting pursuant to Section 15 (d) of the Exchange Act continue to increase in number notwithstanding numerous reductions occasioned by listings on the exchanges or

absorption into other companies by purchase of assets or mergers. The number of such issuers increased from 2,435 on December 31, 1961, to 2,647 on December 31, 1962. The 2,647 reporting issuers included 1,887 having $34.7 billion aggregate market value of stocks. The remaining 760 issuers included partnerships, voting trusts duplicative of listed shares, stock purchase and employees savings plans, companies with only bonds in public hands, registered investment companies, and numerous issuers for whose shares no quotation was available, including a considerable number registering in 1962 but not offering their shares until 1963.

[table omitted]

Foreign Stocks Traded Over the Counter

About 150 foreign stocks, or American shares representing foreign stocks, were so actively quoted in the American over-the-counter markets at the close of 1962, as to suggest the likelihood of active daily trading therein in the United States. In addition, there are many foreign stocks which are less actively quoted in the domestic over-the-counter markets.

DELISTING OF SECURITIES FROM EXCHANGES

Pursuant to Rule 12d2-2 (Rule 12d2-1 (b) until amended February 15, 1963) under Section 12 (d) of the Securities Exchange Act, an exchange may apply to the Commission to strike securities or an issuer may apply to withdraw its securities from exchange listing and registration. During the fiscal year ended June 30, 1963, the Commission granted applications to remove 68 stocks, representing 63 issuers, from listing and registration. Since 2 stocks were each delisted by two exchanges, there was a total of TO removals. The removals were as follows:

[table omitted]

In accordance with the practice in recent years, practically all of the delisting applications were filed by exchanges. The single removal resulting from an issuer's application removed from the American Stock Exchange a Canadian stock whose principal exchange market was in Toronto.

The considerable number of delistings by the American Stock Exchange and the Salt Lake Stock Exchange was a result of the adoption by those exchanges, during the 1962 fiscal year, of new rules and criteria for retention of listed status thereon.

Delisting Proceedings Under Section 19 (a)

Section 19 (a) (2) authorizes the Commission to suspend for a period not exceeding 12 months, or to withdraw, the registration of a security on a national securities exchange if, in its opinion, such action is necessary or appropriate for the protection of investors and, after notice and opportunity for hearing, the Commission finds that the issuer of the security has failed to comply with any provision of the Act or the rules and regulations thereunder. The following table indicates the number of such proceedings with which the Commission was concerned during the 1963 fiscal year.

[table omitted]

Section 19 (a) (4) authorizes the Commission summarily to suspend trading in any registered security on a national securities exchange for a period not exceeding 10 days if, in its opinion, such action is necessary or appropriate for the protection of investors and the public interest so requires. During the 1963 fiscal year the Commission used this authority in three instances. One of these suspensions remained in effect at the end of the fiscal year.

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Stocks with unlisted trading privileges on exchanges which are not also listed and registered on other exchanges continued to decline in number, from 187 on June 30, 1962, to 168 on June 30, 1963. The American Stock Exchange accounted for 17 of the 19 removals. The Pacific Coast Stock Exchange accounted for the balance of the removals, leaving only 2 stocks thereon in the strictly unlisted category.

The distribution of unlisted stocks and share volumes therein among the exchanges is shown in Appendix Table 8 of this annual report.

The reported volume of trading on the exchanges in stocks with only unlisted trading privileges for the calendar year 1962, was about 28,135,000 shares or about 1.7 percent of the total share volume on all the exchanges. About 90.5 percent of this volume was on the American Stock Exchange, 8.2 percent was on the Pacific Coast Stock Exchange, and 3 other exchanges contributed the remaining 1.3 percent. The share volume in these stocks represented about 7.6 percent of the total share volume on the American Stock Exchange and about 4.6 percent of that on the Pacific Coast Stock Exchange.

Unlisted trading privileges on some exchanges in stocks listed and registered on other exchanges numbered 1,570 on June 30, 1963. The volume of unlisted trading in these stocks, for the calendar year 1962, was reported at about 49,252,000 shares. About 14.4 percent of this volume was on the American Stock Exchange in stocks listed on regional exchanges, and about 85.6 percent was on regional exchanges in stocks listed on the New York or American Stock Exchanges. While the 49,252,000 shares amounted to less than 3 percent of the total share volume on all the exchanges, they constituted substantial

portions of the share volumes on the leading regional exchanges, reaching about 79 percent on Boston, 69 percent on Philadelphia-Baltimore-Washington, 68 percent on Cincinnati, 59 percent on Detroit, 55 percent on Pittsburgh, 30 percent on Midwest, and 22 percent on Pacific Coast Stock Exchange.

Applications for Unlisted Trading Privileges

Applications by exchanges for unlisted trading privileges in stocks listed on other exchanges, made pursuant to Rule 12f-1 under Section 12 (f) of the Securities Exchange Act, were granted by the Commission during the fiscal year ended June 30, 1963, as follows:

[table omitted]

BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

The usual method of distributing blocks of listed securities considered too large for the auction market on the floor of an exchange is to resort to "secondary distributions" over the counter after the close of exchange trading.

In an effort to keep as much as possible of this business on their floors, the leading exchanges adopted Special Offering Plans commencing in 1942, and the somewhat more flexible Exchange Distribution Plans commencing in 1953. The plans, declared effective by this Commission, include an exemption from the anti-manipulative Rule 10b-2, as set forth in paragraph (d) thereof, with respect to payment of compensation in connection with the distribution of securities.

The largest number of Special Offerings was 87 in 1944, with $32,454,000 aggregate value. The number has declined through the years, there being only 2 in 1961, aggregating $1,503,750, and 2 in 1962, aggregating $587,650.

The largest number of Exchange Distributions was 57 in 1954, compared with 41 in 1962. However, the $65,459,197 total in 1962 was larger than in any previous year.

Secondary distributions, as reported since 1942, reached a peak of $926,514,294 during the calendar year 1961, and declined to $658,780,395 during 1962.

[table omitted]

MANIPULATION AND STABILIZATION

Manipulation

The Exchange Act describes and prohibits certain forms of manipulative activity in any security registered on a national securities exchange. The prohibited activities include wash sales and matched orders effected for the purpose of creating a false or misleading appearance of trading activity in, or with respect to the market for, any such security; a series of transactions in which the price of such security is raised or depressed, or in which actual or apparent active trading is created for the purpose of inducing purchases or sales of such security by others; circulation by a broker, dealer, seller, or buyer, or by a person who receives consideration from a broker, dealer, seller or buyer, of information concerning market operations conducted for a rise or a decline in the price of such security; and the making of any false and misleading statement of material information by a broker, dealer, seller, or buyer regarding such security for the purpose of inducing purchases or sales. The Act also empowers the commission to adopt rules and regulations to define and prohibit the use of these and other forms of manipulative activity in any security registered on an exchange or traded over the counter.

The Commission's market surveillance staff in its Division of Trading and Markets in Washington and in its New York Regional Office and other field offices observes the tickertape quotations of securities listed on the New York Stock Exchange and on the American Stock Exchange, the sales and quotation sheets of the various regional exchanges, and the bid and asked prices published by the National Quotation Bureau for about 6,000 unlisted securities to observe any unusual and unexplained price variations or market activity. The financial news ticker, leading newspapers, and various financial publications and statistical services are also closely followed.

When unusual and unexplained market activity in a security is observed, all known information regarding the security is examined and a decision made as to the necessity for an investigation. Most investigations are not made public so that no unfair reflection will be cast on any persons or securities and the trading markets will not be upset. These investigations, which are conducted by the Commission's regional offices, take two forms. A preliminary investigation or "quiz" is conducted to discover rapidly evidence of unlawful activity. If it appears that more intensive investigation is necessary, a formal order of investigation, which carries with it the right to subpoena witnesses and documents, is issued by the Commission. If violations by a broker-dealer are discovered, the Commission may institute administrative proceedings to determine whether or not to revoke his registration or suspend or expel him from membership in the National Association of Securities Dealers, Inc., or from a national securities exchange. The Commission may also seek an injunction against any person violating the Exchange Act and it may refer information obtained in its investigation to the Department of Justice recommending that persons violating the Act be criminally prosecuted. In some cases, where the activities are essentially local in character and state jurisdiction is not open to question, the information obtained may be referred to state agencies for injunctive action or criminal prosecution.

The following table shows the number of quizzes and investigations pending at the beginning of fiscal 1963, the number initiated in fiscal 1963, the number closed or completed during the same period, and the number pending at the end of the fiscal year:

[table omitted]

When securities are to be offered to the public, their markets are watched very closely to make sure that the price is not unlawfully raised prior to or during the distribution. A total of 1,157 registered offerings, having a value of $14.8 billion, and 517 offerings exempt under Section 3 (b) of the Securities Act, having a value of about $101 million, were so observed during the fiscal year. A total of 162 other offerings, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of $374 million, were also kept under surveillance.

Stabilization

Stabilization involves open-market purchases of securities to prevent or retard a decline in the market price in order to facilitate a distribution. It is permitted by the Exchange Act subject to the restrictions provided by the Commission's Rules 10b-6, 7 and 8. These rules are designed to confine stabilizing activity to that necessary for the above purpose, to require proper disclosure and to prevent unlawful manipulation.

During 1963 stabilizing was effected in connection with stock offerings totaling 24,435,202 shares having an aggregate public offering price of $680,107,579 and bond offerings having a total offering price of $216,689,800. In these offerings, stabilizing transactions resulted in the purchase of 476,799 shares of stock at a cost of $12,603,474 and bonds at a cost of $3,019,225. In connection with the stabilizing transactions, 4,337 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY HOLDINGS AND TRANSACTIONS

Section 16 of the Act is designed to prevent the unfair use of information by directors, officers and principal stockholders by giving publicity to their security holdings and transactions and by removing the profit incentive in short-term trading by them in securities of their company. Such persons by virtue of their position may have knowledge of the company's condition and prospects which is unavailable to the general public and may be able to use such information to their personal advantage in transactions in the company's securities. Provisions similar to those contained in Section 16 of the Act are also contained in Section 17 of the Public Utility Holding Company Act of 1935 and Section 30 of the Investment Company Act of 1940.

Ownership Reports

Section 16 (a) of the Securities Exchange Act requires every person who is a direct or indirect beneficial owner of more than 10 percent of any class of equity securities (other than exempted securities) which is registered on a national securities exchange, or who is a director or officer of the issuer of such securities, to file reports with the Commission and the exchange disclosing his ownership of the issuer's equity securities. This information must be kept current by filing subsequent reports for any month in which a change in his ownership occurs. Similar reports are required by Section 17 (a) of the Public Utility Holding Company Act of officers and directors of public utility holding companies and by Section 30 (f) of the Investment Company Act of officers, directors, principal security holders, members of advisory boards and investment advisers or affiliated persons of investment advisers of registered closed-end investment companies.

All ownership reports are available for public inspection as soon as they are filed at the Commission's office in Washington and reports filed pursuant to Section 16 (a) of the Securities Exchange Act may also be inspected at the exchanges where copies of such reports are filed. In addition, for the purpose of making the reported information available to interested persons who may not be able to inspect the reports in person, the Commission summarizes and publishes such information in a monthly "Official Summary of Security Transactions and Holdings," which is distributed by the Government Printing Office on a subscription basis. Subscriptions to this publication exceed 16,000.

During the fiscal year, 41,807 ownership reports were filed, a slight decrease from the record high of 42,983 reports filed during the 1962 fiscal year.

Recovery of Short-Swing Trading Profits by Issuer

In order to prevent insiders from making unfair use of information which may have been obtained by reason of their relationship with a company, Section 16 (b) of the Securities Exchange Act, Section 17 (b) of the Public Utility Holding Company Act, and Section 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than 6 months. The Commission has certain exemptive powers with respect to transactions not comprehended within the purpose of these provisions, but is not charged with the enforcement of the civil remedies created thereby.

REGULATION OF PROXIES

Scope of Proxy Regulation

Under 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 14 requiring the disclosure in a proxy statement of pertinent information in connection with the solicitation of proxies, consents and authorizations in respect of securities of companies subject to those statutes, in order that holders of such securities will be able to act intelligently on such matters. The regulation provides, among other things, that when the management is soliciting proxies, any security holder desiring to communicate with other security holders for a proper purpose may require the management to furnish him with a list of all security holders or to mail his communication to security holders for him. A security holder may also, subject to reasonable prescribed limitations, require the management to include in its proxy material any appropriate proposal which such security holder desires to submit to a vote of security holders. Any security holder or group of security holders may at any time make an independent proxy solicitation upon compliance with the proxy rules, whether or not the management is making a solicitation. Certain additional provisions of the regulation are applicable where a contest for control of the management of an issuer is involved.

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

Statistics Relating to Proxy Statements

During the 1963 fiscal year, 2,396 proxy statements in definitive form were filed under the Commission's Regulation 14 for the solicitation of proxies of security holders; 2,375 of these were filed by management and 21 by nonmanagement groups or individual stockholders. These 2,396 solicitations related to 2,231 companies, some 165 of which had more than one solicitation during the year, generally for a special meeting not involving the election of directors.

There were 2,205 solicitations of proxies for the election of directors, 174 for special meetings not involving the election of directors, and 17 for assents and authorizations for action not involving a meeting of security holders or the election of directors.

In addition to the election of directors, the decisions of security holders were sought through the solicitation in the 1963 fiscal year of their proxies, consents and authorizations with respect to the following types of matters:

[table omitted]

Stockholders' Proposals

During the 1963 fiscal year, 56 stockholders submitted a total of 229 proposals which were included in the 134 proxy statements of 134 companies under Rule 14a-8 of Regulation 14.

Typical of such stockholder proposals submitted to a vote of security holders were resolutions relating to amendments to charters or bylaws to provide for cumulative voting for the election of directors, limitations on granting stock options and their exercise by key employees and management groups, sending a post-meeting report to all stockholders, changing the place of the annual meeting of stockholders, and the approval by stockholders of management's selection of independent auditors.

The managements of 26 companies omitted from their proxy statements under the Commission's Rule 14a-8 a total of 61 additional proposals submitted by 45 individual stockholders. The principal reasons for such omissions and the numbers of times each such reason was involved (counting only one reason for omission for each proposal even though it may have been omitted under more than one provision of Rule 14a-8) were as follows:

(a) 36 proposals were withdrawn by the stockholders;

(b) 8 proposals related to the ordinary conduct of the company's business;

(c) 7 proposals were not a proper subject matter under state law;

(d) 5 proposals were not timely submitted;

(e) 3 proposals concerned a personal grievance against the company;

(f) 1 proposal involved substantially the same matter as one previously submitted to security holders;

(g) 1 proposal and reason therefor was deemed misleading.

Ratio of Soliciting to Non-soliciting Companies

Of the 2,417 issuers that had securities listed and registered on national securities exchanges as of June 30, 1963, 2,254 had voting securities so listed and registered. Of these 2,254 issuers, 3 listed and registered voting securities for the first time after their annual stockholders' meeting in fiscal 1963; of the remaining 2,251 issuers with voting securities, 1,875 or 83 per cent solicited proxies for the election of directors under the Commission's proxy rules during the 1963 fiscal year.

Proxy Contests

During the 1963 fiscal year, 27 companies were involved in proxy contests for the election of directors. A total of 376 persons, both management and nonmanagement, filed detailed statements as participants under the requirements of Rule 14a-11. Proxy statements in 18 cases involved contests for control of the board of directors and those in 9 cases involved contests for representation on the board.

Management retained control of the board of directors in 10 of the 18 contests for control, 1 was settled by negotiation, nonmanagement persons won 4, and 3 were pending as of June 30, 1963. Of the 9 cases where representation on the board of directors was involved, management retained all places on the board in 6 cases.

INVESTIGATIONS

Section 21 (a) of the Act authorizes the Commission to make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or regulation thereunder. The Commission is authorized, for this purpose, to administer oaths, subpoena witnesses, compel their attendance, take evidence and require the production of records. In addition to the investigations undertaken in enforcing the anti-fraud, broker-dealer registration, and other regulatory provisions of the Act, which are discussed in Part XI of this report under "Complaints and Investigations," the following investigations were undertaken in enforcing the reporting provisions of Sections 12, 13, 14 and 15 (d) of the Act and the rules thereunder, particularly those provisions relating to the filing of annual and other periodic reports and proxy material:

[table omitted]

REGULATION OF BROKER-DEALERS AND OVER-THE-COUNTER MARKETS

Registration

Section 15 (a) of the Securities Exchange Act of 1934 requires the registration of all brokers and dealers who use the mails or instrumentalities of interstate commerce to effect or induce transactions in securities in the over-the-counter market. Brokers and dealers conducting an exclusively intrastate business or dealing only in exempted securities, commercial paper, commercial bills or bankers' acceptances are exempt from registration.

The table below sets forth statistics on broker-dealer registrations and applications for fiscal 1963.

[table omitted]

ADMINISTRATIVE PROCEEDINGS

Under Section 15 (b) of the Exchange Act, the Commission has the power to deny or revoke the registration of a broker-dealer. An order of denial or revocation will be issued, after notice and opportunity for hearing, if the Commission finds that such sanction is in the public interest and that the applicant or registrant, or any partner, officer, director, or other person directly or indirectly controlling or controlled by the applicant or registrant, is subject to a statutory disqualification. The statutory disqualifications are:

(1) willfully false or misleading statements in the application for registration or documents supplemental thereto;

(2) conviction within the previous 10 years of a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of business as a broker-dealer;

(3) injunction by a court of competent jurisdiction against engaging in any practices in connection with the purchase or sale of securities; and

(4) willful violation of the Securities Act of 1933 or the Exchange Act or any of the Commission's rules or regulations thereunder.

The Commission has no authority to deny or revoke registration without finding a disqualification of the types set forth. Therefore, bad reputation or character, or inexperience in the securities business, or even conviction of a felony unrelated to transactions in securities is not a basis for ordering denial or revocation of registration.

Section 15A of the Exchange Act empowers the Commission to suspend or expel a broker-dealer from membership in a registered securities association upon a finding of violation of the Federal securities laws or regulations thereunder. The National Association of Securities Dealers, Inc. ("NASD") is the only such association. Section 19 (a) (3) of the Act gives the Commission power to take similar action against members of national securities exchanges.

Pursuant to the provisions of Section 15A (b) (4) of the Securities Exchange Act, in the absence of Commission approval or direction, no broker or dealer may be admitted to or continued in membership in the NASD if the broker or dealer or any partner, officer, director, or controlling or controlled person of such broker or dealer was a cause of any order of denial or revocation of registration or suspension or expulsion from membership which is in effect. An individual named as a cause often is subject to one or more statutory disqualifications under Section 15 (b) and his employment by any other broker-

dealer thus could also become a basis for broker-dealer revocation or denial proceedings against such employer.

Set forth below are statistics on administrative proceedings instituted during fiscal 1963 to deny and revoke registration and to suspend and expel from membership in an exchange or the NASD.

[table omitted]

Revocation or Denial of Registration

A summary of the cases in which the Commission revoked or denied broker-dealer registrations during the 1963 fiscal year appears at the end of this section. However, a few cases of unusual interest or significance are set forth in some detail in the following paragraphs:

Mac Robbing & Co., Inc. -- On remand to this Commission from the Court of Appeals for the Second Circuit, the Commission reaffirmed its previous determination that two salesmen for the firm of Mac Bobbins & Co., Inc., had engaged in fraudulent acts and practices and were each a cause of the revocation of the broker-dealer registration of the firm. The Commission found that these two salesmen were aware of and participated in that firm's "boiler-room" selling activities and had themselves made unwarranted representations to customers.

The salesmen, Irwin Berko and Arnold Leonard Kahn, had been named as causes of the February 1961 revocation order against Mac Bobbins & Co., Inc. along with seven other salesmen,3 but neither the firm nor the other salesmen joined in the appeal. In remanding the case to the Commission, the Court asked the Commission to re-examine the participation by Berko and Kahn in the illegal operations of the firm, including the right of the salesmen to rely on information provided by their employer.

In its subsequent decision the Commission stated that "participation in a high-pressure sales effort involving the use of misleading sales materials, and the making of extravagant predictions and projections, without basis in factual information and without adequate disclosure of material adverse information, is inconsistent with the duty of brokers, dealers, and their salesmen to deal fairly with their customers" and a violation of the anti-fraud provisions of the Securities Acts.

On the right of salesmen to rely upon information furnished by their employer the Commission declared, "Whatever may be a salesman's obligation of inquiry, or his right to rely on information provided by his employer, where securities of an established issuer are being recommended to customers by a broker-dealer who is not engaged in misleading and deceptive high-pressure selling practices, that situation is not presented here. Certainly, there can be little, if any, justification for a claim of reliance on literature

furnished by an employer who is engaged in a fraudulent sales campaign. In our view, a black letter rule providing exculpation of a salesman in such circumstances, because of reliance on his employer, would place a premium on indifference to responsibilities at the point most directly and intimately affecting the investor."

The Commission's position was then affirmed on a subsequent appeal to the Court of Appeals, whose decision, sub nom. Berko v. Securities and Exchange Commission, is discussed on page 116 infra.

A. J. Caradean & Co., Inc. -- In this proceeding the Commission denied an application for broker-dealer registration by A. J. Caradean & Co., Inc. and named Jerome H. Truen and Jack Cohen, co-owners and principal officers of the applicant, as causes of the denial order. The Commission found that Truen and Cohen, while employed as salesmen by N. Pinsker & Co., Inc., during 1957-59, had made false and misleading statements in the offer and sale of securities of Tyrex Drug & Chemical Corporation and Seaford-Mar Marina, Inc., in willful violation of the anti-fraud provisions of the Federal securities laws. Pinsker's registration had been revoked in 1960, for fraud in the sale of Tyrex stock. "It seems clear," the Commission stated in summarizing its findings, "that both salesmen engaged in an intensive high-pressure telephone campaign to sell highly speculative and promotional securities to customers irrespective of their investment needs and objectives. Their sales techniques of highly colored representations and predictions of rapid and substantial market price rises without disclosure of adverse information and the lack of adequate information were calculated not to inform but to mislead. We do not believe that the investing public should be exposed to further risk of fraudulent conduct by individuals such as Truen and Cohen who have demonstrated their gross indifference to the basic duty of fair dealing required of securities salesmen."

Alexander Reid & Co., Inc. -- In this proceeding, the Commission revoked the registration of the firm and named as causes Alexander Silberman, its president and sole stockholder, and the firm's salesmen, for the fraudulent offer and sale of the stock of Woodland Electronics Co., Inc. The Commission found that representations made by the respondents regarding Woodland's contracts and production and anticipated appreciation in the price of its stock were false or misleading. It stated that optimistic representations, even if couched in terms of opinion and expectation, were fraudulent when they lacked a reasonable basis. Respondents contended that the salesmen honestly and reasonably believed that a machine produced by Woodland would become a success, that the company had bright prospects and that the stock would rise in price. They argued that they had observed a demonstration of the machine, that the company had received many letters of interest, and that its balance sheet showed working capital of about $50,000. The Commission held, however, that these asserted facts could not afford a basis for predictions of specific and substantial price rises and offered 110 reasonable basis for enthusiastic predictions of business success.

Heft, Kahn & Infante, Inc. -- This case, in which the Commission revoked the firm's registration for fraud in the sale of stock of United States Communications, Inc., presented the novel question of the responsibility of a research analyst who, pursuant to his employer's instruction, prepared fraudulent sales literature. The Commission found, among other things, that the analyst knew or had good reason to suspect that the key points conveyed by the "message" in the market letters prepared by him were completely unreliable. The Commission, in concluding that the analyst participated in and aided and abetted the firm's willful violations of the anti-fraud provisions of the Securities Acts, stated: "A member of the research staff of a broker-dealer may well be entitled to rely, so far as he personally is concerned, upon materials concerning a going business supplied by an issuer or by his employer absent facts and circumstances which would raise doubts in the mind of a careful and responsible analyst as to the reliability of the materials or the propriety of their use for a particular purpose. In the circumstances of this case, however, we think Binday's defense that he followed the instructions of his employer is unavailing. By proceeding with the preparation of the false and misleading market letter notwithstanding his knowledge of the absence of supporting facts and in light of the all-too-evident warnings of irregularities and the indicated irresponsibility and lack of diligence on the part of the principals of the registrant and USC [the issuer], he became an important part of an apparatus perpetrating a fraud. Under these facts, if a salesman had made these statements orally to his customer, we would have no hesitancy in finding him a cause of our order of revocation. In his fabulist role, Binday's activities were no less reprehensible and no less willful; indeed, the market letter was designed to reach a much wider audience than the oral statements of a salesman."

The following summary, covering the cases in which broker-dealer registrations were revoked or denied other than those already discussed, reflects the principal basis or bases upon which such action was taken:

[table omitted]

Other Sanctions

During the fiscal year, the Commission suspended the following broker-dealers from membership in the National Association of Securities Dealers, Inc.: Amos Treat &Co., Inc., for 12 months; D. F. Bernheimer & Co., Inc., for 6 months; C. A. Benson & Co., Inc., for 30 days; and Sutro Bros. & Co., for 15 days.

In Sutro Bros. & Co., the Commission suspended the registrant from membership in the National Association of Securities Dealers, Inc., for 15 days, finding that registrant and its salesmen had "arranged" for the extension of credit in violation of Section 7 (a) of Regulation T. A number of registrants' customers and salesmen had financed securities transactions through First Discount Corp., a factoring firm which made credit available in amounts greater than those which registrant itself could have lawfully extended under the margin requirements of Regulation T. The illegal arrangements consisted of the conduct

of salesmen who acted as intermediaries between customers and First Discount Corp., conveyed customers' communications to the factor or vice versa, and responded to requests or directives of the factor concerning customers' transactions.

The Commission said that through these activities of its salesmen, the broker had become "so involved in the extension or maintenance of credit for the customer by the lender as to be held to be arranging. These are activities in relation to the credit absent which the credit would not be supplied by the factor. If the broker acts for the customer or the factor in these matters, he has involved himself in the financial arrangements which are entirely unrelated to his function of executing his customer's orders and following the customer's instructions as to delivery of securities and payment. If the credit provided the customer exceeds the amount which the broker could himself extend, we think the broker has violated Regulation T."

The Commission rejected the contention that the prohibitions of Regulation T did not apply to a salesman who arranged for the extension of credit through a factor for his own account or that of a member of his family. The Commission said that a salesman who effects transactions in his own- account occupies a dual role of customer and representative of the broker-dealer and the credit restrictions of Regulation T apply to his activities in the latter capacity. "It is immaterial," the Commission stated, "that the salesman himself is the instrument through whom the broker-dealer arranges for the extension of credit."

While the Commission recognized that registrant had sought to discourage and to forbid factoring, the Commission concluded that registrant had not been diligent and alert enough in its supervision procedures under all the circumstances. The Commission emphasized the need for adequate supervision of branch offices in large organizations.

Suspension of Registration

Section 15 (b) of the Securities Exchange Act authorizes the Commission to suspend a broker-dealer's registration pending final determination as to whether registration should be revoked. In order to suspend registration, the Commission must find, after notice and opportunity for a hearing, that suspension is necessary or appropriate in the public interest or for the protection of investors. The registrations of four broker-dealers were suspended during the past fiscal year after hearings at which the evidence revealed that they were engaging in serious misconduct. To prevent further harm to investors the Commission determined that it was in the public interest to suspend those registrations pending determination of the question of revocation. The entry of a suspension order is not determinative of the ultimate questions of willful violations or revocation itself.

Net Capital Rule

The basic purpose of Rule 15c3-1, promulgated by the Commission under Section 15 (c) (3) of the Exchange Act, is to safeguard funds and securities of customers dealing with registered broker-dealers. This rule, commonly known as the net capital rule, limits the amount of indebtedness which may be incurred by a broker-dealer in relation to its capital. It provides that the "aggregate indebtedness" of a broker-dealer may not exceed 20 times the amount of its "net capital" as computed under the rule.

If it appears from an examination of the reports filed by a registered broker-dealer with the Commission, or through inspection of its books and records, that the ratio is exceeded, the Commission normally notifies the broker-dealer of the deficiency and affords an opportunity for compliance. Unless the capital situation is promptly remedied, injunctive action may be taken by the Commission and in addition proceedings may be instituted to revoke the broker-dealer's registration. During the past fiscal year, violations of the net capital rule were charged in 33 injunctive actions and in 25 revocation proceedings instituted against broker-dealers.

Registered broker-dealers who participate in "firm commitment" underwritings must have sufficient capital to permit the participation provided by the underwriting contract without impairing the capital-debt ratio prescribed by the rule. For the protection of issuers and customers of the broker-dealer, the Commission's staff carefully analyzes the latest available information on the capital position of the participants to determine whether they will be in compliance with the rule upon assumption of the new obligations involved in the underwritings. Acceleration of the effective date of registration statements filed under the Securities Act will be denied where underwriting commitments may engender violations of the net capital rule by any participating underwriter. A participant found to be inadequately capitalized to take down his commitment is notified and given an opportunity to adjust his financial position to meet the requirements of the rule without reducing his commitments. If he is unable to meet such requirements, he must decrease his "firm commitment" until compliance with the rule is reached. If necessary he may have to withdraw from the underwriting or participate on a "best efforts" basis only.

As a result of recommendations of the Special Study of Securities Markets, the Commission presently has under consideration a proposed rule which would establish minimum net capital requirements for broker- dealers.

Financial Statements

Rule 17a-5 under Section 17 (a) of the Exchange Act requires registered broker-dealers to file annual reports of financial condition with the Commission. Such reports must be certified by a certified public accountant or public accountant who is in fact independent, with certain specified limited exemptions applicable to situations where certification does not appear necessary for customer protection. Under certain circumstances member firms of national securities exchanges are exempt from the necessity of certification and an exemption is available for a broker-dealer who, since his previous report, has limited his

securities business to soliciting subscriptions as an agent for issuers, has transmitted funds and securities promptly, and has not otherwise held funds or securities for or owed monies or securities to customers. Also exempt is a broker or dealer who, from the date of his last report, has confined his business to buying and selling evidences of indebtedness secured by liens on real estate and has carried no margin accounts, credit balances or securities for any customers.

After his registration, a broker-dealer's first financial report must reflect his condition as of a date between the end of the 1st and 5th months after the effective date of the registration. All reports must be filed within 45 days after the date as of which the report speaks.

Through these reports the Commission and the public may evaluate the financial position and responsibility of broker-dealers. The financial report is one means by which the staff of the Commission determines whether the registrant is in compliance with the net capital rule. Failure to file the required reports may result in the institution of revocation proceedings. However, it is the policy of the Commission first to advise the broker-dealer of his obligations under the rule and to give him an opportunity to file the report.

During the fiscal year 5,197 reports of financial condition were filed with the Commission compared to the 1962 total of 5,228.

As of February 14,1963, the last date for broker-dealers to file their 1962 annual financial reports, if prepared as of December 31, 1962, a large number were delinquent in their filings. An effort has been made to obtain the termination of the registrations of those broker-dealers through revocation, withdrawal or cancellation. A continuing effort will be made to secure the filing of financial reports of all registered broker-dealers in compliance with the Commission's requirements.

Broker-Dealer Inspections

Section 17 (a) of the Exchange Act provides for regular and periodic inspections of registered broker-dealers. During the fiscal year the number of such inspections totaled 1,534. The inspection device is a most useful instrument in protecting investors and detecting violations of the Federal securities laws. The inspection, among other things, determines a broker-dealer's financial condition, reviews his pricing practices, evaluates the safeguards employed in handling customers' funds and securities, and determines whether adequate and accurate disclosures are made to customers.

The Commission's inspectors also determine whether brokers and dealers are keeping books and records as required by the Exchange Act and the Commission's rules thereunder and conforming to the margin and other requirements of Regulation T of the Federal Reserve Board. Inspectors also look for excessive trading or switching in customers' accounts. Inspectors frequently find evidence of the sale of unregistered

securities or of fraudulent practices such as use of improper sales literature or sales techniques.

When inspections reveal that a broker-dealer is violating the statutes or rules, consideration is given to the type of violation and the effect on the public. The Commission does not take formal action as a result of every infraction discovered. Inspections frequently reveal inadvertent violations which are discovered before becoming serious and before customers' funds or securities are in danger. When no harm has come to the investing public the registrant is informed of the violations and advised to correct the improper practices. If the violation appears to be willful and the public interest is best served by formal action against the broker-dealer, the Commission will institute appropriate proceedings.

The table below shows the types of infractions uncovered by the inspection program during the fiscal year:

[table omitted]

The National Association of Securities Dealers, Inc., and the principal stock exchanges also conduct inspections of their members, and some states have inspection programs. Each inspecting agency conducts inspections in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Inspections by the Commission are primarily concerned with the detection of violations of the Federal securities laws and the Commission's regulations. The inspection programs of the self-regulatory agencies and of the states afford added protection to the public. The Commission and certain other inspecting agencies coordinate their inspections to avoid duplication and to obtain the widest possible coverage of brokers and dealers. Agencies now participating in this coordination program include the New York Stock Exchange, the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange, the Pittsburgh Stock Exchange, and the National Association of Securities Dealers, Inc. It is hoped that even closer coordination may become possible in the future as recommended by the Special Study of Securities Markets. This program, however, does not preclude the Commission from inspecting any broker-dealer that has also been inspected by another agency, and such inspections are made whenever reason therefor exists.

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

The Securities Exchange Act of 1934, in Section 15A (the "Maloney Act"), provides for the registration with the Commission of national securities associations and establishes standards for such associations. The rules of such associations must be designed to

promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to meet other statutory requirements. Such associations are essentially disciplinary in purpose and serve as a medium for the cooperative self-regulation of over-the-counter brokers and dealers. They operate under the general supervision of this Commission which is authorized to review disciplinary actions and decisions which affect the membership of members, or of applicants for membership, and to consider all changes in the rules of associations. The National Association of Securities Dealers, Inc. (NASD) is the only Association registered under the Act.

In adopting legislation permitting the formation and registration of such associations, Congress provided an incentive to membership by permitting such associations to adopt rules which preclude a member from dealing with a nonmember, except on the same terms and conditions as the member affords the investing public. The NASD has adopted such rules. Accordingly, membership is necessary to profitable participation in underwritings and over-the-counter trading since members may properly grant price concessions, discounts and similar allowances only to other members. Loss or denial of membership due to expulsion or suspension or other ineligibility due to a statutory disqualification, or to failure to meet standards of qualification established in NASD rules, thus imposes a severe economic sanction.

During the year NASD membership decreased by 261 to stand at 4,664 as of June 30, 1963. This net decrease was the result of 454 admissions to and 715 terminations of membership. In the same period the registered representative population, which generally includes all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in capacities which involve their doing business directly with the public, declined by 15,030 to 87,375. This decline was the result of 38,292 terminations of registrations, as against 9,325 initial registrations and 13,937 re-registrations.

NASD Disciplinary Actions

The Commission receives from the NASD summaries of decisions in all disciplinary actions against members. A complaint instituting disciplinary action must be based on allegations that a member had violated specified provisions of the Rules of Fair Practice, although registered representatives of members, and persons controlling or controlled by members, may also be cited for having been the cause of a violation.

Where violations are found one or more of the available sanctions may be imposed. These include expulsion or suspension from membership, revocation or suspension of registration as a registered representative, fine and censure. An individual may also be found to have been the cause of a violation and of the penalty imposed on another party for such violation. Such a cause finding can have far-reaching effects, particularly in the case of expulsion or suspension from membership or suspension or revocation as a registered representative. A person found to be a cause of suspension or expulsion from

membership can be employed by a member, while such suspension or expulsion is in effect, only with approval of the Commission. Where an individual should have been, but was not registered as a representative, a finding that the unregistered person was a cause of an effective expulsion, suspension or revocation acts as a disqualification from membership, or control of or by a member, just as if such a penalty had been imposed directly on the person found a cause of the violation underlying the decision. In many cases more than a single penalty may be imposed so that expulsion, suspension or revocation may be accompanied by a fine and/or censure. In cases where the penalty is a fine, censure is customarily added.

During the year the Association reported to the Commission its final disposition in 536 disciplinary complaint actions against 503 different member firms and 332 registered representatives. With respect to 88 members and 57 representatives, complaints were either withdrawn prior to determination or were dismissed on findings that allegations of violations had not been sustained. In the remaining cases violations were found and some penalties were imposed on 448 members and 275 registered representatives, or other individuals who should have been but were not registered as representatives.

The maximum penalty of expulsion from membership was applied against 65 different members (1 member having been expelled in each of two separate decisions) and 16 members were suspended from membership for periods ranging from 5 days to 2 years. In many of these expulsion or suspension cases, fines were also imposed. In one case the penalty included suspension from membership for 5 days, a fine of $25,000 and an assessment of $20,000 to cover costs. In 310 cases, the major penalty imposed was fines, ranging from $50 to $8,000. In 55 other cases the only sanction imposed was censure, although censure was usually a secondary penalty imposed where expulsion, suspension or fines were the major penalties imposed.

Registered representatives found in violation of rules were similarly subjected to various penalties. The registrations of 93 representatives were revoked and 30 had their registrations suspended for periods ranging from 15 days to 2 years. Twenty-two individuals, some of whom should have been but were not registered as representatives, were found to have been causes of expulsions or suspensions of their firms. Fines were imposed on 66 representatives in amounts ranging from $50 to $5,000. Censure was the only penalty imposed on 65 representatives found to have acted improperly.

Commission Review of NASD Action on Membership

Section 15A (b) of the Act and the bylaws of the NASD provide that, except where the Commission finds it appropriate in the public interest to approve or direct to the contrary, no broker or dealer may be admitted to or continued in membership if he, or any controlling or controlled person, is under any of the several disabilities specified in the statute or the bylaws. By these provisions Commission approval is a condition to admission to or continuance in Association membership of any broker-dealer who,

among other things, controls or is controlled by a person whose registration as a broker-dealer has been revoked or who has been and is suspended or expelled from Association membership or from a national securities exchange, or whose registration as a registered representative has been revoked by the NASD or who was found to have been a cause of such an effective order.

A Commission order approving or directing admission to or continuance in Association membership, notwithstanding a disqualification under Section 15A (b) (4) of the Act, or under an effective Association rule adopted under that Section or Section 15A (b) (3), is generally entered only after the matter has been submitted initially to the Association by the member or applicant for membership. Where, after consideration, the Association is favorably inclined, it ordinarily files with the Commission an application on behalf of the petitioner. A broker-dealer, however, may file an application directly with the Commission either with or without Association sponsorship. The Commission reviews the record and documents filed in support of the application and, where appropriate, obtains additional evidence. At the beginning of the fiscal year one such petition was pending before the Commission. During the year two petitions were filed; decisions were issued in three cases; and no petitions were pending at the year end.

The Commission found it appropriate in the public interest to approve petitions filed by the Association for Commission approval of the continuance in Association membership of two firms notwithstanding their employment of disqualified persons.

However, the Commission denied an application by Bruce William Grocoff, doing business as Lloyd Securities, for an order directing the Association to continue him as a member while employing Robert Grocoff, his father, as a controlled person.17 The latter had been president and sole stockholder of R. G. Worth & Co., Inc., whose broker-dealer registration was revoked in 1960, for willful violations of the Commission's net capital and record-keeping rules and the credit requirements of Regulation T. Robert Grocoff was found a cause of that order. The violations had extended over a 3-year period and continued even after assurances of compliance and after an injunction had been obtained against them. The NASD had denied applicant's request that it seek Commission approval of his continued membership with his father as a controlled person. At the hearing before the NASD Board of Governors it was stated that applicant's securities business was to be taken over by Lloyd Securities, Inc., whose principal officers and sole stockholders were applicant and Robert Worth, and that applicant and Worth would manage and supervise the operations of the corporation, while Grocoff, Sr. would be employed as a salesman and an advisor with respect to investment situations. Both applicant and Worth had worked for a time for Worth & Co., under the supervision of Grocoff Sr. The NASD concluded, and the Commission agreed, that in the light of the more limited experience of applicant and Worth, and in view of their personal and prior business relationships with Grocoff Sr., it was difficult to believe that the proposed arrangement of control and supervision would be adequate under the circumstances.

Commission Review of NASD Disciplinary Action

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 timely application of any aggrieved person. This Section also provides that the effectiveness of any penalty imposed by the NASD is automatically stayed pending determination in any matter which comes before the Commission for review. Section 15A (h) of the Act defines the scope of the Commission's review in proceedings to review disciplinary action of the NASD. If the Commission finds that the disciplined person engaged in the acts or practices, or has omitted the acts, found by the NASD and that such acts, practices, or omissions to act are in violation of such rules of the Association as have been designated in the determination, and that such conduct was inconsistent with just and equitable principles of trade, the Commission must dismiss such proceedings unless it finds that the penalties imposed are excessive or oppressive, having due regard to the public interest, in which case the Commission must cancel or reduce the penalties. At the beginning of the fiscal year 15 review cases were pending before .the Commission; during the year 19 additional petitions for review were filed, decisions were issued in 9 cases, 2 petitions were withdrawn prior to determination, and 23 petitions were pending at the year end. Among the significant cases decided by the Commission during the year are the following:

The Commission sustained findings by the NASD that Palombi Securities Co., Inc., Edward Palombi, president and registered representative and Harry Barath, James DePasquale and Marvin Jay Polsky, registered representatives, had violated certain of the NASD Rules of Fair Practice and that the violations constituted conduct inconsistent with just and equitable principles of trade. It also sustained the penalties imposed by the NASD, which had expelled the firm from membership, found Palombi a cause of the expulsion and revoked the registrations of the individuals as registered representatives.

The NASD had found, among other violations, that there was such a high ratio of cancellations of retail sales by the firm in the course of a Regulation A offering as to indicate that the respondents had engaged in a conspiracy to and did increase sales by sending confirmations to persons who were solicited over the telephone to purchase stock but who did not, in fact, agree to make the purchase. The Commission held that the evidence supported the NASD finding. Among other things, it considered "the high-pressure selling methods, characteristic of a boiler-room operation" which were used by the salesmen and which "are often accompanied by the use of false confirmations to generate sales." The Commission also held that in determining whether the rate of customer cancellations was beyond normal expectations, the members of the NASD District Committee properly utilized their experience in the securities industry.

The Commission sustained the NASD's action in expelling from Association membership Vickers, Christy and Co., Inc. and revoking the registrations of Sydney Gr. Vickers, Jr. and William J. Christy as registered representatives. This was the first case presented to the Commission involving the responsibilities of NASD members in hiring registered

representatives. The Commission (in an opinion by Chairman Gary) concluded that under the circumstances, the penalty of expulsion was not excessive, and observed: "Both the NASD and we have been concerned with raising the standards of character, competence and training of securities salesmen. . . . The salesman often represents the major point of contact between the securities business and the general public -- a minimum level here can produce maximum damage everywhere."

Under the NASD's rules, any member which employs any person who is required to be registered with the NASD, must have reason to believe upon the exercise of reasonable care, and must certify to the NASD, that such person "is of good character and of good business repute" and is or will be qualified by training or experience to perform the functions assigned to him. This determination is the "complete" responsibility of the member, and "improper or unwarranted certification . . . shall be deemed to be conduct contrary to high standards of commercial honor."

The NASD found that appellants had certified to the "good character and good business repute" of four salesmen "without having exercised reasonable care" in investigating their background. The investigation consisted of casual interviews and a telephone call to Biltmore Securities Corp., a former employer of three of the salesmen. That firm was a respondent in both injunctive and administrative Commission actions. One of these salesmen had himself been the subject of injunction proceedings based on violations of the registration and anti-fraud provisions of the Federal securities acts.

Moreover, the four salesmen had previously been associated with one or more of a number of other firms against which various adverse actions had been taken. The "superficial" nature of the firm's inquiry, the Commission stated, was highlighted by its "asserted ignorance of Biltmore's difficulties and the prior employment records of the salesmen. We must doubt the depth of their interviews and investigations when they failed completely to learn of the formidable record of the salesmen's dubious connections."

The Commission also rejected, as immaterial, the contention that the NASD had not found that the salesmen in fact were not of good character and business reputation, pointing out that "the dereliction charged concerns appellants' duty to make a reasonable inquiry and to certify a reasonable belief based on information." The appellants indicated that they would not have engaged the salesmen had they known of their past connections. "Here is the crux of the case against them" the Commission stated; "they did not know and made no reasonable effort to find out."

The Commission also sustained findings by the NASD that Valley Forge Securities Company, Inc., and William Landenberger, III and Claude F. McDaniel, its principal officers and stockholders, violated the Commission's net capital rule, the credit restrictions of Regulation T and the NASD's interpretation of its Rules of Fair Practice with respect to advertising and sales literature. The NASD had expelled the firm from

membership and revoked the registrations as representatives of Landenberger, McDaniel and another officer who did not seek review of the NASD action.

According to the Commission's decision the firm distributed a "Financial Bulletin" designated as "A SPECIAL MEMORANDUM REGARDING NEW ISSUES." This brochure, headed by the words "FROM $2.50 to $76.00 PER SHARE IN SIX MONTHS," included a list of securities that had been the subject of initial offerings which the firm was said to have either participated in or recommended to its clients and which were stated to have increased in price from 33 percent to 2,900 percent in very short periods of time. The brochure offered to place the names of interested clients on a "NEW ISSUE LIST" which would purportedly entitle them to preferential treatment in the disposition of new issues. The NASD found that while many of the statements were superficially true, "the general connotation of such a presentation is, in our judgment, neither wholly true, nor in the best interest of the industry." The Commission observed that while the NASD did not in so many words find the use of the bulletin to be a violation of the anti-fraud provisions of the Securities Acts, the NASD did conclude that the bulletin contained statements whose implications might mislead and that it did not provide a fair basis for evaluating the facts presented. It also noted that the NASD's action was based on its published interpretation of its Rules of Fair Practice that exaggerated or sensational statements or claims, the implications of which may mislead, are prohibited.

The Commission emphasized that both it and the NASD are "concerned with raising the standards of the industry. The phenomenon of the 'hot issue' offers the less scrupulous broker-dealer a myriad of opportunities to trade on the public greed and gullibility characteristic of such a 'hot market.' The public is done disservice by the distribution of sales literature which attempts to sell new issues on the basis of a 'hot' market rather than on the merits of individual securities. This is particularly so where there is no explanation of or reference to the inherent risk in investing in new and untried enterprises. The technique used by applicants in calling attention only to past recommendations which were or would have been profitable is inherently misleading and deceptive because by its very nature it emphasizes the favorable facts, ignores any which are unfavorable, and fails to caution that investment in subsequent new issues cannot always be expected to show results comparable to the selected instances listed. Furthermore, its appeal is bottomed on what has been colloquially referred to as the 'bigger fool' theory. This is simply the assurance that regardless of whether the price paid for a security is fair and/or reflective of the intrinsic value of the security or even reflective of a rational public evaluation of the security, the security is still a good buy because a 'bigger fool' will always come along to take it off the customer's hands at a higher price. To imply that this theory will be perpetually applicable is an intolerable business practice which is the antithesis of any acceptable standards of commercial honor."

The Commission noted that applicants did not dispute their failure to comply with the net capital rule and Regulation T and sustained the NASD rejection of their contentions that

these violations were inadvertent and a result of a lack of experienced employees and the inability of their accountants to prepare and submit monthly statements on time.

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

In administering the Public Utility Holding Company Act of 1935 the Commission regulates interstate public-utility holding-company systems engaged in the electric utility business and/or in the retail distribution of gas. The Commission's jurisdiction also extends to natural gas pipeline companies and other nonutility companies which are subsidiaries of registered holding companies. Although the matters under the Act dealt with by the Commission and its staff embrace a variety of intricate and complex questions of law and fact generally involving more than one area of regulation, briefly there are three principal regulatory areas. The first covers those provisions of the Act, contained principally in Section 11 (b) (1), which require the physical integration of public-utility companies and functionally related properties of holding-company systems and those provisions, contained principally in Section 11 (b) (2), which require the simplification of intercorporate relationships and financial structures of holding company systems. The second covers the financing operations of registered holding companies and their subsidiaries, the acquisition and disposition of securities and properties, and certain accounting practices, servicing arrangements and intercompany transactions. The third includes the exemptive provisions of the Act, the provisions covering the status under the Act of persons and companies, and those regulating the right of a person affiliated with a public-utility company to acquire securities resulting in a second such affiliation. Matters embraced within this last area of regulation come before the Commission and its staff frequently. Many such matters do not result in formal proceedings and others are reflected in such proceedings only in an indirect manner when they are related to issues principally under one of the other areas of regulation.

The Branch of Public Utility Regulation of the Commission's Division of Corporate Regulation performs the principal functions under the Act. It observes and examines problems which arise in connection with transactions which are or may be subject to regulation under the Act and discusses such problems with interested persons and companies and advises them as to the applicable Sections of the Act, the rules thereunder and Commission policy with respect thereto. Questions are raised with and problems are presented to the staff daily. These include questions raised by security holders and problems presented by companies contemplating transactions requiring the filing of an application or declaration, particularly financing operations and the acquisition and disposition of securities and properties. This day-to-day activity includes profiling discussions and conferences, in person and by telephone, with company representatives and with other persons where the matter under consideration affects their interest.

Members of the staff of this Division actively participate in hearings and often aid the Commission, in the preparation of its decision on a particular matter. The staff continually re-examines the status of exempt companies, examines the annual reports filed with the Commission and those sent to stockholders and must keep abreast of new technical developments in the electric and gas industry, including the use of atomic energy as a source of power.

COMPOSITION OF REGISTERED HOLDING-COMPANY SYSTEMS

At the close of the fiscal year there were 24 holding companies registered under the Act. Of these, 18 are included in the 16 remaining holding-company systems which are herein classified as "active registered holding-company systems," 2 of the 18 being sub-holding companies in these active systems. The remaining 6 registered holding companies are of relatively small size and are excluded from the active holding-company systems. In the 16 active systems there are 85 electric and/or gas utility subsidiaries, 40 nonutility subsidiaries, and 13 inactive companies. These, together with the 18 parent holding companies, totaled 156 system companies. The following table shows the number of holding companies, the number of subsidiaries, classified as utility, nonutility, and inactive, in each of the active systems as of June 30, 1963, and their aggregate assets, less valuation reserves, as of December 31, 1962, which amounted to $12,458,709,000:

[table omitted]

SECTION 11 MATTERS AND OTHER SIGNIFICANT DEVELOPMENTS IN ACTIVE REGISTERED HOLDING-COMPANY SYSTEMS

Section 11 Matters

At the close of the fiscal year, there was pending before the Commission Step 2 of a Section 11 (e) plan filed by Eastern Utilities Associates, proposing the sale of all the outstanding common stock of Valley Gas Co. to the public common stockholders of Blackstone Valley Gas and Electric Co. and to the shareholders of Eastern Utilities Associates. This will constitute the final step to be taken for divestment of the System's gas utility properties. Prior proceedings are discussed at page 109 of the 27th Annual Report.

On February 20,1958, the Commission issued its Findings, Opinion and Order pursuant to Section 11 (b) (1) permitting the retention of all of the New England Electric System's electric properties. Thereafter, further hearings were held to consider the retainability of the System's gas properties; briefs were filed by New England Electric System and by the Commission's Division of Corporate Regulation; and oral argument was heard by the Commission. At the close of the fiscal year the matter was under advisement.

A current problem under Section 11 (b)(l) in the Middle South Utilities system concerns the question whether New Orleans Public Service Inc. may retain its gas and transportation properties together with its electric properties. On January 10,1963, a bill was introduced in the Congress (H.R. 742, 88th Cong., 1st Sess.) providing generally that New Orleans Public Service Inc. shall not be required to dispose of its gas or transportation properties pursuant to any provision of the Public Utility Holding Company Act of 1935. The bill was referred to the Committee on Interstate and Foreign Commerce which, at the close of the fiscal year, had taken no action thereon. Two similar bills had previously been introduced in the 87th Congress, 2d Session (H.R. 10872 and H.R. 10898). No proceedings have been instituted by the Commission regarding this problem.

The Commission has held, with court approval, that the existence of public minority interests in the common stock of subsidiaries of integrated registered public-utility holding-company systems constitutes an inequitable distribution of voting power under Section 11 (b) (2). Such minority interests have heretofore been eliminated in most of the holding-company systems through appropriate proceedings under the Act, but the problem still exists in several others. During fiscal 1963, informal conferences were held between the staff and representatives of Allegheny Power System, a registered holding company, looking to the elimination of a 4.8 percent public minority interest in the common stock of one of Allegheny's subsidiary companies, West Penn Power Company. Shortly after the close of the fiscal year, Allegheny filed a plan pursuant to Section 11 (e) of the Act, proposing that each share of West Penn's publicly-held common stock be surrendered in exchange for 1.7 shares of Allegheny's common stock.

Other holding-company systems in which a minority interest problem exists, and as to which no proceedings have been proposed by the systems or instituted by the Commission, are Columbia Gas System, Eastern Utilities Associates and New England Electric System. In respect of the latter system, the minority interests are confined to several of the gas utility subsidiaries the retainability of which, as noted above, is under advisement by the Commission.

Other Developments

On January 28, 1963, an application-declaration was filed with the Commission relating to the proposed construction of a nuclear-powered electric generating plant by Connecticut Yankee Atomic Power Company, all of whose outstanding capital stock would be owned in various proportions by a group of 12 New England utility companies, including subsidiaries of certain registered holding companies. The proposal involves the initial issuance of $5 million par value of Connecticut Yankee's common stock to finance part of a total estimated construction cost of about $85 million; the necessary approvals under Section 10 of the Act for the acquisition of their proportionate shares of such stock by 8 of the 12 sponsor companies; the requests of 2 of the sponsor companies, each of which proposes to acquire more than 10 percent of Connecticut Yankee's stock, for

exemptions as holding companies under Section 3 (a); and Connecticut Yankee's request for permission to conduct private negotiations to determine the type, amount and method of its permanent financing program. Halsey, Stuart & Co., Inc., an investment banking firm, appeared as a participant in the proceeding in opposition to the company's request to conduct such private negotiations. After the close of the fiscal year, the Commission issued an order granting and permitting the application-declaration to become effective, but denying the company's request to conduct private negotiations relating to the future sale of its senior securities.

The Commission's Rule 45 (b) (6) promulgated under the Act provides that the consolidated Federal income tax liabilities of registered holding companies and their subsidiaries may be allocated among the members of the consolidated group without prior approval by the Commission -- provided, among other things, that such allocation is made in accordance with the method prescribed by Section 1552 (a) (1) of the Internal Revenue Code of 1954. This method (frequently referred to as the source-of-income method) requires that the consolidated tax liability be apportioned among the members of the group in accordance with the relative amount of the consolidated taxable income which is attributable to each member of the group having taxable income. Under the Revenue Act of 1962, taxpayers installing qualified property after December 31, 1961, were permitted, as an "investment credit," to deduct from their Federal income taxes otherwise payable an amount equal to a percentage (generally 3 percent in the case of public-utility companies) of the cost of such qualified property. Since the investment credit taken in a consolidated tax return reduces the group's consolidated tax liability as determined on the basis of consolidated taxable income, adherence to the Commission's Rule 45 (b) (6) in such circumstances would require, in effect, that the net consolidated tax liability (i.e., the consolidated tax liability as reduced by the investment credit) be apportioned among the several members of the group under the source-of-income method. This could result in certain inequities, inasmuch as a member which generates a relatively small portion of the group's total investment credit could have allocated to it a disproportionately large amount of such credit; conversely, it could penalize a member which generates a relatively large amount of the group's total investment credit.

To resolve the problem in a manner which would accord uniform treatment to all registered holding-company groups filing consolidated tax returns, the Director of the Commission's Division of Corporate Regulation, on February 1, 1963, sent a letter to the chief executive of each of the registered holding companies advising him (1) that the consolidated tax liability after giving effect to the investment credit must be allocated in accordance with Rule 45 (b) (6) unless an exception is granted by the Commission, and (2) that the Division saw no basis for denying requests for such an exception which would generally give the full benefit of its investment credit to each individual company within a consolidated group qualifying for the credit under the Revenue Act of 1962. By the end of fiscal 1963, 11 registered holding-company systems had applied for and received Commission approval for allocating the investment credit in accordance with the

Division's letter of February 1, 1963; and after the close of the fiscal year an additional registered holding-company system applied for and received such approval.

FINANCING OF REGISTERED PUBLIC-UTILITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

During the fiscal year 1963, 12 registered holding-company systems issued and sold for cash 25 issues of long-term debt and capital stocks, aggregating $425.4 million, pursuant to authorizations granted by the Commission under Sections 6 and T of the Act. All but one of the security issues were sold by public distribution. Fifteen issues were sold for the purpose of raising additional capital. Of the remaining 10 issues, 9 were entirely or in part for the purpose of refunding $145.8 million principal amount of outstanding debt securities carrying a higher rate of interest, and 1 for the purpose of refunding $10 million par value of preferred stock carrying a higher dividend rate.

The following table shows the amounts and types of securities issued and sold by registered holding companies and their subsidiaries during fiscal 1963:

[table omitted]

The table does not include securities issued and sold by subsidiaries to their respective parent holding companies, the issuance of notes to banks, portfolio sales by system companies, or securities issued for assets or stock of other companies. These issuances and sales also required authorization by the Commission except in the case of the issuance of notes having a maturity of less than 9 months where the aggregate amount did not exceed 5 percent of the total capitalization of the company. The issuance of the latter securities is exempt by the provisions of Section 6 (b) of the Act.

Competitive Bidding

All but one of the issues shown in the preceding table were offered for competitive bidding pursuant to the requirements of Rule 50 promulgated under the Act.

During the period from May 7, 1941, the effective date of Rule 50, to June 30,1963, a total of 863 issues of securities with aggregate sales value of $12,727 million were sold at competitive bidding under the rule. These totals compare with 231 issues of securities with an aggregate sales value of $2,371 million which have been sold pursuant to orders of the Commission granting exceptions from the competitive bidding requirements of the rule under paragraph (a) (5) thereof. Of the total amount of securities sold pursuant to orders granting exceptions under this paragraph, 126 issues, with a total sales value of $1,888 million, were sold by the issuer; and the balance of 105 issues, with a dollar value of $483 million, were portfolio sales. Of the 126 issues sold by issuers, 70 were in

amounts of from $1 million to $5 million, and 2 bond issues were in excess of $100 million each.

PROTECTIVE PROVISIONS OF FIRST MORTGAGE BONDS AND PREFERRED STOCKS OF PUBLIC-UTILITY COMPANIES

Statements of policy were adopted by the Commission in 1956, codifying the standards to which provisions covering first mortgage bonds and preferred stocks issued under the Act must conform for the protection of investors in such securities. Prior to 1956 these standards had been established by the Commission on a case-by-case basis. In passing upon the issuance of first mortgage bonds and preferred stocks under the Act, the Commission examines the applicable mortgage indentures and charter provisions to insure a continuing substantial conformity with the codified standards of the respective statements of policy. Such conformity has been uniformly required except where, in particular circumstances^ deviations from the statements of policy are clearly justified.

During the fiscal year, applications or declarations were filed by public-utility companies subject to the Act with respect to 18 first mortgage bond issues involving an aggregate principal amount of $354.9 million and 4 preferred stock issues with a total par value of $29.5 million.

The statement of policy with respect to first mortgage bonds requires, among other things, that dividends or other distributions to common stockholders be limited so as to preserve an "equity cushion" beneath the claims of the bondholders. This requirement was adequately provided for in the indentures covering the bond issues as filed or as a result of informal discussions between the Commission's staff and representatives of the issuers.

Since the bulk of bondholders' security consists of mortgaged depreciable plant and equipment, the statement of policy for bonds also requires the periodic renewal and replacement of such property so as to preserve the book value of the underlying security. This requirement, in substance, obligates the issuing company to provide for new property additions (or, alternatively, to deposit cash or outstanding bonds with the indenture trustee) in an amount which, over the estimated useful life of the mortgaged depreciable property, will maintain the original book cost of the mortgaged property. The statement of policy requires that the mortgage indenture express the periodic renewal and replacement obligation as a percentage of the book cost of the mortgaged depreciable property, but where existing indentures express the provision on some other basis (usually as a percent of operating revenues), such alternate provision is permitted to remain unchanged if the issuer can satisfactorily demonstrate to the Commission that the existing provision affords substantially the same protection as that based on a percent-of-property basis. To insure observance of this standard of the statement of policy, the

Commission's staff conducts a continuous study of the depreciation requirements of the various issuers subject to the Act.

Of the 18 bond issues filed during the fiscal year, the indentures of 14 expressed the renewal and replacement provision as a percentage of depreciable property deemed adequate. The indentures covering 2 of the other 4 bond issues expressed the provision as a percentage of revenues, which afforded no less protection to the bondholders than would be afforded on an appropriate percent-of-property basis. As to the remaining 2 bond issues, no renewal and replacement provisions were deemed necessary since the indenture of 1 issue provided for a 100 percent amortization of the bonds through the cash sinking fund over the life of the issue, and the indenture of the other provided for a 70 percent amortization.

With respect to the four preferred stock issues aggregating $29.5 million, as to which applications or declarations were filed during the fiscal year, all had charter provisions in substantial conformity with the statement of policy for preferred stock.

During the fiscal year, the Commission has continued to require adherence to the provision contained in both the bond and the preferred stock statements of policy that the securities be freely refundable at the option of the issuer upon reasonable notice and payment of a reasonable redemption premium, if any. During fiscal year 1963, issuers subject to the Act took advantage of the refunding privilege to refund outstanding bond and preferred stock issues at substantial savings in interest and dividend costs under the prevailing favorable market conditions.

The following table shows the securities sold by registered holding companies and subsidiaries thereof during fiscal 1963, to refund outstanding issues:

[table omitted]

In each instance shown in the table, the refunded issue had been outstanding for a period of 7 years or less, and each of the issuers effected substantial savings in cost of capital. Had the outstanding issues been nonrefundable or restricted as to refundability, such savings could not have been effectuated.

Continuing studies made by the Commission's staff for fiscal year 1963 with respect to electric and gas utility bond issues sold at competitive bidding, whether or not subject to the Act, indicated that the presence or absence of a restriction on free refundability has not affected the number of bids received by an issuer at competitive bidding. With respect to the ability of the winning bidder to market the bonds, the data for fiscal year 1963 are at some variance with the data for the previous fiscal year and for prior periods. The 28th Annual Report, at pages 91-93, contains a summary of the results of an examination of all electric and gas utility bond issues (including debentures) sold at competitive bidding between May 14, 1957, and June 30, 1962, by companies subject to

the Act as well as those not so subject. This study was extended to include fiscal year 1963.

During the period from May 14, 1957, to June 30, 1963, a total of 420 electric and gas utility bond issues, aggregating $9,255.4 million principal amount, was offered at competitive bidding. The refundable issues numbered 316 and accounted for a total of $5,931.0 million, while the nonrefundable issues -- all being nonrefundable for a period of 5 years, except one which was nonrefundable for a period of 7 years -- numbered 104 and totaled $3,324.4 million principal amount. The number of refundable issues thus represented 75.2 percent of the total number of issues, while, in terms of principal amount, the refundable issues accounted for 64.1 percent.

The weighted average number of bids received on the refundable issues for the period was 4.64, while on the nonrefundable issues it was 4.19. The median number of bids was five on the refundable and four on the nonrefundable issues. With respect to the success of the marketing of the bond issues, an issue was considered to have been successfully marketed if at least 95 percent of the issue was sold at the syndicate price up to the date of termination of the syndicate. On this basis, 71.2 percent of the refundable issues were successful, while 67.3 percent of the nonrefundable ones were successful.17 In terms of principal amount, 68.4 percent of the refundable issues were successful, while 66.5 percent of the nonrefundable ones were successful. Extension of the comparison to include the aggregate principal amounts of all issues which were sold at the applicable syndicate prices up to the termination of the respective syndicates, regardless of whether a particular issue met the definition of a successful marketing, indicates that 86.8 percent of the combined principal amount of all the refundable issues were so sold, as compared with 83.1 percent for the non-refundable issues. While the statistics for the total period from May 14,1957, to June 30,1963, developed in respect of the two groups of bond issues support the Commission's policy of requiring free re-fundability of utility bond issues subject to the Act, the Commission's staff will continue its studies of refundability provisions, particularly in light of the inconsistent marketing results in fiscal year 1963.

OTHER MATTERS

Request for Declaratory Order

On May 26,1963, a hearing was held with respect to an application filed by Pacific Northwest Power Company pursuant to Section 5 (d) of the Administrative Procedure Act for a declaratory order requesting a determination as to when, in the construction of a hydroelectric plant, it will become an electric utility company within the meaning of Section 2 (a) (3) of the Act. Pacific Northwest's common stock is owned equally by Pacific Power and Light Company, Montana Power Company, Washington Water Power Company, and Portland General Electric Company. The application was held in abeyance pending the outcome of proceedings before the Federal Power Commission, in which the

granting of a license to Pacific Northwest was contested by certain public utility districts. During fiscal 1962, an examiner of the Federal Power Commission issued an opinion recommending the grant of a license to Pacific Northwest. The license proceeding before the Federal Power Commission was reopened at the request of the Secretary of the Interior and, at the end of fiscal 1963, the matter was under advisement by that Commission, and briefs were being prepared by the interested persons with respect to the proceeding before this Commission.

PART VII
PARTICIPATION OF THE COMMISSION IN CORPORATE RE-ORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT

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

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

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

The Commission has lawyers, accountants and financial analysts in its New York, Chicago and San Francisco regional offices who are actively engaged in Chapter X cases in which the Commission has filed its appearance. Supervision and review of the regional offices' Chapter X work is the responsibility of the Division of Corporate Regulation of the Commission, which, through its Branch of Reorganization, also serves as a field office in cases arising in the Atlanta and Washington, D.C. regional areas.

SUMMARY OF ACTIVITIES

The Commission's activities in Chapter X this year increased over the previous year and will probably be even more extensive in fiscal year 1964. In fiscal 1963, the Commission entered its appearance in 32 new proceedings under Chapter X involving companies with aggregate stated assets of approximately $152,451,000 and aggregate indebtedness of approximately $142,965,000. They involved the rehabilitation of corporations engaged in the operation of varied businesses, including, among others, shell home construction, chain retail and discount stores, consumer finance, and real estate and mortgage investment.

During the year, the Commission participated in a total of 91 reorganization proceedings, including the new proceedings. The stated assets of the companies in all these proceedings totaled approximately $743,311,000 and their indebtedness totaled approximately $692,199,000. The proceedings were scattered among district courts in 31 states and the District of Columbia, as follows: 14 proceedings in New York; 8 each in California and Florida; 7 in Illinois; 5 each in Kentucky and Colorado; 4 each in North Carolina and Oklahoma; 3 each in Maryland, Iowa, Pennsylvania, Texas and Michigan; 2 each in New Jersey and Montana; and 1 each in Connecticut, West Virginia, Tennessee, Utah, Washington, Indiana, Virginia, Kansas, Georgia, Mississippi, New Mexico, Arkansas, Ohio and the District of Columbia. Proceedings involving 13 principal debtor corporations were closed during the year. Thus, at the end of the year the Commission was participating in 78 reorganization proceedings.

PROCEDURAL AND ADMINISTRATIVE MATTERS

In Chapter X proceedings in which it participates, the Commission seeks application of the procedural or substantive safeguards to which all parties are entitled. The Commission also attempts in its interpretations of the statutory requirements to encourage uniformity in the construction of Chapter X and the procedures thereunder.

In Florida Southern Corporation, the second mortgagee appealed from an order of the district court approving the debtor's Chapter X petition for reorganization. On appeal the court of appeals affirmed, holding, as urged by the Commission, that a petition is not

lacking in "good faith" within the meaning of Section 146 (3) merely because a class of secured creditors announced in advance that it will not agree to a plan of reorganization.

In Flora Sun Corporation this ruling was reaffirmed by the court of appeals. This case also held, as urged by the Commission, that where creditors filed an answer controverting material allegations of the debtor's Chapter X petition, it was error for the district court to approve the petition summarily, without a hearing, when the answer presented a triable issue of fact. The court also agreed with the Commission that a corporation can be subject to Chapter X even though, as argued, it was owned and controlled by a single shareholder.

In G.F.E. Industries, Inc. the lessor of certain properties occupied by the debtor urged, among other things, that the lease had terminated pursuant to the provisions of Section 70b of the Bankruptcy Act which provides, in part, that a lease not assumed or rejected by the trustee within 60 days after adjudication or within 30 days after qualification of the trustee, whichever is later, is deemed to be rejected. The Commission urged that Section 70b is in conflict with the provisions of Chapter X regarding rejection of leases and therefore is not applicable in proceedings under Chapter X. The district court did not reach this question, since it found that the lessor had waived this statutory provision. On appeal by the lessor, the Commission again urged the inapplicability of this provision of Section 70b in Chapter X proceedings.

Credit Finance Services had filed a voluntary Chapter X petition in the district court in which the reorganization proceeding with respect to its parent, Certified Credit Corporation, was pending. The creditors of the subsidiary moved to dismiss the Chapter X proceeding for lack of proper venue, arguing that a prior bankruptcy proceeding with respect to the subsidiary was pending in another district court and that in such circumstances Section 129 does not permit a nonresident subsidiary to file a Chapter X petition in the reorganization forum of its parent. The Commission's memorandum supporting the Chapter X trustee's opposition to the motion reviewed the present state of the law and the legislative history of Section 129 and its broad policy that the administration of parent and subsidiary estates should be centralized in a single reorganization proceeding. At the close of the fiscal year the matter was pending before the Chapter X court.

In Walco Building Corporation, the owners of land petitioned the district court to vacate, for lack of jurisdiction, an order which specifically enjoined them from interfering with the debtor's or trustee's rights on the ground that because of prior defaults the debtor no longer had a valid leasehold interest. While this petition was pending, the owners filed an action for a declaratory judgment in the state court with respect to the same matter. The district court then entered another order specifically enjoining the owners from further prosecuting that action. On appeal, the Commission's brief urged that the appeal was premature since the questions raised by appellants were pending before the district court, which had power to preserve the status quo.

TRUSTEE'S INVESTIGATION

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

In Automatic Washer Company, as noted in a prior report, the trustee obtained a judgment for more than $500,000 for fraud in the alleged sale of rubber machinery to the debtor. On appeal, the court reversed the judgment and ordered a new trial. Thereafter, this claim and others were compromised for $90,000. In addition, as the result of an investigation in which the staff of the Commission participated, the trustee brought suit for fraud against Bankers Life and Casualty Company and obtained a judgment for $406,250. The collection of this judgment will yield a participation to stockholders under the plan of liquidation.

In Swan-Finch Oil Corporation, the trustees filed an action for damages in the amount of $6 million against the American Stock Exchange, Lowell M. Birrell, Edward T. McCormick, Joseph F. Reilly, Re, Re and Sagarese, William P. Hoffman & Co., Ira Haupt & Co., Swiss American Corporation, and others. The action was based primarily upon the facts developed in the Commission's investigation of the Res, specialists on the Exchange, with respect to their unlawful sale of Swan-Finch stock. The district court denied a motion to dismiss the complaint, holding that the complaint sufficiently stated claims under Sections 6 and 10 (b) of the Securities Exchange Act of 1934; Section 70e of the Bankruptcy Act and in common law conversion. In another step to recover assets for the debtor, the court also granted the trustees' application for the appointment of a receiver to take possession of and collect the rents on certain property which, as alleged by the trustee, had been transferred by Lowell Birrell to his brother to defraud creditors. Subsequent to the end of the fiscal year, the trustees settled certain other litigation and pursuant to the settlements received from various parties defendant an aggregate amount of $80,000 and 31,500 shares of Swan-Finch stock.

ADVISORY REPORTS ON PLANS OF REORGANIZATION

Generally, a formal advisory report is prepared only in a case involving a substantial public investor interest and presenting significant problems. When no such formal report is filed, the Commission may state its views briefly by letter, and authorize its counsel to make an oral or written presentation to amplify the Commission's views.

In TMT Trailer Ferry, Inc., the Commission and the stockholders' committee objected to approval and confirmation of an internal plan of reorganization which excluded stockholders from any participation. It was urged that the record on valuation was inadequate to justify exclusion of the stockholders, especially since the plan allowed some $2 million of seriously contested claims; and that the court should not have rejected summarily the stockholders' contentions that they were entitled to rescind their purchases of the debtor's stock sold in alleged violation of the anti-fraud provisions of the Federal securities laws and that, as a consequence, they should be classified as general creditors for purposes of the plan. The Commission also objected to the provisions of the plan which would permit the trustee to become president of the reorganized company. The district court approved and confirmed the plan, overruling these contentions. The Commission is supporting the pending appeal of the stockholders' committee. In Third Avenue Transit Corporation the plan of reorganization, consummated in 1957, reserved to the trustee, with the approval of the court, the right to reject, assume, or assume as modified, a pension plan adopted by the debtor prior to the reorganization proceeding. The authority was never exercised by the trustee, and the reorganized debtor continued to pay the pensions to employees who had retired prior to the consummation of the plan of reorganization. When, in 1962, the properties of the reorganized debtor were seized in condemnation proceedings, the trustee petitioned the court for authority to reject the pension plan. Pursuant to a request by the court, the Commission advised, and the court agreed, that the reservation did not appear in the circumstances to be related or ancillary to the consummation of the plan of reorganization and that to permit its exercise now would involve the kind of tutelage over reorganized debtors which the courts have disapproved.

ACTIVITIES WITH REGARD TO ALLOWANCES

Every reorganization case ultimately presents the difficult problem of determining the allowance of compensation to be paid out of the debtor's estate to the various parties for services rendered and for expenses incurred in the proceeding. The Commission, which under Section 242 of the Bankruptcy Act may not receive any allowance from the estate for the services it renders, has sought to assist the courts in protecting debtors' estates from excessive charges and at the same time in equitably allocating compensation on the basis of the claimants' contributions to the administration of estates and the formulation of plans. During the fiscal year 187 applications for compensation totaling about $7.3 million were reviewed.

In Food Town, Inc. the Commission recommended that the trustee's accountant should be denied compensation because the audit report had failed to include certain information bearing upon a possible $300,000 preference by the debtor. The court, in reducing the accountant's compensation, stated that accountants retained by the trustee pursuant to an order of the court are quasi-officers of the court; that as such they owe their primary duty to the court; and that reliance upon statements made by adverse parties, and acquiescence

therein by the trustee's counsel, will not relieve the accountants of their responsibility to advise the court fully of all pertinent matters coming to their attention. The court also allowed some compensation to former counsel for the trustee, although the Commission had urged total disallowance because, in reliance on the accountant's audit report, he had omitted the same information from the trustee's report under Section 167, and for the additional reason that he had delegated substantially all his responsibilities to counsel for debtor who, under Section 158 (3), is not disinterested.

In Parker Petroleum Co., Inc. the Commission recommended denial of four applications for compensation totaling $93,000 by reason of Section 249 of Chapter X. The district court disallowed three of the applications for a total of $53,000, as recommended by the Commission, but held that Section 249 was not applicable to the fourth applicant and allowed $10,000 as the reasonable value of services rendered. The Commission also urged that no compensation should be allowed to the chairman of the creditors' committee or to its attorney because the committee represented both secured and unsecured creditors. The court denied an allowance to the committee chairman, but on the ground that no compensable service had been rendered. While recognizing the conflict, the court allowed the attorney $21,000 as against his request for $106,000.

In Selected Investments Corporation, as reported previously, the Commission successfully argued that a fee applicant who was denied compensation because he had represented conflicting interests could not thereafter obtain a fee from the reorganized company in settlement of an appeal by the applicant from the district court's order which had denied him compensation. As urged by the Commission, the court of appeals affirmed the ruling of the district court.

INTERVENTION IN CHAPTER XI PROCEEDINGS

Chapter XI of the Bankruptcy Act provides a procedure by which debtors can effect arrangements with respect to their unsecured debts under court supervision. Where a proceeding is brought under that Chapter but the facts indicate that it should have been brought under Chapter X, Section 328 of Chapter XI authorizes the Commission to make application to the court to dismiss the Chapter XI proceeding unless the debtor's petition is amended to comply with the requirements of Chapter X, or a creditors' petition under Chapter X is filed.

Grayson-Robinson Stores, Inc., through numerous subsidiaries, operated a chain consisting of specialty stores and leased departments in discount stores, each selling women's and children's apparel, and additional stores or departments selling photographic equipment" and supplies. The debtor also owned 51 percent of the stock of A. S. Beck Shoe Corporation, which manufactures shoes and operates a retail shoe store chain of over 250 units. Pursuant to agreement executed in 1960, the debtor operated the 130 stores of Darling Stores Corporation, whose outstanding stock is owned by Maxwell H.

Gluck, chairman of the board of the debtor. The debtor's balance sheet as of July 28, 1962, showed total assets of about $33 million and liabilities of $33.7 million. The debtor's 803,507 shares of common stock, listed on the New York Stock Exchange, are held by about 3,470 investors. Approximately 32 percent of the stock is owned by Gluck, either individually or through Darling. In its motion under Section 328, the Commission stressed, among other things, the debtor's substantial liabilities, both secured and unsecured, the operating losses under the Gluck management, the depletion of cash, the unsuccessful attempts to refinance by proposed debenture offerings to the public, and the consequent need of an overall reorganization and an inquiry by a disinterested trustee. The district court denied the Commission's motion. On appeal by the Commission, the court of appeals affirmed and in a 6-3 decision denied, without opinion, the Commission's petition for rehearing en banc. In dissenting from the denial of a rehearing, Judge Clark indicated that the court's original decision appeared contrary to the decisions of the Supreme Court of the United States and prior decisions in the Second Circuit, stating, inter alia, "that the battle for public supervision won in 1940 has all to be done again -- if it can be rewon after this setback."

On October 22, 1963, the Commission, in a public release, stated:

The Commission has been advised by the Solicitor General that he has decided not to file a petition with the United States Supreme Court for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit in Grayson-Robinson Stores, Inc. v. Securities and Exchange Commission, 320 F. 2d 940 (1963). This decision affirmed the District Court's denial of the Commission's motion under Section 328 of Chapter XI of the Bankruptcy Act to dismiss the Grayson-Robinson Chapter XI proceeding on the ground that the proceeding should have been brought under Chapter X. The Solicitor General does not believe that the case presents a proper question for consideration by the Supreme Court at this time.

The decision not to seek Supreme Court review in this case, however, should not be construed as acquiescence by the Commission in the decision of the Court of Appeals or concurrence with the views expressed in the opinion."

American Trailer Rentals Company had sold to more than 1,300 public investors automobile utility trailers which were then leased back to debtor and rented to the public. The debtor's plan of arrangement under Chapter XI proposed to offer trailer owners common stock of another company in exchange for their trailers and nothing for past-due rentals. It provided participation for the common stock of the debtor, over 61 percent of which was held by the debtor's management, who would also be included in the management of such other company. The Commission's motion under Section 328 stressed the need for an independent investigation of the past acts of management, the public investors' need for independent advice, and that Chapter XI was not the proper forum for an overall reorganization of the debtor as contemplated by the plan of arrangement. The district court denied the Commission's motion, and at the close of the

fiscal year an appeal by the Commission was pending. The Commission also filed a separate motion for leave to intervene and to restrain the stock offering pursuant to the plan of arrangement because of alleged violations of the anti-fraud provisions of the Securities Act of 1933.

American Guaranty Corporation was a nationwide equipment leasing and finance company. As of September 30,1963, it had total assets of over $26 million and total liabilities of about $24 million, of which three issues of about $4.6 million were publicly held. The debtor also had outstanding 500,000 shares of preferred stock and 204,199 shares of common stock, held in the aggregate by over 1,100 investors. The Commission's motion under Section 328 was based largely on the asserted inadequacy of Chapter XI to assure that public investors would receive fair and equitable treatment under the proposed arrangement, the claimed need for an independent inquiry into past acts of management, and possible violations of the securities laws which might affect the status and rank of the claims and interests of the public investors. After the close of the fiscal year the court denied the Commission's motion, stating, among other things, that the proposed plan of arrangement was a simple composition and that the referee or a person designated by him would make the necessary investigations. The Commission has filed an appeal.

Crumpton Builders, Inc., a company engaged in the sale, erection and financing of shell homes in 10 southeastern states, proposed an arrangement under Chapter XI whereby the claims of its unsecured creditors, including those of its debenture holders, are to be satisfied in full by the payment of 15 cents on the dollar, while the stockholders are to retain their stock interest undiminished. Crumpton's debentures, in the principal amount of $1,425,660, are held by 600 public investors. The president of the debtor and his wife own 39 percent of the debtor's common stock; the balance of the common stock is held by approximately 2,100 public investors. The Commission's motion under Section 328, in which the indenture trustee joined, stated, among other things, that the provisions of the proposed arrangement raised substantial questions as to fairness and equity to the debenture holders which required the application of the procedural and substantive safeguards found only in Chapter X. The court denied the Commission's motion without opinion, and the Commission has appealed. The debtor has stipulated to a stay of confirmation, pending appeal.

In Precision Transformer Corporation, the Commission withdrew its motion under Section 328, and the court approved a separate Chapter X petition for reorganization filed by creditors. The district court denied the Commission's motion in United Star Companies, Inc., the Commission appealed, and, during the pendency of the appeal, the debtor was adjudicated a bankrupt. In Chase Capital Corporation, the district court, at the urging of the Chapter XI receiver, adjudicated the debtor a bankrupt, and the Commission's motion was, accordingly, denied.

PART VIII
ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

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 requires that indentures to be qualified include 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 to designated standards of eligibility and qualification of the corporate trustee to provide reasonable financial responsibility and to minimize conflicting interests. The Act outlaws exculpatory provisions formerly used 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 "in the exercise of the rights and powers invested in it by the indenture" as a prudent man would use in the conduct of his own affairs.

The provisions of the Trust Indenture Act are closely integrated with the requirements of the Securities Act. Registration pursuant to the Securities Act of securities to be issued under a trust indenture subject to the Trust Indenture Act is not permitted to become effective unless the indenture conforms to the requirements of the latter Act, 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.

[table omitted]

PART IX
ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 provides for the registration and regulation of companies primarily engaged in the business of investing, reinvesting, owning, holding, or trading in securities. The Act, among other things, requires disclosure of the finances and investment policies of such companies, prohibits changing the nature of their business or their investment policies without shareholder approval, regulates the means of custody of the companies' assets, requires management contracts to be submitted to security holders for approval, prohibits underwriters, investment bankers, and brokers from constituting more than a minority of the directors of such companies, and prohibits

transactions between such companies and their officers, directors, and affiliates except with approval of the Commission. The Act also regulates the issuance of senior securities and requires face-amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

The securities of investment companies which are offered to the public are also required to be registered under the Securities Act of 1933 and the companies must file periodic reports. Such companies are also subject to the Commission's proxy rules and closed-end companies are subject to "insider" trading rules. The Division of Corporation Finance and the Division of Corporate Regulation both assist the Commission in the administration of the statute, the former being concerned with the disclosure provisions and the latter with regulatory provisions.

COMPANIES REGISTERED UNDER THE ACT

As of June 30,1963, there were 727 investment companies registered Under the Act, including 71 small business investment companies, and the estimated aggregate market value of their assets on that date was approximately $36 billion. Compared with the corresponding totals at June 30,1962, these figures represent an overall increase of approximately $8.7 billion in the market value of assets while the number of registered companies remained the same. The registered companies were classified as follows:

[table omitted]

During the fiscal year, 48 new companies, including 4 small business investment companies, registered under the Act while the registrations of 48 companies, including 11 small business investment companies, were terminated. The classification of these companies is as follows:

[table omitted]

GROWTH OF INVESTMENT COMPANY ASSETS

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

[table omitted]

INSPECTION AND INVESTIGATION PROGRAM

Pursuant to the statutory authority conferred by Section 31 (b) of the Investment Company Act, a total of 84 inspections of investment companies was completed during fiscal year 1963. The number of inspections compares favorably with the total of 165

inspections that had been conducted in all prior years since the inception of the program in 1957 and with the 52 inspections in fiscal 1962. These inspections were planned and supervised by a Branch of Inspections and Investigations which was newly created for such purpose in the Division of Corporate Regulation.

As part of the Commission's expanding program in this area, Investment Company Act training seminars for staff members in the regional offices were conducted for the first time, with a total of some. 75 participants. The object of the seminars was to train personnel in the technical aspects of inspection of investment companies and to coordinate the activities of the various regional offices in regard to the inspection and enforcement program.

In a majority of the inspections conducted during the fiscal year, violations of various provisions of the Investment Company Act, as well as violations of other statutes administered by the Commission, were brought to light. While many of the violations thus uncovered were of a minor nature and, when called to the attention of those involved, were corrected or discontinued, serious violations have also been discovered. Instances were discovered in which investment advisory contracts had not been entered into or continued in accordance with provisions of Section 15 of the Act with the consequence that the investment adviser was collecting fees based upon a void contract. In one such instance, the board of directors had failed to renew the advisory contract as required by Section 15 (c). In another instance, the inspection and resulting investigation developed information indicating that certain directors were acting as investment advisers to the investment company in violation of Section 15 (a). The inspection of investment companies has also disclosed in several instances violations of Section 17 by persons affiliated with the investment companies.

During the fiscal year, the responsibility for conducting investigations in matters involving violations of the Investment Company Act was transferred to the Division of Corporate Regulation from the Division of Trading and Exchanges now Trading and Markets. A total of 29 investigations was commenced during the year through the Branch of Inspections and Investigations, chiefly as a result of information gained during the course of the inspection program.

As a consequence of the inspection and investigation program, situations were brought to light warranting the institution of civil actions by the Commission in nine separate matters. Of the nine actions, one has been concluded with the entry of a consent decree and the appointment of receivers to liquidate the company. In another action, S.E.C. v. The Keller Corporation et al., a preliminary injunction was entered December 20, 1962, enjoining certain defendants from further violations of the Investment Company Act and the Securities Act of 1933 and appointing a trustee and receiver for an unregistered investment company. As of July 1,1963, there were eight actions still in process. In addition, the inspection and investigation program in certain instances produced tangible benefits for investment companies or their shareholders.

SPECIAL STAFF STUDY OF INVESTMENT COMPANIES

Shortly after the beginning of fiscal year 1963 the Wharton School of the University of Pennsylvania submitted to the Commission its Study of Mutual Funds, which the Commission in turn submitted to the Committee on Interstate and Foreign Commerce, House of Representatives. The Study, based on responses to questionnaires, relates to the problems created by the growth in size of investment companies. It constitutes the most comprehensive analysis of the mutual fund industry since the Commission's study made more than 20 years ago, prior to the adoption of the Investment Company Act of 1940. The Study analyzes the growth, organization and control, investment policy and performance of open-end investment companies or mutual funds, their impact on securities markets, the extent of control of portfolio companies, and the financial and other relationships of mutual funds with their investment advisers and principal underwriters.

As the Commission stated in its transmittal letter, many of the comments in the Study raise questions of broad policy whether some of the practices and patterns which originated in an earlier time and under different conditions and which have become conventional within the broad tolerances of the 1940 Act should be reconsidered. The Study draws attention to the potential for divided loyalties arising from the typical structure of the industry under which a significant part of the funds' activities are performed by affiliated organizations such as advisers, underwriters, and brokers, who control or are represented on the boards of directors of the funds. Questions are raised by the Study as to the relationship or lack of relationship between the growth, size and performance of funds, and sales commissions and other sales incentives. Attention is further directed to the relationship or lack of it between growth, size and performance of funds, on the one hand, and advisory fees and costs of operation of the funds and of the advisers, including fees charged by advisers to other clients, on the other hand. The Study comments upon the role of and in general questions the effectiveness of "unaffiliated" directors of the typical fund.

The Wharton School Study, as noted, is a report to the Commission and not by the Commission. In forwarding the Study to the Congress, the Commission stated that it would be premature to attempt an evaluation of the conclusions in the Study, but that it was apparent that the Commission's rules under the 1940 Act and indeed some of the provisions of the statute itself might require reassessment. The Commission accordingly directed its staff to conduct a detailed analysis of the Study with a view to making such recommendations as may seem appropriate. During fiscal 1963 members of the staff of the Division of Corporate Regulation have been engaged in conducting this staff study, including intensive field visits to selected investment companies and complexes of different types, and interviews with persons in the industry, including "unaffiliated" directors. Its scope includes a review of the structure of the investment company industry

generally, and a reassessment of the provisions of the Investment Company Act and the Commission's rules and regulations thereunder.

This staff project has been coordinated with the work of the Special Study of Securities Markets, which considered certain aspects of the investment company industry not covered by the Wharton School Study, namely sales techniques, the adequacy of training and supervision of salesmen, "contractual" or "front-end load" plans for the purchase of investment company shares and the possible use of inside information with respect to portfolio transactions by those closely affiliated with investment companies. The conclusions and recommendations of the Special Study in these areas are contained in Chapter XI of the Special Study report, transmitted by the Commission to the Congress shortly after the close of the fiscal year 1963. In one of the areas covered, that of "contractual" plans, the Special Study made recommendations of a tentative nature, suggesting that final recommendations be made only after completion of the comprehensive staff study.

It is contemplated that the staff study will be completed during fiscal 1964, and that its analysis, together with the reports of the Wharton School and the Special Study of Securities Markets, will aid the Commission in determining whether specific legislative recommendations should be made to the Congress with respect to the 1940 Act and what action, if any, should be taken to strengthen the rules and regulations under the Act.

CURRENT INFORMATION

The Commission's rules promulgated under the Act require that the basic information contained in notifications of registration and in registration statements of investment companies be kept current, through periodic and other reports, except in cases of certain inactive unit trusts and face-amount companies. The following reports and documents were filed during the 1963 fiscal year:

[table omitted]

The foregoing statistics do not reflect the numerous filings of revised prospectuses by open-end mutual funds and unit investment trusts making a continuous offering of their securities. These prospectuses, which must be checked for compliance with the Act, are required to show material changes which have occurred in the operations of the companies since the last effective date of the prospectuses on file. In this respect registration statements under the Securities Act of 1933 covering securities of such companies are essentially different from registration statements relating to the usual type of corporate securities.

APPLICATIONS AND PROCEEDINGS

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

During the fiscal year, 238 applications filed under various Sections of the Investment Company Act were before the Commission. The Sections of the Act with which these applications were concerned and their disposition are shown in the following table:

[table omitted]

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

The Commission's Annual Report for fiscal 1962 referred to applications pursuant to Section 2 (a) (9) filed by shareholders of Fundamental Investors, Inc., Investors Mutual, Inc., and Television-Electronics Fund, Inc., registered open-end investment companies, alleging that certain directors of these companies who were represented to be unaffiliated with the respective investment advisers in fact had been and were now controlled by such investment advisers. Prior to ordering a hearing on the factual questions raised by the applications, the Commission directed that the parties and other interested persons file briefs with respect to certain specified common legal issues raised by the applications. Following oral argument on these issues, the Commission held that a shareholder of a registered investment company is an "interested person" within the meaning of Section 2 (a) (9) with standing to file an application seeking a determination under that Section, that the Commission is empowered to determine whether or not a natural person is controlled even though control of a company is not at issue, and that a determination of status by the Commission pursuant to Section 2 (a) (9) is not limited in application to the period of time subsequent to such a determination. However, since the same issues and parties were before courts of competent jurisdiction in pending suits brought prior to the filing of the instant applications, and there were no policy reasons why the Commission should decide these issues first, the Commission applied the doctrine of comity and dismissed the applications without prejudice.

On December 19, 1962, Randolph Phillips, a stockholder of Investors Mutual, Inc. and other registered mutual funds for which Investors Diversified Services, Inc. ("IDS"), also

a registered investment company, serves as investment adviser, filed an application under Section 2 (a) (9) of the Act requesting a determination that Bertin C. Gamble, Gamble-Skogmo, Inc. and General Outdoor Advertising Company, acting collectively (referred to in the application as the "Gamble Group"), either alone or in concert with John D. Murchison, Glint W. Murchison, Jr. and others (referred to as the "Murchison Group"), had acquired control of Alleghany Corporation and of IDS, about 47.5% of whose voting securities are owned by Alleghany. On January 2, 1963, the Commission ordered that a hearing be held with respect to these questions of control. On February 15, 1963, the Commission, upon the applications of IDS and Gamble-Skogmo, issued an order pursuant to Section 6 (c) of the Act exempting all persons named in the application of Phillips from that part of Section 2 (a) (9) of the Act which provides that if an application is not granted or denied within 60 days, the determination sought shall be deemed to have been temporarily granted pending final determination. The exemption was to remain in effect until May 18,1963, subject to earlier termination.

On February 15, 1963, IDS filed an application under Section 2 (a) (9) seeking determinations that (a) Murchison Brothers; (b) Allan P. Kirby; (c) Kirby and certain associates; and (d) Murray D. Lincoln and/or companies controlled by or associated with him, controlled Alleghany and that Alleghany controlled IDS. This application was consolidated for purposes of hearing with the Phillips application.

On May 17; 1963, the Commission granted applications filed pursuant to Section 6 (c) of the Act by certain of the persons named in the IDS application seeking exemptions from the operation of the "60-day provision" of Section 2 (a) (9). These exemptions were to remain in effect until final determination, subject to earlier modification or termination. The exemptions with respect to the Phillips application were extended so as to be co-extensive. The hearings in these consolidated proceedings were concluded after the close of the fiscal year.

On January 22, 1963, the Commission issued its opinion and order denying an application by The Prudential Life Insurance Company of America for exemption from the Act or, in the alternative, for exemption from certain provisions thereof. In its opinion the Commission found that Prudential established a separate fund to be invested in securities exclusively for the benefit and at the risk of purchasers of the variable annuity contracts Prudential proposes to sell. The Commission held that such fund was an investment company, required to be registered under the Act. The Commission granted in part and denied in part Prudential's alternative application requesting exemptions from various specific provisions of the Act. Prudential filed a petition in the Court of Appeals for the Third Circuit for review of the Commission's order, insofar as it held the separate fund to be an investment company required to be registered under the Act. Following the end of the fiscal year, the Court affirmed the order.

The Commission granted an application by American Manufacturing Company, Inc., for an order under Section 3 (b) (2) of the Act declaring that it was primarily engaged in a

business or businesses other than that of investing in securities, either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. In its decision, the Commission held that in determining primary business engagement under the statute, it could add to businesses in which the applicant engaged directly and through its majority-owned subsidiaries, the businesses engaged in through controlled companies conducting, as among themselves, similar types of businesses, irrespective of whether or not such businesses were of types similar to those engaged in by the applicant or its majority-owned subsidiaries, or to those of any controlled companies which it was not necessary to add in order to arrive at the primary business engagement.

Pursuant to the Commission's order of April 12, 1962, hearings continued on an application filed by Growth Capital, Inc., a small business investment company, seeking to exempt conditionally C. B. McDonald, a director of Growth Capital and also the managing partner of McDonald & Company, an investment banking firm, from the provisions of Section 30 (f) of the Act which makes applicable to directors of closed-end investment companies the provisions of Section 16 of the Securities Exchange Act of 1934 with respect to insiders' transactions. The application was opposed by the Commission's Division of Corporate Regulation.

PART X
ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

The Investment Advisers Act of 1940 requires the registration of persons engaged for compensation in the business of advising others with respect to securities. Certain advisers are exempt from the requirement of registration, including those who advise only investment companies or insurance companies and those who, within the last 12 months, had fewer than 15 clients and who do not hold themselves out generally to the public as investment advisers. Furthermore, the registration requirements do not apply to an adviser whose investment advice is given only to persons resident in the state in which he maintains his principal place of business, as long as the advice does not concern securities listed on a national securities exchange or admitted to unlisted trading privileges on such an exchange.

Section 206 of the Act, as amended in September 1960, prohibits an investment adviser from engaging in fraudulent, deceptive or manipulative acts or practices and gives the Commission authority, by rules and regulations, to define and to prescribe means reasonably designed to prevent such acts and practices. [Footnote: In S.E.C.. v. Capital Gains Research Bureau, Inc., an important action under the anti-fraud provisions of the Act as in effect prior to its amendment, the Supreme Court in December 1963 reversed lower court decisions denying the Commission's motion for a preliminary injunction.] In accordance with this provision, the Commission, during the 1962 fiscal year, adopted

Rule 206 (4)-1, effective January 1, 1962, which defines certain advertisements by investment advisers as fraudulent, deceptive or manipulative. During the 1963 fiscal year an informal program was instituted to secure compliance with Rule 206 (4)-1 by those investment advisers whose advertising continued to be objectionable. The cooperation of the investment advisers who were contacted has resulted in a marked reduction in the publication and distribution of advertising material violative of Rule 206 (4)-1.

Investment advisers who also effect transactions as brokers and dealers must disclose any interest they may have in transactions effected for clients if acting as an investment adviser with regard to such transactions. The Act prohibits any investment adviser not exempt from registration from basing his compensation upon a share of the capital gains or appreciation of his client's funds. The Act also makes it unlawful for any such investment adviser to enter into, extend or renew any investment advisory contract or to perform such contract if the contract provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client or fails to provide that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. Under Rule 206 (4)-2, which became effective in April 1962, an investment adviser who has custody of funds or securities of any client is required to segregate them, maintain them in the manner provided in the rule, and to comply with other conditions specified in the rule. Moreover, every investment adviser who is not exempt from registration is required, since the 1960 amendments, to make, keep and preserve such books and records as may be prescribed by the Commission and the Commission is empowered to inspect such books and records. The books and records to be maintained by investment advisers are specified in Rule 204-2, which became effective in July 1961.

Inspection procedures have been revised to obtain information concerning compliance with the new rules. During the fiscal year 1963, 219 inspections were completed and 131 violations of the new rules were disclosed. It is anticipated that the number of inspections will increase annually until the investment advisers registered with the Commission are subject to a regular cycle of inspections.

Investment advisers who violate any of the provisions of the Act are subject to appropriate administrative, civil or criminal remedies. With respect to administrative remedies, the Act provides, in Section 203 (d), that the Commission shall deny, revoke, or suspend for not more than 12 months, the registration of an investment adviser if it finds that such action is in the public interest and that the investment adviser or any partner, officer, director or controlling or controlled person of the investment adviser is subject to a specified disqualification. These disqualifications include willful misstatements in an application or report filed with the Commission, the existence of a conviction or injunction based on or related to specified types of misconduct, willful violation of any provision of the Securities Act, Securities Exchange Act or Investment Advisers Act or any rule or regulation thereunder, or aiding and abetting any other person's violation of such provisions, rules or regulations.

At the close of the fiscal year, 1,564 investment advisers were registered with the Commission. The following tabulation contains statistics with respect to registrations and applications for registration during fiscal year 1963:

[table omitted]

An extensive program pursued during the year resulted in the withdrawal or cancellation of the registrations of several hundred investment advisers who failed to file supplements to their registration as required by the Act.

ADMINISTRATIVE PROCEEDINGS

At the beginning of the fiscal year, 10 revocation proceedings and 1 denial proceeding were pending. With respect to these, the Commission during the year revoked 5 registrations; in the denial proceedings, it held that denial of the application for investment adviser registration was not required in the public interest and permitted the application to become effective, subject to certain conditions designed to ensure that the applicant would confine his activities exclusively to those of an investment adviser. During fiscal 1963, the Commission instituted revocation proceedings against 7 registered investment advisers. These proceedings, and the remaining 5 revocation proceedings previously instituted, were pending at the close of the year.

PART XI
OTHER ACTIVITIES OF THE COMMISSION CIVIL LITIGATION

The several statutes administered by the Commission authorize the Commission to seek injunctions against continuing or threatened violations of such statutes. Such violations may involve a wide range of illegal practices, including the purchase or sale of securities by fraud, and the sale of securities without compliance with the registration requirements of the Securities Act. The Commission also participates in various other types of proceedings, including appearances as amicus curiae in litigation between private parties where it is important that its view regarding the interpretation of the statutes be furnished to the court.

At the beginning of the fiscal year 1963 there were pending in the courts 105 injunctive and related enforcement proceedings instituted by the Commission to prevent fraudulent and other illegal practices in the sale or purchase of securities. During the year 121 additional proceedings were instituted and 105 cases were disposed of, leaving 121 such proceedings pending at the end of the year. In addition the Commission participated in a number of corporate reorganization cases under Chapter X of the Bankruptcy Act, in 10

proceedings in the district courts under Section 11 (e) of the Public Utility Holding Company Act, and in 14 miscellaneous actions. The Commission also participated in 46 civil appeals in the United States courts of appeals. Of these, 19 came before the courts on petition for review of an administrative order, 15 arose out of corporate reorganizations in which the Commission had taken an active part, 2 were appeals in actions brought by or against the Commission, 3 were appeals from orders entered pursuant to Section 11 (e) of the Public Utility Holding Company Act, and 6 were appeals in cases in which the Commission appeared as amicus curiae. The Commission also participated in 9 petitions for or memoranda in opposition to certiorari before the United States Supreme Court resulting from these or similar actions.

Complete lists of all cases in which the Commission appeared before a Federal or state court during the fiscal year, either as a party or as amicus curiae, and the status of such cases at the close of the year are contained in the appendix tables. This section describes few of the more noteworthy cases, not including, however, any cases arising under the Public Utility Holding Company Act or Chapter X of the Bankruptcy Act; cases arising under those statutes are discussed in the sections of this report dealing with such statutes.

Since publication of the last Annual Report, the United States Supreme Court has rendered two significant decisions in the field of securities regulation, one relating to the permissible scope of regulation by a stock exchange of its members, the other to the interpretation of anti-fraud provisions of the Investment Advisers Act of 1940.

In Silver v. New York Stock Exchange the Supreme Court, reversing the court of appeals, held that the stock exchange violated Section 1 of the Sherman Act in ordering several of its member firms to remove telephone wire connections previously in operation between their offices and those of a nonmember -- a broker-dealer trading in over-the-counter securities -- without giving the nonmember notice, assigning him any reason for the action or affording him an opportunity to be heard. The court found that such action by the exchange would constitute a per se anti-trust violation had it occurred in a context free from other Federal regulation, but agreed with the court of appeals that the exchange's rules governing its members' relationships with nonmembers are within its duty of self-regulation under the Securities Exchange Act, even where the particular nonmember deals only in "unlisted" securities. The court held, however, that particular applications of these rules by the exchange are outside the purview of the anti-trust laws only when justified by its self-regulatory duty and that the Exchange Act affords no justification for anti-competitive collective action taken without according fair procedures.

In Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., decided subsequent to the end of the fiscal year, the Supreme Court held that it was fraudulent and deceptive within the meaning of Sections 206 (1) and (2) of the Investment Advisers Act of 1940 for a registered investment adviser to fail to disclose to his clients a practice -- known in the trade as "scalping" -- of purchasing shares of a security for his own

account shortly before recommending that security for long-term investment and then immediately selling the shares at a profit upon the rise in the market price following the recommendation. The court pointed out the conflict of interests present in such a situation by noting that "[a]n adviser who, like respondents, secretly trades on the market effect of his own recommendation, may be motivated -- consciously or unconsciously -- to recommend a given security not because of its potential for long-run price increase (which would profit the client), but because of its potential for short-run price increase in response to anticipated activity from the recommendation (which would profit the adviser)." The court rejected the interpretations of the lower courts to the effect that the Act requires the Commission to establish intent to injure and actual injury to the adviser's clients in order to obtain a preliminary injunction requiring disclosure of such practices. It pointed out that "Congress intended the Investment Advisers Act of 1940 to be construed like other securities legislation 'enacted for the purpose of avoiding frauds,' not technically and restrictively, but rather flexibly to effectuate its remedial purposes." [Footnote omitted.]

Among the numerous actions instituted in the Federal district courts by the Commission, seeking injunctions against continuing or threatened violations of the Securities Act or Securities Exchange Act, and related types of proceedings, the following were of particular interest or significance:

In Securities and Exchange Commission v. Chamberlain Associates, et al. the Commission sought to enjoin an issuing corporation and a person retained as public relations counsel for the issuer from offering and selling securities without registration in violation of Section 5 of the Securities Act and from engaging in practices operating as a fraud upon purchasers in violation of Section 17 (a) of that Act. The public relations counsel had prepared a "Report to Stockholders" which was a verbatim copy of a letter by the company's president. The letter contained false and misleading statements concerning the issuer. The public relations counsel displayed the report and other material to various broker-dealers,. encouraged them to establish markets at prices he suggested and on one occasion placed a purchase order for 200 shares. In this manner, the broker-dealers were induced to buy and sell some 3,000 shares, most of which emanated from a Canadian source and as to which no registration statement had been filed and no exemption appeared to be available.

The district court concluded that the Commission was entitled to a permanent injunction. It held that the activities of the public relations counsel amounted to a solicitation of offers to buy and thus constituted offers to sell, as defined in Section 2 (3) of the Securities Act, and that he was an underwriter as defined in Section 2(11) of that Act. The court concluded that his activities were therefore in violation of Section 5 of that Act. It further held that the counsel also violated the anti-fraud provisions of Section 17 (a) of the Act, stating that he could not shirk responsibility for the misleading statements in the Report to Stockholders by claiming that he relied upon the representations of others. The

court made it clear that since it was through his efforts that the stock was to pass to the public, he had a duty to investigate further.

In Securities and Exchange Commission v. Tenn-Tex Land and Cattle Co., et al. the Commission sought to enjoin a corporation, its president and certain other officers from offering and selling investment contracts and profit-sharing agreements without registration in violation of Section 5 of the Securities Act of 1933. The securities took the form of grazing lease agreements between the corporation and investors who placed cattle with the defendants for care, feeding and breeding. The investors agreed to pay a stipulated service charge per head of cattle plus one-half the calf crop or a monthly fee. While the defendants neither sold cattle to investors nor purchased from them, defendants offered to arrange purchases and sales for investors. The court entered a preliminary injunction, and a permanent injunction was consented to.

The case of Securities and Exchange Commission v. Electronics Security Corp.,5 was an action for injunction against further violations of Section 17 (a) of the Securities Act of 1933 and Sections 10 (b) and 15 (c) (1) of the Securities Exchange Act and Rules 10b-6 and 15c1-8 thereunder by a registered broker-dealer corporation and its president. The defendants consented to the entry of a preliminary injunction. At the time of the hearing on the permanent injunction the defendants urged that no injunction be entered on the ground of mootness, inasmuch as the defendant corporation had previously surrendered its dealer's license to the state authorities and had ceased to exist as an active corporation. The district court, however, issued an injunction, citing United States v. Parke Davis & Co., 365 U.S. 125 (1961); 362 U.S. 29 (1960), where the Supreme Court had rejected similar arguments.

In Securities and Exchange Commission v. American Trailer Rentals Company, the Commission petitioned for leave to intervene in proceedings for an arrangement under Chapter XI of the Bankruptcy Act to show that an offering of securities of Capitol Leasing Corporation, pursuant to the plan of arrangement proposed by the debtor, violated the anti-fraud provisions of Section 17 (a) of the Securities Act of 1933. The Commission stated to the bankruptcy court that its responsibility for enforcement of the anti-fraud provisions is in no way lessened by the fact that the violator is involved in bankruptcy proceedings or that the sanctions afforded by the statute might be imposed in connection with an arrangement proceeding under Chapter XI. It pointed out that it was confronted with a choice between instituting an independent proceeding in a Federal district court having jurisdiction under Section 20 of the Securities Act or taking steps to bring to the attention of the bankruptcy court that proceedings therein were being employed in a manner violative of the Securities Act. The Commission noted that if it had obtained an injunction against further offerings or sales by Capitol Leasing Corporation through an independent action, the proceedings for arrangement in the bankruptcy court would have been rendered moot. It therefore appeared to the Commission both more seemly and more consonant with the best interests of the arrangement proceeding to apply to the bankruptcy court for relief.

The referee in bankruptcy denied the Commission's petition to intervene on procedural grounds and also decided that the Commission had not shown facts necessary to entitle it to relief. On review, district court held that it was error to deny the Commission leave to intervene but that the referee's holding that there was not adequate evidence in the record to support the Commission's claim could not be set aside as "clearly erroneous." An appeal has been taken by the Commission to the Court of Appeals for the Tenth Circuit where the matter is now pending.

In Securities and Exchange Commission v. Paul Richter, doing business as Meade & Company, the court had preliminarily enjoined a registered broker-dealer from violating the net capital and bookkeeping requirements under the Securities Exchange Act of 1934 and had appointed a receiver of all of the defendant's assets. A bank moved the court for an order authorizing it to sell certain securities pledged to it by the defendant as collateral for loans. The receiver and the Commission opposed the motion on the grounds that at least certain of the stock certificates held by the bank contained forged endorsements, that many other complaints of forgeries had been received from defendant's customers, and that many customers complained of having bought or sold shares without having received certificates or money therefor. The court held that it appeared there might be a cloud on the bank's title to the certificates and therefore denied the bank's motion but without prejudice to another application on timely notice to all persons whose rights might be affected by a sale.

The decision of the Court of Appeals for the Second Circuit in Berko v. Securities and Exchange Commission is of considerable significance to the Commission in connection with its enforcement activities directed against fraudulent sales of securities, particularly through so-called "boiler-rooms." As described in the last Annual Report, Berko had been found a cause of the revocation of the broker-dealer registration of Mac Robbins & Co., Inc. He sought review of that finding and the court had remanded to the Commission, which thereafter issued an Opinion and Order reaffirming its previous finding. In April 1963, the court affirmed that order as being supported by substantial evidence. It stated that Berko worked in an office which was plainly established to be a "boiler-room" and which he knew to be a "boiler-room," and held that these facts justified the Commission in holding him chargeable with knowledge of the contents of brochures utilized by him which he should have known to be misleading. The court accepted the Commission's conclusion that a salesman working in a "boiler-room" has a higher duty to prospective customers than one working out of a legitimate sales operation, and does not meet his obligation when he has no knowledge of the issuer other than opinions and brochures furnished by his employer without an investigation of their correctness.

During the year, the Commission participated as amicus curiae in several cases in which there was an issue regarding the validity or interpretation of provisions of the Securities Acts, or the rules promulgated thereunder by the Commission. Among those cases were the following:

Kornfeld v. Eaton 13 was an action brought by stockholders of the Norwich Pharmacal Company under Section 16 (b) of the Securities Exchange Act to recover on behalf of Norwich the profits realized by defendant Eaton, an officer and director of the company, through "short-swing" transactions in Norwich common stock. Although the purchase and sale of the stock by Eaton occurred within a 6-month period, the purchase was made pursuant to the exercise of an option which had been granted to him by the company several years earlier. Following a demand by the plaintiffs that the company institute suit against Eaton to recover the profits from the transactions, Eaton paid to the company a sum computed in accordance with the Commission's Rule 16b-6, which limits the amount of profits that are recoverable from transactions of this type to the market increment occurring within the short-swing period surrounding the sale of the stock, thus excluding the increment arising from the long-term holding of the option. The plaintiffs claimed that the rule is invalid, urging that it is inconsistent with the purpose of Section 16 (b) and that it exceeds the Commission's statutory authority to exempt transactions from the operation of that Section. The district court, agreeing with the views expressed in a memorandum which the Commission filed as amicus curiae, rejected the plaintiffs' contentions and upheld the rule as a valid exercise of the Commission's rulemaking authority under the Act. Subsequent to the close of the fiscal year, the Court of Appeals for the Second Circuit affirmed.

Fuller v. Dilbert was an action by the guarantors of a purchaser's obligations under a contract for the sale of stock to have the contract declared void as in violation of Section 5 of the Securities Act and Section 16 (c) of the Securities Exchange Act. The sellers moved for summary judgment, and the Commission filed a memorandum amicus curiae. The contract was for the sale of a control block of unregistered stock, and it was contemplated that the purchaser would not take all of the stock himself but would designate unidentified other persons as co-purchasers or sub-purchasers. It was expressly provided, however, that purchaser "and his designees" would take only for investment so that the transaction would be exempt from the registration requirements of the Securities Act, under Section 4 (1) of that Act, as a transaction not involving an "issuer, underwriter or dealer." The Commission in its memorandum took the position that the contract could be performed without violating the Securities Act. Since any performances which violated the Securities Act would constitute a breach of the contract, the contract did not have to be declared void.

The other ground advanced by plaintiffs in support of their contention that the contract was void was predicated on the fact that certain shares included in its terms, which had been bequeathed to the sellers by their father, had not as yet been distributed to them at the time the contract was executed. It was urged that the sellers therefore did not "own" the stock which they were purporting to sell and that, since they were insiders, the contract was void as being in violation of Section 16 (c) of the Securities Exchange Act, which prohibits any sale by an insider of equity securities of his corporation if he "does not own the security sold." The Commission urged, among other matters, that there is no

particular form of legal or equitable title required to satisfy the requirements of ownership within the meaning of this Section, although some property interest is clearly required. Though it cannot be said what this property interest might be in every case, the sellers here could be considered to "own" the equity securities, without giving rise to the abuses with respect to "short sales" which the statute seeks to prevent.

The district court denied summary judgment on the ground that there were issues of fact which could not be decided upon affidavits or motion papers.

In Borak v. J.I. Case Co., plaintiff, a stockholder of J. I. Case Co., sought a declaration that the 1956 merger between Case and American Tractor Corporation was void, as well as damages and other retrospective relief, claiming that the merger had been approved at a stockholders' meeting at which proxies, solicited in violation of Section 14 (a) of the Securities Exchange Act and the proxy rules thereunder, were voted. The district court, relying upon the case of Dann v. Studebaker-Packard Corp., held that it had no jurisdiction under the Exchange Act to award damages and other retrospective relief, that claims for such relief were claims arising under state law and that the state security-for-expense statute was therefore applicable to the complaint insofar as it sought other than declaratory relief. Plaintiff appealed and the Commission filed a brief amicus curiae urging the court of appeals to hold that in a private suit based upon Section 14 (a) and the proxy rules thereunder a Federal district court has jurisdiction under Section 27 of the Act to grant damages or any other retrospective relief as the merits of the particular case may require. The court of appeals adopted the Commission's position and reversed, expressly disagreeing with the Dann decision insofar as it held to the contrary. Subsequent to the end of the fiscal year the Supreme Court granted certiorari.

The fiscal year saw further significant developments in litigation under the Investment Company Act of 1940.

The institution of action in the case of Securities and Exchange Commission v. Midwest Technical Development Corporation was described in the last Annual Report. In that case the Commission charged certain officers and directors of that corporation, a registered closed-end investment company, with gross abuse of trust and various violations of the Investment Company Act. The primary charge of gross abuse of trust stemmed from the activities of certain directors in purchasing the same securities which the investment company presently held in, or proposed to introduce into, its portfolio of securities. In addition to charging that irreconcilable conflicts of interest resulted from the directors' ownership of portfolio securities, the Commission also alleged in its complaint that the personal securities-trading activities of the directors constituted the effecting of transactions in joint arrangements and joint enterprises with the investment company in violation of Section 17 (d) of the Investment Company Act and Rule 17d-1 thereunder. It was also charged that the defendants caused the investment company to enter into prohibited transactions with affiliated persons in violation of Section 17 (a) of the Investment Company Act, that the company had violated Sections 13 and 21 of the Act in

issuing guarantees which in effect were indirect loans contrary to its stated investment policy, and that it had issued senior securities in violation of Section 18 of the Act.

On July 5, 1963, the district court issued its opinion. It agreed with the Commission that the activities of the directors in purchasing securities which were also represented or were intended to be included in the investment company's portfolio constituted joint arrangements in violation of Section 17 (d) of the Act and Rule 17d-1 thereunder. The court held, however, that such conduct alone or together with the other violations alleged did not constitute gross abuse of trust. The court viewed the evidence as showing that the directors did not fully appreciate the conflicts of interest which were involved and that they unintentionally failed to seek approval of the joint transactions from the Commission. The court also held, among other things, that the issuance of the guarantees by the investment company in connection with loans made by third persons to companies in which the investment company had invested, or in which it intended to invest, violated the investment company's investment policy concerning the amount of loans which the company could make without stockholder approval.

Securities and Exchange Commission v. United Benefit Life Ins. Co. is an action by the Commission to enjoin the defendant, a Nebraska corporation, from the offering and sale of a contract described by the company as an Annual Flexible Fund Retirement Annuity. In its complaint, the Commission contended that the contracts being sold are securities within the meaning of the Securities Act and that they may not be offered for public sale without prior registration with the Commission under that Act. The Commission further contended that certain guarantees of partial repayment made by the company to the purchasers of the contracts also constituted a security required to be registered with the Commission under the Securities Act.

In addition, the Commission contended that the defendant had created and manages a separate fund for the purpose of investing in securities, and that such fund constitutes an "investment company," as defined in the Investment Company Act, and must be registered under that Act. The defendant has filed an answer controverting the Commission's contentions, and, as of the end of the fiscal year, discovery proceedings were being conducted.

In Prudential Life Insurance Company of America v. Securities and Exchange Commission, Prudential petitioned the Court of Appeals for the Third Circuit for review of a Commission order which denied Prudential's request for exemptions from the Investment Company Act of 1940 for the separate variable annuity contract business which Prudential proposes to conduct. Following the close of the fiscal year, the Court affirmed the Commission order.

In Taussig, et al. v. Wellington Fund, Inc., et al., a suit by stockholders of an investment company, Wellington Fund, Inc., against its corporate investment adviser and another investment company, Wellington Equity Fund, and its adviser, the district court held that

Section 35 (d) of the Investment Company Act conferred an implied private right of action, and then relied upon pendent jurisdiction to resolve common law claims of unfair competition. It enjoined the advisers and Wellington Equity Fund from employing the name, "Wellington" in the investment company field, but denied damages. On appeal, the Commission, as amicus curiae, filed a brief which urged that implied rights of action flow from violations of provisions of the Investment Company Act, including Section 36. The brief also pointed out that no inference should be drawn from the nonaction of the Commission or from its acceleration of the registration of shares as to whether names, proxy material or other material is deceptive or misleading. The Court of Appeals for the Third Circuit held that there was a "substantial Federal question" whether there can be a private implied right of action under Section 35 (d) in these circumstances and that the existence of this question provided the basis for retaining pendent jurisdiction to decide the case on common law principles of unfair competition.

Securities and Exchange Commission v. The Keller Corporation, et al., involved a fraudulent scheme involving the sale of securities of an unregistered investment company. The Commission filed a complaint seeking to enjoin the corporate defendants and certain of their principals from further fraudulent sales of Keller securities and to enjoin Keller from continuing certain activities which, under Section 7 (a) of the Investment Company Act, unregistered investment companies may not engage in. In view of the fraud practiced upon the public investors in Keller, both through the fraudulent sales of Keller stock and through the fraudulent mismanagement of Keller's portfolio and affairs, the Commission also sought the appointment of a trustee or receiver. The district court entered a preliminary injunction enjoining the corporate defendants and two of the principals from further fraudulent sales of Keller stock and enjoining Keller from continuing any of the prohibited activities. The court also appointed a trustee and receiver for Keller. Subsequent to the close of the fiscal year, the court of appeals affirmed the lower court in all respects.

The remaining cases discussed in this section include two actions to enforce subpoenas, one in connection with an administrative proceeding, the other in connection with an investigation, and three proceedings instituted against the Commission to enjoin, respectively, the conduct of an investigation, the continuation of administrative proceedings, and the institution of such proceedings.

In Securities and Exchange Commission v. Parrott the Commission sought to enforce subpoenas issued by one of its hearing examiners in the course of an administrative proceeding involving a broker-dealer. The subpoenaed persons, who were to be witnesses in the administrative hearings, contended it was unfair to require them to testify or produce records prior to the trial of two injunctive actions brought by the Commission in which they were named defendants. Upon the Commission's application for enforcement of the subpoenas, the district court delayed enforcement for 90 days. It was expected that one of the trials would be completed within that period. The court indicated that depositions would be' permitted if they were taken in Denver, the home of the witnesses.

The parties to the administrative proceeding, which was pending in Washington, D.C., would not consent to a transfer of the proceeding to Denver and contended that they were unable to afford the expense of being present at the taking of depositions there. In addition, the hearing examiner ruled in the administrative proceeding that depositions were not appropriate since he desired to hear live testimony. The district court extended the delay period on two occasions and the Commission appealed, contending that the existence of the injunctive actions was not a ground for delaying enforcement of the subpoenas and that the interests of parties to the administrative proceeding were paramount to the interests of witnesses. The court of appeals, without opinion, directed that the subpoenas be enforced.

In Securities and Exchange Commission v. National Bank of Commerce of Seattle the Commission sought enforcement of a subpoena directed to a bank calling for the production of certain bank records relating to the accounts of customers who were being investigated for possible violations of the anti-fraud provisions of the Securities Acts. The court ordered the bank to comply with the subpoena even though the customers who were the subjects of the investigation had directed the bank not to produce the records. The court held not only that the customers of the bank had no privilege with respect to the records, but that they did not have sufficient property rights therein or any other interests sufficient to make them necessary parties to the subpoena enforcement proceeding.

In Howard P. Carroll, et al. v. Securities and Exchange Commission, et al. plaintiffs sought to enjoin the Commission from exercising its subpoena power in aid of an investigation into sales of certain securities by plaintiffs and sought to quash a subpoena issued by a grand jury sitting in California. Plaintiffs alleged that the Commission was exercising its subpoena power to discover evidence for use in prosecution of a criminal indictment then pending in California against certain of the plaintiffs. Similar charges were made concerning the grand jury subpoena. The court granted the Commission's motion to dismiss, holding that it had no jurisdiction to enjoin the Commission in the conduct of its investigation or to quash a subpoena not issued in the court's district.

In R. A. Holman & Co., Inc. v. Securities and Exchange Commission the plaintiff sought to have the Commission enjoined from continuing broker-dealer revocation proceedings against it, claiming that one of the members of the Commission was disqualified from adjudicating the case because he had previously been Director of the Commission's Division of Corporation Finance at a time when that Division had processed a registration statement, which processing ultimately led to the institution of the revocation proceedings. As noted in the last Annual Report, the district court granted plaintiff's motion for a preliminary injunction. During fiscal 1963, the court of appeals reversed the order of the district court, holding that plaintiff had not made a record sufficient to excuse him from exhausting his administrative remedies. Plaintiff has filed a petition for a writ of certiorari in the Supreme Court.

The Wolf Corporation v. Securities and Exchange Commission was an action seeking to enjoin the institution of stop-order proceedings against plaintiff's registration statement under the Securities Act of 1933. The complaint alleged irregularities in the taking of evidence during the preliminary investigation conducted pursuant to Section 8 (e) of the Act, and plaintiff argued that the order authorizing a public hearing pursuant to Section 8 (d) was rendered unlawful because it was based on the results of that investigation. The District Court for the District of Columbia denied plaintiff's motion for preliminary injunction, holding that the issues raised in the complaint were not subject to judicial review until plaintiff had exhausted its administrative remedies. The court of appeals affirmed, holding that the complaint failed to state a cause of action on which relief could be granted. A motion for a stay pending petition for a writ of certiorari was thereafter denied by the court of appeals, and a similar motion was denied by the Chief Justice of the United States Supreme Court.

CRIMINAL PROCEEDINGS

The statutes administered by the Commission provide that the Commission may transmit evidence of violations of any provisions of these statutes to the Attorney General, who in turn, may institute criminal proceedings. Where facts ascertained as a result of an investigation by a regional office of the Commission or at times its headquarters office appear to warrant criminal prosecution, a detailed report is prepared. After careful review by the General Counsel's Office, the recommendations of the regional office and the General Counsel's Office are considered by the Commission and, if the Commission believes criminal prosecution is appropriate, the case is referred to the Attorney General and to the appropriate United States Attorney. Commission employees familiar with the case generally assist the United States Attorney in the presentation of the facts to the Grand Jury, the preparation of legal memoranda for use in the trial, the conduct of the trial, and the preparation of briefs on appeal.

During fiscal year 1963, the Commission referred 49 cases to the Department of Justice for prosecution. In the course of the year, 40 indictments were returned, in cases referred prior to and during the fiscal year, against 117 defendants and 115 convictions were had in 50 cases, while convictions were affirmed in 11 cases.

From 1934, when the Commission was established, until June 30, 1963, 3,304 defendants have been indicted in the United States District Courts in 753 cases developed by the Commission and 1,695 convictions have been obtained. The record of convictions obtained and upheld in completed cases is over 85 percent for the 29-year life of the Commission.

As in prior years, the majority of the criminal cases prosecuted involved the offer and sale of securities by fraudulent representations and other fraudulent practices. These activities included high-pressure long-distance telephone "boiler-room" frauds,

conversion of customers' funds and securities by broker-dealers or their salesmen, frauds involving the sale of securities by new as well as established businesses, and fraudulent securities sales in connection with the promotion of insurance companies, mortgage companies, oil and gas and other mining ventures, and other types of enterprises. It is not feasible to describe individually each of the many criminal matters pending during the year. However, two landmark criminal prosecutions which occurred during the fiscal year are discussed below.

On July 14, 1961, an indictment was returned by a Grand Jury sitting in the Southern District of New York charging 33 individuals and corporations with manipulating the market price of United Dye and Chemical Corporation stock on the New York Stock Exchange and with fraudulently distributing to the public unregistered shares of this stock. (United States v. Garfield, et al.)

Certain defendants were severed, and others pleaded guilty before or during the trial, which commenced in March 1962. The trial continued until February 1963, when a jury found the remaining defendants, Virgil D. Dardi, Charles Rosenthal, Charles M. Berman, Robert B. Gravis and R. B. Gravis, Inc. guilty. Sentences which had been imposed as of the close of the fiscal year on individual defendants included imprisonment up to 7 years and fines up to $50,000.

The evidence at the trial showed that Alexander Guterma, who was named as a co-conspirator and testified for the Government, and defendants Garfield and Pasternak acquired control of United Dye and Chemical Corporation by purchasing a controlling block of stock from Lowell M. Birrell in 1955. Virgil Dardi, who arranged this purchase, received a percentage of the proceeds. Thereafter, in a series of transactions, Guterma, Garfield and Pasternak caused United Dye and Chemical to issue 575,000 shares of stock to them for Handridge Corporation which they controlled. Thus, without any outlay of cash, they received United Dye and Chemical stock which had a then market value of over $5 million.

In order to distribute this large block of stock to the public without depressing the market, the services of various "boiler-rooms" were utilized, including Rockwell Securities Corporation, J. H. Lederer Co., Cornells DeVroedt, Inc., McGrath Securities, Inc., I. F. Stillman & Co., Inc., R. B. Gravis, Inc. and G. F. Rothschild & Co., Inc. These "boiler-rooms" employed the typical fraudulent high-pressure selling practices. Contemporaneously the defendants manipulated the price of the stock upwards on the New York Stock Exchange by purchasing large amounts on the Exchange while, at the same time, selling the stock previously acquired and the stock being purchased on the Exchange to the public through the "boiler-rooms."

The trial of this one complex fraud and manipulation case to a lay jury presented litigation problems of great magnitude. At the conclusion of the trial, which was the longest in the annals of United States criminal prosecutions, Judge Herlands noted:

". . . There never was a case that was presented with such detail, such documentation, letters, books, records, confirmations, witnesses. There never was a case that was proved to the hilt the way this case was proved.

"[The prosecuting attorneys] have been assisted by two very able representatives of the Securities and Exchange Commission, Mr. Ralph H. Tracy and Alien S. Kilmer. It is evident that they performed Herculean labors by way of investigation and ferreting out the facts, and I think that the Securities and Exchange Commission, Mr. Tracy and Mr. Kilmer, deserve commendation for the way in which they are discharging their function of acting as the financial watchdog for the investment public.

"It took years of unremitting labor in the face of all kinds of investigative difficulties to develop the facts that were presented to the jury, and if the case took 11 months to present the evidence, one can only imagine how long it took to dig up the evidence.

"I therefore want the Securities and Exchange Commission to know that its efforts have been recognized, and that the Securities and Exchange Commission and its facilities and personnel should be implemented and strengthened so that they could carry on with even greater effectiveness the task of protecting the securities markets and the investing public from frauds and swindles and other sophisticated types of chicanery."

The court emphasized the efficient manner in which the prosecuting attorneys prepared and conducted their case and stated that the length of the trial was not attributable to any inadequacy on their part. On the other hand, the court pointed out, defense counsel's tactics were designed to create delay and to cause the judge to "lose his temper and say something which would be grounds for a mistrial."

The convictions of Gerard and Jerry Re, former specialists on the American Stock Exchange, and the other defendants in United States v. Re, et al., are also of the utmost significance to the Commission's enforcement program. The Res and others were charged with participating with Lowell M. Birrell, presently a fugitive in Brazil, in manipulating the price of Swan-Finch Oil Corporation stock on the American Stock Exchange and in fraudulently distributing unregistered shares of this stock on the Exchange and through "boiler-rooms" which used the manipulated market price as one of the fraudulent selling devices.

The Res themselves distributed at least 578,000 shares of Swan-Finch stock over the Exchange at an aggregate sales price of over $3 million. To prepare the market to absorb these large blocks of Swan-Finch stock, the Res made short sales from their specialist's accounts over a period of time and later covered them with stock from at least 18 nominee accounts controlled by them. They also, on occasion, prevented others from effecting sales of large blocks of stock on the Exchange, "painted the tape" to show

considerable trading in the stock at crucial periods, and so executed sales as to close the market in this stock on the "up tick."

In addition to the large sums realized through the sales of this stock, the Res received approximately one-quarter of a million dollars from Birrell as payment for their services.

The importance of the convictions of the Res can best be appreciated when the specialists' role and function in the securities markets are considered. As stated at page 23 in the Staff Report on Organization, Management, and Regulation of Conduct of Members on the American Stock Exchange:

"In his unique capacity the specialist stands at the heart of the exchange market mechanism. He has intimate knowledge of the past market actions of the stock in which he specializes. He also has sole access to the specialist book showing outstanding orders both below and above market, which affords him a great competitive advantage over the public. In addition, he exercises a significant influence on the public appraisal of a security since he is the one who quotes the market. For all these reasons, it is a matter of tremendous importance in the maintenance of a fair and orderly market that a specialist's transactions as principal be only of such kinds and amounts as are consistent with his function of acting as broker at the vital center of the auction market."

These convictions, as well as the many convictions obtained in other cases throughout the country, are of the utmost importance to the Commission, in performing its task of protecting the investing public and deterring further violations.

OFFICE OF PROGRAM PLANNING

Pursuant to the recommendations of the Special Study of Securities Markets, a new Office of Program Planning was created subsequent to the close of the fiscal year. The principal function of this Office policy by analyzing legal, economic and industrial developments affecting the regulation of the securities markets. The Office recommends to the Commission the institution or modification of programs commensurate with the needs and trends of the securities markets.

The initial task of the Office will be to assist and advise the Commission in the implementation of the recommendations of the Special Study of Securities Markets. This work involves, in coordination with other Commission offices and divisions, changes in the rules, regulations and policies of the Commission and self-regulatory agencies; recommendations for legislation; proposals for modifications of industry practices and procedures for gathering and analyzing economic data about the securities markets; and conferring, where appropriate, with the self-regulating agencies and the financial community regarding such proposals.

It is anticipated that, as the recommendations of the Special Study are implemented, the work of this Office will gradually shift in emphasis to the principal function described above.

COMPLAINTS AND INVESTIGATIONS

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

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

There are available to the Commission several sources of information concerning possible violations of the provisions of the Federal securities laws. The primary source of information is complaints by members of the general public concerning the activities of certain persons in securities transactions. The Division of Trading and Markets and the regional offices give careful consideration to this information and, if it appears that violations of the Federal securities laws may have occurred, an investigation is commenced. Other sources of information which are of assistance to the Commission in carrying out its enforcement responsibilities are the national securities exchanges, brokerage firms, state and Canadian securities authorities, better business bureaus, the National Association of Securities Dealers, Inc. and various law enforcement agencies.

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

investigation unless it is made a matter of public record in proceedings brought before the Commission or in the courts.

When it appears that a serious violation of the Federal securities laws has occurred or is occurring, a case is opened and a full investigation is conducted. Under certain circumstances it becomes necessary for the Commission to issue a formal order of investigation which appoints members of its staff as officers to issue subpoenas, to take testimony under oath and to require the production of documents. Usually this step is taken when the subjects of the investigation and others who may be involved are uncooperative and it becomes necessary to use the subpoena power to complete the investigation of the case. During the past year 213 formal orders were issued in connection with investigations handled through the Division of Trading and Markets.

In addition, there were 11 formal orders issued upon the recommendation of the Division of Corporate Regulation and 27 upon the recommendation of the Division of Corporation Finance. The latter Division conducts certain investigative work in connection with the processing of filings under the Securities Act of 1933 and the Securities Exchange Act of 1934.

When an investigation has been completed and enforcement action appears appropriate, the Commission may proceed in one of several ways. It may refer the case to the Department of Justice for criminal prosecution. The Commission may also, when appropriate, authorize the institution of civil proceedings for injunctive relief to halt further violations of the Federal securities laws. In such event a complaint is filed in the appropriate United States District Court and the case is presented by a member of the Commission's staff. Finally, the Commission may institute administrative proceedings when its investigation indicates that a registration statement or report filed with it is false or misleading or omits required information, or that a broker-dealer or investment adviser registered with it is violating the Federal securities laws.

The following table reflects in summarized form the investigative activities of the Commission during fiscal 1963:

[table omitted]

ENFORCEMENT PROBLEMS WITH RESPECT TO FOREIGN SECURITIES

Progress was again made during fiscal 1963 in reducing the unlawful offer and sale of Canadian securities in the United States. The continuing cooperation of responsible Canadian officials and segments of the Canadian securities industry has resulted in even fewer enforcement problems with respect to such activities than last year. This decrease, however, has been offset by an increasing number of fraudulent promotions from other sources outside the United States.

During the past fiscal year United States residents have been subjected to massive mail campaigns from such diverse areas as Panama, Ireland, Switzerland and the Bahamas. In its efforts to deal with these problems, the Commission has employed new and simplified procedures for obtaining issuance of foreign postal fraud orders. The success of this program is due in large measure to the continuing cooperation of the Post Office Department.

The Commission is still hampered by jurisdictional problems, including the status of the Supplementary Extradition Convention with Canada.

The Commission continues to maintain its Canadian Restricted List, which is a list of Canadian companies whose securities the Commission has reason to believe are being, or recently have been, distributed in the United States in violation of the registration requirements of the Securities Act of 1933. The list and supplements thereto are issued to and published by the press, and copies are mailed to all registered broker-dealers and are available to the public. As a practical matter, most United States broker-dealers refuse to execute transactions in such securities.

The Court of Appeals for the District of Columbia upheld the Commission's right to publish the Canadian Restricted List in Kukatushi Mining Corporation v. Securities and Exchange Commission. In its opinion, the court pointed out that the list does not charge anyone with any wrongdoing, and that the Commission expressly disavows any comment on the investment merits of the securities listed. The court said that listing simply states "a fact -- that the securities have not been registered -- which the American public has a right to know."

Eleven supplements to the list were issued in fiscal 1963. As a result of more effective enforcement activities here and in Canada, it was necessary to add only 7 names to the list during the year, compared to 9 names added in fiscal 1962, 47 in fiscal 1961, and 82 in fiscal 1960. Twelve names were deleted during the year, leaving 253 names on the list as of June 30,1963.

The current list, as of September 30,1963, follows:

CANADIAN RESTRICTED LIST

Abbican Mines, Ltd.

Adonis Mines, Ltd.

Alaska-Canadian Mining & Exploration Co., Ltd.

Alaska Highway Beryllium Venture Aldor Exploration and Development Co., Ltd.

A. L. Johnson Grubstake Alouette Mines, Ltd.

Amador Highland Valley Coppers, Ltd.

Ambassador Mining Developments, Ltd.

Americanadian Mining & Exploration Co., Ltd.

Anthony Gas and Oil Explorations, Ltd.

Anuwon Uranium Mines, Ltd.

Apollo Mineral Developers, Inc.

Associated Livestock Growers of Ontario

Atlantic Industrial Development Co., Ltd.

Autofab, Ltd.

Ava Gold Mining Co., Ltd.

Barite Gold Mines, Ltd.

Basic Lead and Zinc Mines, Ltd.

Bayonne Mine Limited

Bengal Development Corp., Ltd.

Black Crow Mines, Ltd.

Blue Springs Explorations

Bonwitha Mining Co., Ltd.

Burbank Minerals, Ltd.

Cable Mines and Oils, Ltd.

Caesar Minerals, Ltd.

Cairngorm Mines, Ltd.

Cameron Copper Mines, Ltd.

Canada Radium Corp., Ltd.

Canadian Alumina Corp., Ltd.

Canford Explorations, Ltd.

Canol Metal Mines, Ltd.

Cartier Quebec Explorations, Ltd.

Central and Eastern Canada Mines (1958), Ltd.

Centurion Mines, Ltd.

Colville Lake Explorers, Ltd.

Consolidated Easter Island Mines, Ltd.

Consolidated Exploration & Mining Co., Ltd.

Consolidated St. Simeon Mines, Ltd.

Consolidated Woodgreen Mines, Ltd.

Copper Prince Mines, Ltd.

Courageous Gold Mines, Ltd.

Cove Uranium Mines, Ltd.

Cree Mining Corp., Ltd.

Crusade Petroleum Corp., Ltd.

Davian Exploration, Ltd.

Dayjon Explorers Ltd.

Dempster Explorations, Ltd.

Derogan Asbestos Corp., Ltd.

Devonshire Mining Co., Ltd.

Devonshire Mining Syndicate

Diadem Mines, Ltd.

Dolmac Mines, Ltd.

Dolsan Mines, Ltd.

Dominion Pluoridators, Ltd.

Dominion Granite and Marble, Ltd.

DuMaurier Mines, Ltd.

Dupont Mining Co., Ltd.

Eagle Plains Developments, Ltd.

Eagle Plains Explorations, Ltd.

East Trinity Mining Corp.

Eastern-Northern Explorations, Ltd.

Elk Lake Mines, Ltd.

Embassy Mines, Ltd.

Explorers Alliance, Ltd.

Export Nickel Corp. of Canada, Ltd.

Fairmont Prospecting Syndicate

Federal Chibougamau Mines, Ltd.

File Lake Explorations, Ltd.

Fleetwood Mining and Exploration, Ltd.

Font Petroleums, Ltd.

Foreign Exploration Corp., Ltd.

The Fort Hope Grubstake

Franksin Mines, Ltd.

Gas jet Corp., Ltd.

Genex Mines, Ltd.

Georay Prospecting Syndicate

Golden Algoma Mines, Ltd.

Golden Hope Mines, Ltd.

Goldmaque Mines, Ltd.

Grandwick Mines, Ltd.

Guardian Explorations, Ltd.

Haitian Copper Mining Corp., Ltd.

Hallmark Explorations, Ltd.

Hallstead Prospecting Syndicate

Jack Haynes Syndicate

Hoover Mining and Exploration, Ltd.

Ibsen Cobalt-Silver Mines, Ltd.

Inlet Mining Corp., Ltd.

Lucky Creek Mining Co., Ltd.

Lynwatin Nickel Copper, Ltd.

Mack Lake Mining Corp., Ltd.

Magni Mining Corp., Ltd.

Maple Leaf Investing Corp., Ltd.

March Minerals, Ltd.

Marian Lake Mines, Ltd.

Marpoint Gas & Oil Corp., Ltd.

Megantic Mining Corp.

Merrican International Mines, Ltd.

Mexicana Explorations, Ltd.

Mexuscan Development Corp.

Midas Mining Co., Ltd.

Mid-National Developments, Ltd.

Mile 18 Mines, Ltd.

Milldale Minerals, Ltd.

Mina-Nova Mines, Ltd.

Minden Land Enterprises, Ltd.

Mineral Exploration Corp., Ltd.

Missile Metals and Mining Corp., Ltd.

Monarch Asbestos Co., Ltd.

Monitor Gold Mines, Ltd.

Monpre Mining Co., Ltd.

Montclair Mining Corp., Ltd.

Mylake Mines, Ltd.

Nationwide Minerals, Ltd.

Natto Mining Co., Ltd.

New Campbell Island Mines, Ltd.

New Faulkenham Mines, Ltd.

New Hamil Silver-Lead Mines, Ltd.

New Mallen Bed Lake Mines, Ltd.

New Metalore Mining Co., Ltd.

New Surpass Petrochemicals, Ltd.

Norbank Explorations, Ltd.

Norcopper and Metals Corp.

Normalloy Explorations, Ltd.

Norseman Nickel Corp., Ltd.

North American Asbestos Co., Ltd.

North Gaspe Mines, Ltd.

North Lake Mines, Ltd.

North Tech Explorations, Ltd.

Northport Mineral Explorers, Ltd.

Nortoba Mines, Ltd.

Nu-Gord Mines, Ltd.

Nu-Reality Oils, Ltd.

Nu-World Uranium Mines, Ltd.

Olympus Mines, Ltd.

Outlook Explorations, Ltd.

Palliser Petroleums, Ltd.

Pantan Mines, Ltd.

Paramount Petroleum & Minerals Corp., Ltd.

Peace River Petroleums, Ltd.

Pick Mines, Ltd.

Plexterre Mining Corp., Ltd.

Prestige Lake Mines, Ltd.

Prudential Petroleums, Ltd.

Quebec Graphite Corp.

Queensland Explorations, Ltd.

Quinalta Petroleum, Ltd.

Rambler Exploration Co., Ltd.

Red River Mining & Exploration, Ltd.

Regal Mining & Development, Ltd.

Resolute Oil and Gas Co., Ltd.

Revere Mining Corp., Ltd.

Riobec Mines, Ltd.

Roberval Mining Corp.

Rockroft Explorations, Ltd.

Rotlisay Mines, Ltd.

Roxton Mining & Development Co., Ltd.

St. Anthony Mines, Ltd.

St. Lawrence Industrial Development Corp.

Ste. Sophie Development Corp.

St. Stephen Nickel Mines, Ltd.

Sastex Oil and Gas, Ltd.

Savoy Copper Mines, Ltd.

Seaboard Industries, Ltd.

Senvil Mines, Ltd.

Sheba Mines, Ltd.

Sico Mining Corp., Ltd.

Sinclair Prospecting Syndicate

Space Age Mines, Ltd.

Stackpool Mining Co., Ltd.

Strathcona Mines, Ltd.

Sturgeon Basin Mines, Ltd.

Success Mines, Ltd.

Sudbay Beryllium Mines, Ltd.

Swift Copper Mines, Ltd.

Tabor Lake Gold Mines, Ltd.

Taiga Mines, Ltd.

Tamicon Iron Mines, Ltd.

Taurcanis Mines, Ltd.

Temanda Mines, Ltd.

Territory Mining Co., Ltd.

Trans-Leduc Oils, Ltd.

Trans Nation Minerals, Ltd.

Trans-Oceanic Hotels Corp., Ltd.

Trenton Petroleum & Minerals Corp., Ltd.

Tri-Cor Mining Co., Ltd.

Triform Explorations, Ltd.

Triform Explorations (B.C.), Ltd.

Trio Mining Exploration, Ltd.

Trojan Consolidated Mines, Ltd.

Tumac Mining & Development Co., Ltd.

Turbenn Minerals, Ltd.

Turzone Explorations, Ltd.

Tyndal Explorations, Ltd.

Upper Ungava Mining Corp., Ltd.

Val Jon Explorations, Ltd.

Valray-Explorations, Ltd.

Venus Chibougamau Mines, Ltd.

Ver-Million Gold Placer Mining, Ltd.

Vico Explorations, Ltd.

Vimy Explorations, Ltd.

Viscount Oil and Gas, Ltd.

Wakefield Uranium Mines, Ltd.

Webbwood Exploration Co., Ltd.

Western Allenbee Oil and Gas Co., Ltd.

Westwind Explorations, Ltd.

Windy Hill Mining Corp.

Wingdam & Lightning Creek Mining Co., Ltd.

Yukon Prospectors' Syndicate

SECTION OF SECURITIES VIOLATIONS

A Section of Securities Violations is maintained by the Commission as a part of its enforcement program to provide a further means of detecting and preventing fraud in securities transactions. The Section maintains files providing a clearinghouse for other enforcement agencies for information concerning persons who have been charged with violation or found in violation of various Federal and state securities statutes. Considerable information is also available concerning Canadian violators. The specialized information in these files is kept current through the cooperation of the U.S. Post Office Department, The Federal Bureau of Investigation, parole and probation officials, state securities authorities. Federal and state prosecuting attorneys, police officers, better business bureaus, chambers of commerce, the NASD and other agencies. At the end of the fiscal year these records contained information concerning 78,216 persons against whom Federal or state action had been taken in connection with securities violations. In keeping these records current there were added during the fiscal year items of information concerning 8,985 persons, including 2,995 persons not previously identified in these records. A total of 3,779 names was removed from the files since the information concerning them was believed to be obsolete.

The Section issues and distributes quarterly a securities violations bulletin containing information received during the period concerning alleged and actual violators and showing new charges and developments in pending cases. The bulletin includes a "wanted" section listing the names of persons wanted on securities violations charges and references to bulletins containing descriptive information regarding them. The bulletin is distributed to a limited number of officials of cooperating law enforcement and other agencies in the United States and Canada.

The bulletin also includes a new section reporting on NASD disciplinary actions which resulted in the expulsion or suspension of an Association member, or in the revocation or suspension of the registration of a representative of a member. Information in this section includes a brief description of the findings in each reported case and identifies the disciplined member or representative. ' Extensive use is made of the information available in these records by regulatory and law enforcement officials. Numerous requests are received each year for special reports on individuals in addition to the information supplied by regular distribution of the quarterly bulletin. All available information is supplied in response to inquiries from law enforcement agencies. During the fiscal year the Commission received and disposed of 2,778 "securities violations" letters or reports and dispatched 491 communications to cooperating agencies.

APPLICATIONS FOR NONDISCLOSURE OF CERTAIN INFORMATION

The Commission is authorized under the various Acts administered by it to grant requests for nondisclosure of certain types of information which would otherwise be disclosed to the public in applications, reports or other documents filed pursuant to these statutes. Thus, under paragraph (30) of Schedule A of the Securities Act of 1933, disclosure of any portion of a material contract is not required if the Commission determines that such disclosure would impair the value of the contract and is not necessary for the protection of investors. Under Section 24 (a) of the Securities Exchange Act of 1934, trade secrets or processes need not be disclosed in any material filed with the Commission. Under Section 24 (b) of that Act, written objection to public disclosure of information, contained in any material filed with the Commission may be made to the Commission which is then authorized to make public disclosure of such information only if in its judgment such disclosure is in the public interest. Similar provisions are contained in Section 22 of the Public Utility Holding Company Act of 1935 and in Section 45 of the Investment Company Act of 1940. These statutory provisions have been implemented by rules specifying the procedure to be followed by applicants for a determination that public disclosure is not necessary in a particular case.

The number of applications granted, denied or otherwise acted upon during the year are set forth in the following table:

[table omitted]

ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

The several Acts administered by the Commission recognize the importance of dependable informative financial statements which disclose the financial status and earnings history of a corporation or other commercial entity. These, statements, whether filed in compliance with the requirements under those statutes or included in other

material available to stockholders or prospective investors, are indispensable to investors as a basis for investment decisions. The Congress, cognizant of the fact that such statements lend themselves readily to misleading inferences or even deception, whether or not intended, included, in the various Acts, express provisions with respect to disclosure requirements. Thus, for example, the Securities Act requires the inclusion in the prospectus of balance sheets and profit and loss statements "in such form as the Commission shall prescribe" and authorizes the Commission to prescribe the "items or details to be shown in the balance sheet and earnings statement, and the methods to be followed in the preparation of accounts . . ." Similar authority is contained in the Securities Exchange Act, and even more comprehensive power is embodied in the Investment Company Act and the Public Utility Holding Company Act.

Pursuant to the broad rule-making power thus conferred with respect to the preparation and presentation of financial statements, the Commission has prescribed uniform systems of accounts for companies subject to 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, identified as Regulation S-X, which governs the form and content of financial statements filed in compliance with the several Acts. This regulation is supplemented by the Commission's Accounting Series Releases, of which 97 have so far been issued. These releases were inaugurated in 1937 and were designed as a program for making 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 which are regulatory reports, prescribe accounting principles to be followed only in certain limited areas. In the large area of financial reporting not covered by such rules, the Commission's principal means of providing investors protection from inadequate financial reporting, fraudulent practices and over-reaching by management is by requiring a certificate of an independent public accountant based on an audit performed in accordance with generally accepted auditing standards which expresses an opinion as to whether the financial statements are presented fairly in conformity with accounting principles and practices which are recognized as sound and which have attained general acceptance.

The Securities Act provides that the financial statements required to be made available to the public through filing with the Commission shall be certified by "an independent public or certified accountant." The other three statutes permit the Commission to require that such statements be accompanied by a certificate of an independent public accountant, and the Commission's rules require, with minor exceptions, that they be so certified. 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 law in 1933. The Commission's rules accept an accountant who is qualified to practice in his own state as qualified to practice before the Commission unless he has entered into disqualifying relationships with a particular client, such as becoming a promoter,

underwriter, voting trustee, director, officer, employee, or stockholder; or, in rare cases, has demonstrated incompetence, subservience to the management, or has engaged in unethical or improper professional conduct. The Commission endeavors to encourage and foster the independence of the accountant in his relationships with his client so that he may better be able to perform the service to the public contemplated by the Congress in the various Acts.

The Commission is vigilant in its efforts to assure itself that the audits which it requires are performed by independent accountants; that the information contained in the financial reports represents full and fair disclosure and that appropriate auditing and accounting practices and standards have been followed in their preparation. In addition it recognizes that 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 and that accounting and auditing procedures cannot remain static and continue to serve well a dynamic economy. The Commission's accounting staff, therefore, studies the changes and new developments for the purpose of establishing and maintaining appropriate accounting and auditing policies, procedures and practices for the protection of investors. The primary responsibility for this program rests with the Chief Accountant of the Commission, who has general supervision with respect to accounting and auditing policies and their application.

Progress in these activities requires continuing contact and consultation between the staff and accountants both individually and through such representative groups as, among others, the American Accounting Association, the American Institute of Certified Public Accountants, the American Petroleum Institute, the Financial Analysts Federation, the Financial Executives Institute, and the National Association of Railroad and Utilities Commissioners, as well as many Government agencies. Recognizing the importance of cooperation in the formulation of accounting principles and practices, adequate disclosure and auditing procedures which will best serve the interests of investors, the American Institute of Certified Public Accountants, the Financial Analysts Federation and the Financial Executives Institute appoint committees which maintain liaison with the Commission's staff. The Commission on its part has authorized its Chief Accountant to continue to serve as a member of an advisory committee to the Accounting Principles Board of the American Institute of Certified Public Accountants and of a somewhat similar committee of the American Accounting Association.

The many daily decisions to be made require the attention of some of the Chief Accountant's staff. These include questions raised by each of the operating divisions of the Commission, the regional offices, and the Commission. As a result of this day-to-day activity of the Commission and the need to keep abreast of current accounting problems, the Chief Accountant's staff continually reexamines accounting and auditing principles and practices. From time to time members of the staff are called upon to assist in field

investigations, to participate in hearings and to review opinions insofar as they pertain to accounting matters.

Profiling and other conferences, in person or by telephone, with officials of corporations, practicing accountants and others are also an important part of the work of the staff. Resolution of questions and problems in this manner saves registrants and their representatives both time and expense.

Many specific accounting and auditing problems are disclosed in the examination of financial statements required to be filed with the Commission. Where examination reveals that the rules and regulations of the Commission have not been complied with or that applicable generally accepted accounting principles have not been adhered to, the examining division usually notifies the registrant by an informal letter of comment. These letters of comment and the correspondence or conferences that follow continue to be a most convenient and satisfactory method of effecting corrections and improvements in financial statements, both to registrants and to the Commission's staff. Where particularly difficult or novel questions arise which cannot be settled by the accounting staff of the divisions and by the Chief Accountant, they are referred to the Commission for consideration and decision.

Difficulties often arise in connection with initial filings because accountants and other advisers who serve the registrant have not had any prior experience with the Commission. In some cases these persons have not familiarized themselves with the rules and regulations of the Commission -- particularly the instructions as to financial statements required by the forms, the rules relating to independence of the certifying accountant, and those relating to the form and content of financial statements as set forth in Regulation S-X. In an effort to improve this situation several members of the accounting staff of the Commission, at the invitation of the sponsor, the American Institute of Certified Public Accountants, participated in a course on filings with the Commission. This course, in which the enrollment quota was filled each time it was presented, was given in Chicago, Los Angeles, New York, and San Francisco. It appears that the course will be offered during the next fiscal year in cities located in other sections of the United States.

In 1961, the Commission adopted Form S-11, a new form designed to provide adequate disclosure of certain special problems found in filings made by real estate companies. In June 1962, the Commission also adopted new Rules 13a-15 and 15d-15 under the Securities Exchange Act and new Form 7-K to require such companies to file quarterly reports showing profit and loss, cash generated, cash distributions to stockholders and cash balance.

At the time these new forms and rules were adopted it was believed that information filed pursuant to these requirements would provide adequate disclosures with respect to the financial condition and operations of real estate companies. However, late in 1962 a number of cases came to the attention of the Commission in which the gross profits on

certain real estate transactions were taken into income under circumstances which indicated that they were not realized in the period in which the transactions were recorded.

In some of the situations coming before the Commission it appeared from the attendant circumstances that the sale of property was a mere fiction designed to create the illusion of profits or value as a basis for the sale of securities. Moreover, even in bona fide transactions the degree of uncertainty as to the ultimate realization of profits appeared to be so great that business prudence, as well as generally accepted accounting principles, precluded the recognition of gain at the time of sale. In view of the foregoing the Commission issued Accounting Series Release No. 95 in which it listed circumstances which tend to raise a question as to the propriety of current recognition of profit and stated that while any of the circumstances taken alone might not preclude the recognition of profit in an appropriate amount the degree of uncertainty may be accentuated by the presence of a combination of the circumstances listed in the release.

The Chief Accountant's Office cooperated with the Division of Corporate Regulation in the preparation of amendments to Rules 31a-1 and 31a-2 under the Investment Company Act of 1940 and of a new Rule 31a-3, which were adopted by the Commission in November 1962. These rules relate to records to be maintained and preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

The Chief Accountant and his staff continued to cooperate with other divisions of the Commission and the industry in the preparation of a proposal to amend Regulation S-X which would add to that regulation provisions governing the form and content of financial statements and related schedules to be filed by life insurance companies.

The Commission's guide to the form and content of financial statements is found in Regulation S-X which is supplemented by a series of accounting releases. Number 4 in this series was published April 25, 1938, and still is the significant statement of the Commission's administrative policy on financial statements. This policy was re-emphasized in January 1963, when the Commission found it necessary to issue an accounting release M expressing some views on accounting for the "investment credit," a new idea in the United States tax law which stirred up considerable difference of opinion in business and professional accounting circles.

In view of the substantial diversity of opinion that exists in this matter, the Commission stated, in its release, that it will accept with certain limitations either the method endorsed by the Accounting Principles Board of the American Institute of Certified Public Accountants or the 48-52 percent method or, in the case of regulated industries, the 100 percent flow-through method when authorized or required by regulatory authorities. This release also specified that the balance sheet credit should not be made directly to the asset account, and that income tax should not be stated in excess of the amount payable for the

year, and included other comments regarding adequate disclosure, details of certain other accounts, and acceptance of appropriately qualified certificates in cases where an alternative accounting treatment acceptable to the Commission is followed by the registrant.

Shortly before the close of the fiscal year the Commission issued its Findings, Opinion and Order in Harmon R. Stone, a proceeding under Rule 2 (e) of its Rules of Practice. The Commission found that Stone, a certified public accountant, had inadequately performed his professional duties and engaged in activities incompatible with required professional independence. In his audits of a broker-dealer, Stone omitted many of the Commission's Minimum Audit Requirements applicable to Form X-17A-5 relating to reports of registered broker-dealers and failed to comply with generally accepted auditing standards in that he did not properly obtain confirmation of customers' accounts and closed accounts; did not properly balance securities positions or verify securities in transfer; did not take physical control of all cash, securities and other transferable evidence of ownership and maintain such control until those items were inspected, counted, and compared with the records and did not perform other additional verification procedures. Stone's failure to properly perform these procedures negated the effectiveness of his audit; and consequently his audit fell far short of the objective review required for the purpose of safeguarding funds and securities of customers and failed to give the public the protection which an audit is designed to achieve. Stone's certificates stating that his examinations were made in accordance with generally accepted auditing standards were accordingly false and misleading. Stone's lack of independence resulted from the fact that he acquired a personal financial interest in the repayment of loans made by a company in which he was a principal stockholder to salesmen and customers of his client, a registered broker-dealer. In reaching its conclusion the Commission took into consideration the fact that Stone had been a certified public accountant since 1950. Apart from these proceedings there was no evidence that his professional conduct had ever been questioned and he submitted statements from a large number of persons who attested to his character and competence in other accounting work. The Commission did not believe that its findings in these proceedings raised a basic question as to his personal integrity and noted that Stone responded to its staff's examination into this matter with full cooperation and candor. However, because Stone's conduct constituted a serious breach of the standards of his profession and of his responsibilities to the Commission and to the public, which cannot be condoned, he was denied the privilege of practicing before the Commission for a period of 60 days.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Section 15 of the Bretton Woods Agreements Act, as amended, exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued, or guaranteed as to both principal and interest, by the International Bank for Reconstruction and Development, The Bank is required to file with the Commission such

annual and other reports with respect to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors. The Commission has, pursuant to the above authority, adopted rules requiring the Bank to file quarterly reports and also to file copies of each annual report of the Bank to its board of governors. The Bank is also required to file reports with the Commission in advance of any distribution in the United States of its primary obligations. The Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the exemption at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension.

During the Bank's last fiscal year, ending June 30, 1963, the Bank made 28 loans totaling the equivalent of $448.7 million, compared with a total of $882.3 million last year. The loans were made in Colombia (3 loans), Cyprus, El Salvador, Finland, India, Israel, Mexico, Morocco, Nicaragua, Nigeria, Pakistan (3 loans), Panama, Peru, Philippines (2 loans), Singapore, Swaziland, Thailand (4 loans), Uruguay and Yugoslavia (2 loans). This brought the gross total of loan commitments at June 30, to $7,121.5 million. By June 30, as a result of cancellations, repayments, sales of loans and exchange adjustments, the portions of loans signed and still retained by the Bank had been reduced to $4,712.3 million.

During the year the Bank sold or agreed to sell $273.3 million principal amount of loans. On June 30, the total sales of loans amounted to $1,605.3 million, of which all except $69 million was without the Bank's guarantee.

The outstanding funded debt of the Bank amounted to $2,519.2 million on June 30, 1963, reflecting a net decrease of $1.6 million in the past year. During the year there was a gross increase in borrowings of $124 million. This consisted of a Netherlands guilder public bond issue in the amount of f .40 million (US$11 million equivalent); a public offering of $5 million of U.S. dollar bonds in Austria, and a placement of $5 million of U.S. dollar notes with the central bank of Austria; the private placement of an issue of $100 million of U.S. dollar bonds; and the delivery of $3 million of bonds which had been subject to delayed delivery arrangements. The funded debt was decreased by $125.6 million as a result of the maturing of the equivalent of $107.8 million of bonds, and of sinking fund and purchase fund transactions amounting to $17.8 million.

During the fiscal year, Ivory Coast, Jamaica, Kuwait, Niger, Senegal, Sierra Leone, Somalia, Tanganyika, Togo and Upper Volta became members of the Bank with subscriptions aggregating $245 million. On June 30, 1963, the Bank had 85 members with capital subscriptions totaling $20,729.8 million.

INTER-AMERICAN DEVELOPMENT BANK

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

During the year ended June 30,1963, the Bank made 22 loans totaling the equivalent of $146,109,191 from its ordinary capital resources, bringing the gross total of loan commitments outstanding at June 30, to 69 loans aggregating $294,966,049. During the year, the Bank sold or agreed to sell $4,749,772 in participations in the aforesaid loans, all of such participations being without the guarantee of the Bank. The loans from the Bank's ordinary capital resources were made in Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

During the year the Bank also made 13 loans from its Fund for Special Operations totaling the equivalent of $49,588,927, bringing the gross total of loan commitments outstanding at June 30, to 33 loans aggregating $116,908,031. The Bank made 28 loans during the year from the Social Progress Trust Fund, which it administers under an Agreement with the United States, aggregating $124,125,000, bringing the gross total of loan commitments outstanding at June 30, to 64 loans aggregating $347,912,000.

During the year the Bank made its first sale of its primary obligations in the United States with a public issue of dollar bonds in the amount of $75 million.

The outstanding funded debt of the Bank on June 30,1963, was the equivalent of $99,193,548, composed of $75 million resulting from the sale of dollar bonds and Italian lire equivalent to $24,193,548 resulting from the sale of bonds in Italy in April 1962.

The subscribed capital of the Bank on June 30,1963, was the equivalent of $813,160,000, of which $431,580,000 represented callable capital.

STATISTICS AND SPECIAL STUDIES

During the past fiscal year the Branch of Economic Research continued its regular work in connection with the statistical activities of the Commission and the overall Government statistical program under the direction of the Office of Statistical Standards, Bureau of the Budget. In addition, the Branch of Exchange Regulation continued its compilation of data on the stock market.

The statistical series described below are published in the Commission's Statistical Bulletin and in addition, except for data on registered issues, on corporate pension funds, and on the stock market, current figures and analyses of the data are published in quarterly press releases.

Issues Registered Under the Securities Act of 1933

Monthly statistics are compiled on the number and volume of registered securities, classified by industry of issuer, type of security, and use of proceeds. Summary statistics for the years 1935-63 are given in Appendix Table 1 and detailed statistics for the fiscal year 1963 appear in Appendix Table 2.

New Securities Offerings

This is a monthly and quarterly series covering all new corporate and noncorporate issues offered for cash sale in the United States. The series includes not only issues publicly offered but also issues privately placed, as well as other issues exempt from registration under the Securities Act such as intrastate offerings and railroad securities. The offerings series includes only securities actually offered for cash sale, and only issues offered for account of issuers. Annual statistics on new offerings for recent years as well as monthly figures from January 1962, through June 1963, are given in Appendix Tables 3, 4, and 5.

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

Individuals' Saving

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

Corporate Pension Funds

An annual survey is made of pension plans of all United States corporations where funds are administered by corporations themselves, or through trustees. The survey shows the flow of money into these funds, the types of assets in which the funds are invested and the principal items of income and expenditures.

Financial Position of Corporations

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

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

Plant and Equipment Expenditures

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

Directory of Registered Companies

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

Stock Market Data

The Branch of Exchange Regulation regularly compiles statistics on the market value and volume of sales on registered and exempted securities exchanges, round-lot stock transactions on the New York exchanges for accounts of members and nonmembers, odd-lot stock transactions on the New York exchanges, special offerings and secondary distributions. It also computes indexes of stock market prices each week based upon the closing market prices of common stocks listed on the New York Stock Exchange. This stock price index and data on round-lot and odd-lot trading on the two New York exchanges are released weekly. The other statistical data mentioned above, as well as these weekly series, are published regularly in the Commission's Statistical Bulletin.

OPINIONS OF THE COMMISSION

Administrative proceedings under the statutes administered by the Commission and under its Rules of Practice generally culminate in the issuance of an opinion by the Commission, which includes findings of fact and conclusions of law. The extent to which the factual and legal issues are discussed in these opinions depends largely on their importance and novelty.

In the preparation of opinions, the Commission, or the individual Commissioner to whom a case may be assigned for the preparation of an opinion, is generally assisted by the Office of Opinion Writing. This Office is directly responsible to the Commission and is completely independent of the operating divisions, consistent with the principle of separation of functions embodied in the Administrative Procedure Act. Where the parties to a proceeding waive their right to such separation, the operating division of the Commission which participated in the proceeding may assist in the drafting of the Commission's decision.

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

DISSEMINATION OF INFORMATION

The dissemination of information included in the various corporate reports and financing proposals filed in compliance with the securities laws is an important function of the Commission. The information in such reports and proposals, which are public documents available for inspection by investors and other interested persons, is not only reprinted and circulated through the medium of published securities manuals but is frequently and widely reported in business and financial sections of newspapers and national magazines.

In order to keep the public better informed of the pertinent information included in the corporate financing and other proposals filed with the Commission as well as actions taken by it under the securities laws, the Commission issues a daily News Digest containing a resume of each filing, as well as a summary of each order, decision or other action of the Commission. The Digest is not only made available to the press, but is also distributed on a subscription basis by the Government Printing Office to some 2,769 investors, securities firms and other interested persons. During the year, the Digest included a resume of each of the 985 registration statements filed with the Commission (not including investment company filings which added additional securities by way of amendments to previous statements); and it also included summaries of the 1,293 orders,

decisions, rules and other actions of the Commission. The Commission also makes a more limited distribution of the full text of its decisions and other pronouncements to registrants, practicing lawyers and others.

Members of the Commission and its staff frequently deliver addresses before professional, business and other groups, and participate in "briefing" and other conferences in order to explain important rules and policies and otherwise contribute to a better understanding of the role of the Commission by individuals and firms subject to its jurisdiction as well as by the investing public.

Information Available for Public Inspection

The many thousands of registration statements, applications, declarations, and annual and other periodic reports filed each year are available for public inspection at the Commission's principal office in Washington, D.C. In addition, copies of recent reports filed by companies having securities listed on exchanges other than the New York Stock Exchange and the American Stock Exchange, and copies of current reports of many nonlisted companies which have registered securities for public offering under the Securities Act, may be examined in the Commission's New York regional office; and recent reports filed by companies whose securities are listed on the New York and American Stock Exchanges may be examined in the Commission's Chicago regional office. Moreover, there are available for examination in all regional offices copies of prospectuses relating to recent public offerings of securities registered under the Securities Act; and all regional offices have copies of broker-dealer annual financial reports and Regulation A letters of notification filed in their respective regions. Reports of companies whose securities are listed on the various exchanges may be seen at the respective exchange offices.

In order to facilitate a wider dissemination of financial and other information contained in corporate reports filed with the Commission under the Federal securities laws (an objective strongly urged by the Special Study Report), the Commission has arranged to take standing orders, on an experimental basis, for photocopies of Form 10-K annual reports filed. This service may be extended later to other reports, depending upon public reception and the experience gained in supplying copies of annual reports.

Under a new contract with Cooper-Trent, Inc., for reproducing material in the Commission's files in response to requests of members of the public, photocopies may now be obtained at a reduced cost of 11% cents for pages not exceeding 8 1/2" x 14" in size (plus postage). A detailed Table of Charges may be obtained from the Section of Public Reference. The charge for each certification of any such document by the Commission is $2.

So that corporate reports may be more readily available for examination by interested members of the public, the Commission also has made arrangements for the Form 10-K

annual reports to be placed on open shelves in the public area of its public reference room in Washington, D.C., thus making these reports available for immediate inspection. Moreover, a coin-operated photocopier has been installed which will enable visitors to make immediate reproductions of these and other reports at a cost of 25 cents per page. Reproductions prepared by this method can not be certified by the Commission.

Each year many thousands of requests for photocopies of and information from the public files of the Commission are received by the public reference room in Washington, D.C. During the year 5,009 persons examined material on file in the Washington, D.C. office, and several thousand others examined files in the New York and Chicago regional offices. About 249,424 photocopy pages were sold pursuant to 4,120 individual orders.

PUBLICATIONS

In addition to the daily News Digest, and releases concerning Commission action under the Acts administered by it and concerning litigation involving securities violations, the Commission issues a number of other publications, including the following:

Weekly:

Index of Weekly Closing Prices.

Monthly:

Statistical Bulletin.

Official Summary of Securities Transactions and Holdings of Officers, Directors and Principal Stockholders.

Quarterly:

Financial Report, U.S. Manufacturing Corporations (jointly with the Federal Trade Commission).

Plant and Equipment Expenditures of U.S. Corporations (jointly with the Department of Commerce).

New Securities Offerings.

Volume and Composition of Individuals' Saving.

Working Capital of U.S. Corporations.

Annually:

Annual Report of the Commission.

Securities Traded on Exchanges under the Securities Exchange Act of 1934.

List of Companies Registered under the Investment Company Act of 1940.

Classification, Assets and Location of Registered Investment Companies under the 1940 Act.

Corporate Pension Funds.

Directory of Companies Filing Annual Reports.

Other Publications:

Decisions and Reports of the Commission.

Securities and Exchange Commission -- Its Functions and Activities.

A Study of Mutual Funds (by The Wharton School).

Report of Special Study of Securities Markets.

ORGANIZATION

The Commission's staff consists of attorneys, security analysts, accountants, engineers, investigators and administrative and clerical personnel.

The following organizational changes have been made since June 30, 1962, in accordance with the Commission's policy of continuing review of its organization and functional alignments:

As noted in last year's report, a Branch of Investment Company Inspections was established in the Division of Corporate Regulation in July 1962, to plan and supervise the Commission's investment company inspection program. In December 1962, this Branch was assigned the responsibility for investigations and enforcement actions with respect to investment companies, and is now called the Branch of Investment Company Inspections and Investigations. In the same month, the Assistant Director of the Division of Corporate Regulation with responsibility for the Commission's functions under the Public Utility Holding Company Act of 1935, was also given responsibility for its

functions under Chapter X of the Bankruptcy Act; and a staff unit was established to assist the Commission in policy planning under the Investment Company Act of 1940.

There was a realignment of functions in the New York Regional Office in August 1962, involving principally the consolidation of enforcement activities under an Assistant Regional Administrator and the appointment of another Assistant Regional Administrator with responsibility for the Commission's functions under Chapter X of the Bankruptcy Act and for the investment company and investment adviser inspection programs.

Subsequent to the end of the fiscal year, certain organizational changes were effected pursuant to recommendations of the Special Study of Securities Markets. A new Office of Program Planning was organized, whose functions have been described on an earlier page.62 In addition, the Division of Trading and Exchanges was renamed the Division of Trading and Markets, and its functions were realigned. As reconstituted, the Division consists of six units -- The Offices of Chief Counsel, Criminal Reference, Enforcement, Regulation, Special Proceedings, and Statistical Studies.

PERSONNEL AND FINANCIAL MANAGEMENT

The recruitment program of the Commission is designed to attract outstanding college and law school graduates for starting professional level positions such as financial analyst, attorney and investigator. The passage of the Federal Salary Reform Act of 1962, helped to alleviate the disparity between the Government and private industry as to starting salaries, and the Commission was successful in appointing to its staff a number of well-qualified applicants.

The average grade level of positions in the Commission as of June 30, 1963, was GS-9.63, compared with GS-8.76 for 1962. This was a relatively small increase, considering the fact that more than 65 percent of the positions are in the professional category and ever-increasing duties and responsibilities are being assigned to the incumbents.

To better acquaint supervisory personnel and other employees with the provisions of the Federal Salary Reform Act of 1962, the Commission's Director of Personnel conducted a series of 10 meetings with employees of the Headquarters Office. Written guidelines for determining the new standard of "acceptable level of competence" for periodic step increases, and for granting within-grade step increases for quality performance were approved by the Commission and published on May 24,1963.

[chart omitted]

The Commission continued to supplement its on-the-job training of newly appointed professional employees with more formalized training sessions conducted after office hours. This permitted utilization of senior officials as lecturers or instructors; solved

classroom space problems; and enabled work production to continue without interruption. Several of the regional offices conducted instructional sessions for newly employed attorneys and investigators and the Division of Corporate Regulation sponsored one-week sessions on the Investment Company Act of 1940 in the New York, Chicago and San Francisco Regional Offices.

New or revised personnel policy statements were issued dealing with such subjects as appeals from adverse actions, employee management cooperation, equal employment opportunity and position classification. The Office of Personnel also published and distributed to the staff an employee handbook containing information on the personnel policies of the Commission, including its Regulation Governing the Conduct of Members and Employees and Former Members and Employees.

At the Commission's Seventh Annual Service and Merit Awards Ceremony, held in October 1962, the Commission recognized the long service of its career employees by presenting pins to 22 employees with 25 years of Commission service. An additional 62 employees received 20-15- and 10-year service pins. Length-of-service pins were also awarded to employees for combined Federal service. One employee received a pin for 35 years, 3 employees for 30 years, 11 employees for 25 years, 41 employees for 20 years, 25 employees for 15 years and 39 employees for 10 years. Cash awards totaling $8,955 and certificates of merit were presented to 83 employees. Twenty-four employees were granted additional within-grade increases in recognition of high quality performance.

The Commission is singularly proud of the special recognition which has been accorded certain members of the staff. Mention has already been made of the commendation of Ralph H. Tracy and Alien S. Kilmer, of the Division of Corporation Finance, by the United States District Court for the Southern District of New York, for their participation in the United Dye and Chemical Corporation case.63 In May 1963, Andrew Barr, Chief Accountant of the Commission, was elected to the Accounting Hall of Fame, sponsored by Ohio State University. Elections to the Hall of Fame (there have been 27 since its inception in 1950) are by a Board of Nominations that includes 15 public accountants, 15 educators, and 15 industrial and governmental accountants. Bases for election include recognition as an authority in a particular field of practice, advancement of accounting education, public service, contributions to accounting literature, and service to professional organizations. The Accounting Hall of Fame was established "for the purpose of honoring accountants of North America who have made or are making significant contributions to the advancement of accounting since the beginning of the twentieth century." In April 1963, the Washington Chapter of the Federal Government Accountants Association selected Sydney C. Orbach, Chief Accountant of the Division of Corporation Finance, as the recipient of an Outstanding Achievement Award for 1963.

The following comparative table shows the personnel strength of the Commission as of June 30,1962 and 1963:

[table omitted]

The table on page 153 shows the status of the Commission's budget estimates for the fiscal years 1959 to 1964, from the initial submission to the Bureau of the Budget to final enactment of the annual appropriation.

The Commission is required by law to collect fees for registration of securities issued, qualification of trust indentures, registration of exchanges, and sale of copies of documents filed with the Commission.

The following table shows the Commission's appropriation, total fees collected, percentage of fees collected to total appropriation, and the net cost to the taxpayers of Commission operations for the fiscal years 1961,1962 and 1963:
[table omitted]