1991 Annual Report

United States

Securities and Exchange Commission

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

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

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

Gentlemen:

It is my pleasure to transmit to you the Annual Report of the Securities and Exchange Commission for fiscal year 1991. The annual report has been prepared in accordance with the provisions of

Section 23(b) of the Securities Exchange Act of 1934, as amended; Section 23 of the Public Utility Holding Company Act of 1935; Section 46(a) of the Investment Company Act of 1940; Section 216 of the Investment Advisers Act of 1940; Section 3 of the Act of June 29, 1949 amending the Bretton Woods Agreement Act; Section 11 (b) of the Inter- American Development Bank Act; and Section 11(b) of the Asian Development Bank Act.

Sincerely,
Richard C. Breeden
Chairman

Commission Members and Principal Staff Officers

(As of November 4, 1991)

Commissioners*

Richard C. Breeden, *Chairman* — Term expires 1993
Edward H. Fleischman — Term expires 1992
Mary L. Schapiro — Term expires 1994
Richard Y. Roberts — Term expires 1995

J. Carter Beese, Jr. was confirmed as a member of the Securities and Exchange Commission on February 27, 1992. His term expires on June 5, 1996.

Principal Staff Officers

Barbara Green, *Executive Assistant and Senior Advisor to the Chairman*

Mary Ann Gadziala, *Counselor to the Chairman*

James M. McConnell, *Executive Director, Office of the Executive Director*
- **Kenneth A. Fogash,** *Deputy Executive Director*
- **James A. Clarkson, III,** *Director of Regional Office Operations*

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

William R. McLucas, *Director, Division of Enforcement*
- **C. Gladwyn Coins,** *Associate Director*
- **Joseph I. Goldstein,** *Associate Director*
- **Bruce A. Hiler,** *Associate Director*
- **Harry J. Weiss,** *Associate Director*
- **Colleen P. Mahoney,** *Chief Counsel*

Thomas C. Newkirk, *Chief Litigation Counsel*

William H. Heyman, *Director, Division of Market Regulation*
Brandon Becker, *Deputy Director*
Catherine McGuire, *Special Assistant to the Director*
Larry Bergmann, *Associate Director*
Mark D. Fitterman, *Associate Director*
Vacant, Associate Director

Marianne K. Smythe, *Director, Division of Investment Management*
Matthew Chambers, *Associate Director*
Gene A. Gohlke, *Associate Director*
Mary S. Podesta, *Associate Director*
William C. Weeden, *Assistant Director, Office of Public Utility Regulation*
Thomas S. Harman, *Chief Counsel*

James R. Doty, *General Counsel, Office of the General Counsel*
Paul Gonson, *Solicitor*
Phillip D. Parker, *Deputy General Counsel*
Richard Humes, *Associate General Counsel*
Jacob H. Stillman, *Associate General Counsel*
Vacant, *Associate General Counsel*
William S. Stern, *Counselor for Adjudication*

Michael D. Mann, *Director, Office of International Affairs*

Kathryn Fulton, *Director, Office of Legislative Affairs*

Vacant, *Chief Accountant, Office of the Chief Accountant*

Vacant, *Chief Economist, Office of Economic Analysis*

Jonathan G. Katz, *Secretary, Office of the Secretary*

Warren E. Blair, *Chief Administrative Law Judge, Office of the Administrative Law Judges*

Wilson A. Butler, Jr., *Director, Office of Filings, Information and Consumer Services*

Lawrence H. Haynes, *Comptroller, Office of the Comptroller*

John Innocenti, *Director, Office of Human Resources Management*

Gregory Jones, Sr., *Director, Office of Information Systems Management*

Richard J. Kanyan, *Director, Office of Administrative Services*

John O. Penhollow, *Director, Office of EDGAR Management*

Vacant, *Director, Office of Public Affairs*

Biographies of Commission Members

Chairman — Richard C. Breeden

Following his nomination by President Bush and his confirmation by the Senate, Richard C. Breeden was sworn in as the 24th Chairman of the Securities and Exchange Commission on October 11, 1989. The SEC oversees trading markets in stocks, options, bonds and other securities with more than $10 trillion in aggregate value. It is also responsible for overseeing the activities of all securities firms and mutual funds, as well as for establishing disclosure and accounting policies for the nation's 13,500 publicly-owned companies. The SEC also enforces U.S. laws against insider trading and other market abuses.

As Chairman, Mr. Breeden directs a staff of more than 2,500 persons operating in offices throughout the United States. During his tenure, Mr. Breeden has emphasized improvements to the capital raising process for small and large businesses, increased market stability, control of unlawful practices and fundamental reform of the corporate governance system in America. Mr. Breeden has testified before Congress on more than 40 occasions, and he regularly appears on news and investment programs in the U.S. and foreign countries to discuss capital market issues.

In addition to his domestic responsibilities, Mr. Breeden is actively involved in international financial regulation. During his tenure as Chairman, he has signed more than a dozen international agreements to promote cooperation in law enforcement and to provide technical assistance to emerging securities markets around the world. Mr. Breeden has held several leadership positions in the International Organization of Securities Commissions, and he is one of the founders and the first President of the Council of Securities Regulators of the Americas, a group linking securities regulators of North, South and Central America and the Caribbean.

Prior to assuming the Chairmanship, Mr. Breeden served in several governmental assignments, including most recently serving in the White House under President Bush as Assistant to the President for Issues Analysis. From 1982-1985, Mr. Breeden also served as Deputy Counsel to then-Vice President Bush and Staff Director of the President's Task Group on Regulation of Financial Services, a cabinet-level group established to recommend improvements in federal financial regulatory programs.

Mr. Breeden is a lawyer by training. His legal practice has included corporate and financial transactions of all types. In his most recent period of private practice, he was a corporate finance partner with the Washington, D.C. office of one of the nation's largest law firms. Prior to his original government service, Mr. Breeden practiced law in New York City from 1976-1981. This followed completion of an appointment to teach constitutional law and federal jurisdiction at the University of Miami School of Law.

Educated at Stanford University (B.A. with honors in international relations, 1972) and Harvard Law School (1975), Mr. Breeden is the author of articles in both legal and financial publications. Mr. Breeden resides in Virginia with his wife, Holly, and their three sons. The family is active in local church, school, athletic and civic affairs.

Commissioner — Edward H. Fleischman

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

Mr. Fleischman was admitted to the New York Bar in 1959 and to the bar of the U.S. Supreme Court in 1980. He formerly practiced law with Beekman & Bogue, where he specialized in securities and corporate law and related areas.

During his career, Mr. Fleischman has been elected a member of the American Law Institute, the American College of Investment Counsel (of which he was President in 1990-1991) and the American Society of Corporate Secretaries, and has served as an Adjunct Professor of Law teaching securities regulation at the New York University Law School.

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

Mr. Fleischman is a member of the Council of the American Bar Association Section of Business Law. He serves on that Section's Committee on Counsel Responsibility and in 1987-1991 he chaired the Committee on Developments in Business Financing, for which he co-drafted that Committee's 1979 paper on resale of institutional privately-placed debt and chaired its Subcommittees on Simplified Indenture and on Annual Review of Developments. He also serves on the Committee on Federal Regulation of Securities, for which he chaired Subcommittees on Rule 144 and on Broker-Dealer Matters and co-drafted the Committee's 1973 letter on utilization and dissemination of "inside" information. In addition, he serves on the Committee on Futures Regulation and the Committee on

Developments in Investment Services, and has been active in the Section on Administrative Law. Mr. Fleischman is also a member of Committee E—Banking Law and of Committee Q—Issues and Trading in Securities of the International Bar Association Section on Business Law. In the International Law Association (American Branch), he has been appointed to membership on the Committee on International Regulation of Securities.

Commissioner — Mary L. Schapiro

Mary L. Schapiro was sworn in as the 67th member of the Securities and Exchange Commission on December 19, 1989 by the Honorable Sandra Day O'Connor, Associate Justice of the United States Supreme Court. Ms. Schapiro was nominated to the Commission on November 8, 1989 by President George Bush and confirmed by the United States Senate on November 18, 1989. Her term expires in June 1994. Ms. Schapiro had previously been appointed by President Ronald Reagan for a one year term. Ms. Schapiro was named chairman of the

SEC Task Force on Administrative Process in 1990, with responsibility for comprehensive review and revision of the agency's rules for administrative proceedings. Ms. Schapiro also serves on a clearance and settlement advisory committee to the Developing Markets Committee of the International Organization of Securities Commissions.

Before being appointed to the Commission, Ms. Schapiro was General Counsel and Senior Vice President for the Futures Industry Association. While at the FIA her work included regulatory, tax and international issues, including extensive liaison with foreign government officials and analysis of state and Federal legislation.

Ms. Schapiro came to the FIA from the Commodity Futures Trading Commission, where she spent four years. She joined the CFTC in 1980 as a Trial Attorney in the Manipulation and Trade Practice Investigations Unit of the Division of Enforcement, and later (from 1981 to 1984) served as Counsel and Executive Assistant to the Chairman of the agency. In the latter position, Ms. Schapiro advised on all regulatory and adjudicatory matters pending before the Commission and on legislation. She also represented the Chairman with Federal and state officials, Congress, and the futures industry, in addition to other duties.

A 1977 honors graduate of Franklin and Marshall College (Lancaster, Pennsylvania), Ms. Schapiro earned a Juris Doctor degree (with honors) from The National Law Center of George Washington University in 1980.

Commissioner — Richard Roberts

Richard Roberts was nominated to the Commission by President Bush and confirmed by the Senate on September 27, 1990. He was sworn in as a Commissioner on October 1, 1990 by the Honorable Stanley Sporkin, Judge for the United States District Court of the District of Columbia. His term expires in June 1995.

Before being nominated to the Commission, Mr. Roberts was in the private practice of law with the Washington office of Miller, Hamilton, Snider & Odom. Before joining the law firm in April 1990, Mr. Roberts was administrative assistant and legislative director for Senator Richard Shelby (D., Ala.), a position he assumed in 1987. Prior to that, Mr. Roberts was, for four years, in the private practice of law in Alabama. From 1979 to 1982, Mr. Roberts was administrative assistant and legislative director for then-Congressman Shelby.

Mr. Roberts is a 1973 graduate of Auburn University and a 1976 graduate of the University of Alabama School of Law. He also received a Master of Laws in taxation from the George Washington University National Law Center in 1981. He is admitted to the bar in the District of Columbia and Alabama. Mr. Roberts is a member of the Alabama State Bar Association and the District of Columbia Bar Association.

He and his wife, the former Peggy Frew, make their home in Fairfax, Virginia with their son and two daughters.

Mr. Roberts was born in Birmingham, Alabama on July 3, 1951.

Regional and Branch Offices and Administrators

(As of November 4, 1991)

REGION 1

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

REGION 2

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

REGION 3

Richard P. Wessel
ATLANTA REGIONAL OFFICE
3475 Lenox Road, N.E., Suite 1000
Atlanta, GA 30326-1232
404/842-7600

Region: Tennessee, Virgin Islands, Puerto Rico, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Louisiana east of the Atchafalaya River

Charles C. Harper
MIAMI BRANCH OFFICE
Dupont Plaza Center
300 Biscayne Boulevard Way, Suite 500
Miami, FL 33131
305/536-5765

REGION 4

William D. Goldsberry
CHICAGO REGIONAL OFFICE
Northwestern Atrium Center
500 W. Madison Street, Suite 1400
Chicago, IL 60661
312/353-7390
Region: Michigan, Ohio, Kentucky, Wisconsin, Indiana, Iowa, 111inois, Minnesota, and Missouri

REGION 5

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

REGION 6

Robert H. Davenport
DENVER REGIONAL OFFICE
1801 California Street, Suite 4800
Denver, CO 80202-2648
303/391-6800
Region: North Dakota, South Dakota, Wyoming, Nebraska, Colorado, New Mexico, and Utah

Donald M. Hoerl
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801/524-5796

REGION 7

Vacant
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213/965-3998
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Vacant
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415/744-3140

REGION 8

Jack H. Bookey
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206/553-7990
Region: Montana, Idaho, Washington, Oregon, and Alaska

REGION 9

James C. Kennedy
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005 E. 601 Walnut Street
Philadelphia, PA 19106-3322 2
15/597-3100
Region: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia

Enforcement

The SEC's enforcement program is designed to protect investors and foster investor confidence by preserving the integrity and efficiency of the securities markets. To meet these goals, the Commission maintained a strong presence in all areas within its jurisdiction. The Commission also implemented important new remedies and procedures authorized by Congress during the year.

Key 1991 Results

In 1991, the Commission obtained court orders requiring defendants to disgorge illicit profits of approximately $119 million. Included are disgorgement orders in insider trading cases requiring the payment of approximately $12 million. Civil penalties under the Insider Trading Sanctions Act of 1984 (USA) were imposed by orders requiring the payment of almost $11 million. In some instances, the payment of disgorgement and/or civil penalties pursuant to a court order was waived based upon the defendant's demonstrated inability to pay.

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Remedies Act) became effective on October 15, 1990. As of the end of 1991, the Commission had sought sanctions authorized by the Remedies Act in 35 cases.

Seventy-five criminal indictments or informations and 112 convictions were obtained by criminal authorities during 1991 in Commission-related cases. The Commission granted access to its files to domestic and foreign prosecutorial authorities in 192 cases.

[table omitted]

Enforcement Authority

The SEC has broad authority to investigate possible violations of the federal securities laws and to obtain appropriate remedies through litigation. The SEC's investigations may be conducted either informally or formally. Informal investigations are conducted on a voluntary basis, with the SEC requesting persons with relevant information to cooperate by providing documents and testifying before Commission staff. The federal securities laws also empower the Commission to conduct formal investigations, in which the Commission has the authority to issue subpoenas that compel the production of books and records and the appearance of witnesses to testify. Both types of investigations are generally conducted on a confidential, nonpublic basis. Enforcement actions initiated by the Commission often are preceded by an examination pursuant to the Commission's inspection powers. Under its inspection powers, the Commission is authorized to conduct examinations of regulated entities, including broker-dealers, municipal securities dealers, investment advisers, investment companies, transfer agents, and self-regulatory organizations (SROs).

The Commission's primary enforcement mechanism for addressing violative conduct is the injunctive action filed in federal court. In these civil actions, the Commission is authorized to seek temporary restraining orders and preliminary injunctions as well as permanent injunctions against any person who is violating or about to violate any provision of the federal securities laws. A federal court injunction prohibits future violations. Once an injunction has been imposed, conduct that violates the injunction will be punishable by either civil or criminal contempt, and violators are subject to fines or imprisonment. In addition to seeking such orders, the Commission often seeks other equitable relief such as an accounting and disgorgement of illegal profits. Also, when seeking temporary restraining orders, the Commission often requests a freeze order to prevent concealment of assets or dissipation of the proceeds of illegal conduct. The Commission is authorized to seek civil penalties in connection with insider trading violations pursuant to ITSA, as amended by the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA). The Commission also is authorized to seek civil penalties under the Remedies Act.

The Remedies Act adds significantly to the Commission's enforcement authority in civil actions. The legislation authorizes the Commission to seek, and the courts to impose, civil penalties for any violation of the federal securities laws (with the exception of insider trading violations for which civil penalties are under ITSA). The Remedies Act also affirmed the existing equitable authority of the federal courts to bar or suspend individuals from serving as corporate officers or directors.

In addition to civil actions in court, the Commission has the authority to institute several types of administrative proceedings. The Commission may institute administrative proceedings against regulated entities, in which the sanctions that may be imposed include censure, limitation on activities, and suspension or revocation of registration. The Commission may impose similar sanctions on persons associated with such entities and persons affiliated with investment companies. For example, the Commission may bar or suspend individuals associated with a broker or dealer from participating in an offering of penny stock.

In the context of these proceedings, the Remedies Act authorizes the Commission to impose civil penalties and order disgorgement against regulated entities and persons associated with such entities.

The Remedies Act authorizes the Commission to institute administrative proceedings in which it can issue cease-and-desist orders. A permanent cease-and-desist order can be entered against any person violating the federal securities laws, and the order can require disgorgement of illegal profits. The Commission also is authorized to issue temporary cease-and-desist orders (if necessary, on an *ex parte* basis) against regulated entities and persons associated with regulated entities, if the Commission determines that the violation or threatened violation is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest prior to completion of proceedings.

Section 8(d) of the Securities Act of 1933 (Securities Act) enables the Commission to institute proceedings to suspend the effectiveness of a registration statement that contains false and misleading statements. Administrative proceedings pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (Exchange Act) can be instituted against any person who fails to comply, and any person who is a cause of failure to comply, with reporting, beneficial ownership, proxy, and tender offer requirements. Respondents can be ordered to comply or to take steps to effect compliance with the relevant provisions. Pursuant to Rule 2(e) of the Commission's Rules of Practice, administrative proceedings can be instituted against persons who appear or practice before the Commission, such as accountants and attorneys. The sanctions that can be imposed in these proceedings include suspensions and bars from practice before the agency.

The Commission is authorized to refer matters to other federal, state or local authorities, or SROs such as the New York Stock Exchange or the National Association of Securities Dealers (NASD). The staff often provides substantial assistance to criminal authorities, such as the Department of Justice, for the criminal prosecution of securities violations.

Enforcement Activities

The Commission maintained an aggressive enforcement presence in the areas within its jurisdiction. Remedies and procedures newly-authorized by the Remedies Act became key additions to the Commission's enforcement arsenal.

Unless otherwise noted in the discussion below, defendants or respondents who consented to settlement of actions did so without admitting or denying the factual allegations contained in the complaint or order instituting proceedings. See Table 22 for a listing of enforcement actions instituted in 1991.

International Enforcement

A substantial number of investigations have international aspects, and the staff took depositions in and obtained information from a number of persons and entities of foreign countries. In conjunction with the Office of International Affairs, the staff prepared more than 150 requests to obtain such information from foreign authorities, pursuant to formal or informal agreements and understandings. Such requests for assistance generally require detailed submissions describing the investigation and setting forth the need for the requested information.

The staff worked on a substantial number of requests for assistance from foreign securities authorities. Some of these requests involved extensive inquiries or investigations in order to collect the requested information. Pursuant to authority granted by ITSFEA, subpoena power was used in certain investigations conducted at the request of foreign securities authorities.

As part of its increasing emphasis on international coordination and cooperation, the staff participated in a number of training and education programs. Representatives from approximately 30 foreign securities agencies attended the 1991 Enforcement Training Program at the invitation of the Division of Enforcement.

Violations Relating to Financial Institutions

In the wake of the difficulties in the financial institutions industry, the Commission recently focused increased attention on possible securities law violations by those institutions. A special unit within the Division of Enforcement is dedicated to investigating, among other things, financial fraud encompassing false financial statements, misleading disclosures in filings by publicly-held institutions and holding companies, and insider trading by persons associated with financial institutions.

The Commission took enforcement action against a number of financial institutions for violation of the reporting, books and records, and internal accounting control provisions of the federal securities laws. In *SEC v. Bank of New England Corporation,*[1] the Commission alleged that Bank of New England Corporation (BNEC) understated the allowance for loan and lease losses and the related provision for loan and lease losses in financial statements for the quarter ended September 30, 1989. The complaint further charged that BNEC failed to disclose in a quarterly report for the second quarter of 1989 and in a September 1989 registration statement that certain adverse trends, indicating a deterioration in the New England real estate market and in BNEC's portfolio, were reasonably likely to have material adverse effects on BNEC's future operations. BNEC consented to the entry of an injunction in this case.

On December 12, 1991, the Commission filed a civil injunctive action against Charles Keating, Jr., and nine other individuals charging multiple violations of the federal securities laws arising from the operations of American Continental Corporation (ACC) and its former subsidiary, Lincoln Savings and Loan Association (Lincoln). Keating and eight other former officers, directors, and high-ranking employees of ACC and Lincoln, including three attorneys and four accountants, were charged with participating in a scheme that systematically and deliberately defrauded thousands of investors. The fraudulent scheme alleged by the Commission includes (1) filing financial statements during the period 1985 through 1988 which overstated ACC's earnings by an aggregate of more than $120 million; (2) fraud in connection with the sale of $275 million of ACC's subordinated debentures to the public at Lincoln branches during the period 1986 through 1989; (3) false and inadequate disclosures in ACC's filings with the Commission during the same period about ACC's liquidity, cash flow, related party transactions and due diligence procedures with regard to real estate loans and securities investments; (4) insider trading by Keating, in which he sold $7.5 million worth of ACC common stock during a period when the market was unaware of the fraud; (5) the issuance of a false press release by Keating to affect the price of ACC's stock; and (6) the failure of Lincoln and certain defendants to register as broker-dealers. In addition, four other individuals, including three former Lincoln officers, were enjoined by consent decree from further violations of the antifraud and other provisions of the federal securities laws.

The Commission utilized its cease-and-desist authority in proceedings in which it was alleged that Fleet/Norstar Financial Group, a bank holding company, failed to account properly for declines in market values of certain marketable equity securities (issued by other New England bank holding companies) in its portfolio *(In the Matter of Fleet/Norstar Financial Group, Inc.*[2]*).* The order more particularly alleges that Fleet/Norstar should have written down those securities to their realizable values and recognized the corresponding losses in the appropriate periods. Fleet/Norstar had previously restated its financial statements for 1990 to reflect losses due to the other than temporary declines in the market values of those securities. Fleet/Norstar consented to the entry of a cease-and-desist order in these proceedings. Similar issues were involved in the order, entered by consent, in the Commission's cease-and-desist proceedings against Excel Bancorp, Inc. *(In the Matter of Excel Bancorp, Inc.*[3]*).*

The Commission filed a joint action with the Federal Deposit Insurance Corporation (FDIC) involving materially false and misleading statements made in filings with the FDIC by Brooklyn Savings Bank (BSB) (SEC *and Federal Deposit Insurance Corporation v. Robert J. Aulie*[4]*).* The joint complaint alleged that for the second and third quarters of 1989, Aulie, the former president, chief executive officer and a director of BSB, failed to maintain an allowance for loan losses adequate to cover probable and estimatable losses in BSB's loan portfolio, thereby materially overstating net income for those periods. Aulie allegedly failed to identify and provide adequately for probable loss on a real estate joint venture when he knew materially adverse information concerning the value of the project.

In an action against an accounting firm, *SEC v. Ernst & Young,*[5] the Commission alleged that, among other things, Ernst & Young and its predecessor, Arthur Young & Co., caused and aided and abetted violations of the reporting and proxy solicitation provisions by RepublicBank Corporation. The financial statements filed with the

SEC by RepublicBank and its corporate successor on Form 10-K for 1983 and 1988 included unqualified accountant's reports, and were allegedly materially false and misleading because of a lack of independence on the part of Arthur Young. Arthur Young allegedly lacked independence in the conduct of its audits because RepublicBank had made loans of over $5 million to certain Arthur Young partners and loans of at least $15.8 million to tax shelter, real estate partnerships owned by Arthur Young partners. Certain of RepublicBank's financial statements and the related accountant's reports were included in a proxy statement issued in connection with a merger by RepublicBank. At the close of the year, this matter was pending.

In *SEC v. Peoples' Bank of Brevard, Inc.,*[6] the Commission alleged that the defendants offered to sell common stock issued by the financial institution prior to filing a registration statement for an initial public offering with the SEC, conduct referred to as "gun jumping." In addition, they engaged in an active publicity campaign for the offering during the waiting period prior to the effectiveness of the registration statement. The defendants consented to the entry of injunctions.

Related party transactions were at issue in *SEC v. CapitalBanc Corporation,*[7] in which the SEC alleged fraudulent loan schemes undertaken with management's involvement, as well as improper revenue recognition in connection with a sham sale of certain assets. Multiple nominee loan schemes were used to conceal a misappropriation of approximately $2.7 million by the former chairman of CapitalBanc Corporation and to repay the loan issued to the purported purchaser in the sham sale of assets. In addition to other relief, the SEC's complaint seeks an order barring the former chairman from acting as an officer or director of a public company. At the close of the year, the action was still pending as to that individual and CapitalBanc Corporation. Five other individual defendants consented to the entry of injunctions.

Insider Trading

Insider trading refers generally to abuses of nonpublic information in the securities markets. It encompasses more than trading and tipping by traditional insiders, such as officers and directors, who are subject to a duty to disclose any material, nonpublic information or abstain from trading in the securities of their own company. Insider trading also includes the unlawful transmission or use of material, nonpublic information by persons in a variety of other positions of trust and confidence and by those who misappropriate such information. Insider trading cases are varied and, over the years, SEC cases have included actions against investment bankers, risk arbitrageurs, attorneys, law firm employees, accountants, bank officers, brokers, and financial reporters. Most insider trading cases are brought under the general antifraud provisions of the securities laws-particularly Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Exchange Act Rule 14e-3, promulgated under the Williams Act, separately proscribes most trading by persons possessing material, nonpublic information concerning a tender offer.

The SEC ordinarily seeks permanent injunctions and ancillary relief, including disgorgement of any profits gained or losses avoided, against alleged violators. The ITSA penalty provisions authorize the SEC to seek a civil penalty, payable to the United States, of up to three times the profit gained or loss avoided, against persons who unlawfully trade in securities while in possession of material, nonpublic information, or who unlawfully communicate material, nonpublic information to others who trade. Civil penalties also can be imposed upon persons who control insider traders. During the year, the SEC brought 42 civil and administrative actions alleging insider trading violations.

The SEC filed an action against the former chief executive officer and chairman of Ultrasystems Corporation (*SEC v. Phillip J. Stevens*[8]*).* The complaint alleged that the defendant, to protect and enhance his reputation as a corporate officer, made unsolicited telephone calls to securities analysts in which he disclosed material nonpublic information concerning Ultrasystems' anticipated earnings for the first quarter of 1988. Two of the analysts tipped this information to clients, who sold 130,800 shares of Ultrasystems common stock prior to the public announcement that the company anticipated lower first quarter earnings. Stevens consented to the entry of an order by which he was enjoined and ordered to disgorge $126,455, representing the losses avoided by the analysts' clients.

In an action against a former securities analyst at Cowen & Co., the SEC alleged that the defendant obtained material nonpublic information from an officer of Apollo Computer Inc. concerning the financial performance of Apollo for the second quarter of 1988. The defendant sold 10,623 shares of Apollo stock prior to the company's public announcement of its expected financial results, without disclosing this information to Cowen or Cowen's clients. The defendant consented to the entry of an order by which he was enjoined and ordered to disgorge $45,163, representing the loss avoided by his sales *(SEC v. Baruch Rosenberg*[9]*).* In related administrative proceedings, Rosenberg consented to the entry of an order by which he was suspended for 12 months.

Two cases involved insider trading by individuals who obtained information misappropriated from pre-release issues of *BusinessWeek* magazine. In *SEC v. John L Petit,*[10] it was alleged that Petit traded the securities of several companies while in possession of such information, obtained from an employee of a *BusinessWeek* printer, and tipped this information to others. Petit consented to an injunction and to entry of an order requiring him to pay disgorgement, penalties, and interest of approximately $195,529. Petit consented to a bar in related administrative proceedings. The SEC also filed an action, *SEC v. Stephen R. Rasinski,*[11] which was still pending at the end of the year, against two individuals who were alleged to have received tips from Petit.

In SEC o. *Robert H. Willis,*[12] the SEC alleged that a psychiatrist obtained material nonpublic information, concerning a possible merger of Shearson Loeb Rhodes and American Express Company, from a patient, the spouse of Shearson's chief executive officer. The defendant traded while in possession of this information and communicated it to his broker, who also traded and tipped others. The Commission further alleged that the defendant traded while in possession of material nonpublic information regarding a plan to change the management of BankAmerica Corp., obtained in the course of his professional relationship with the same patient. The psychiatrist allegedly tipped this information to his broker who again traded and tipped others. The psychiatrist consented to the entry of an order by which he was enjoined and ordered to disgorge $109,103.95 and to pay a civil penalty under ITSA of $27,476. Injunctions were entered by consent against two other defendants, one of whom was ordered to disgorge $5,047. At the end of the year, this matter was pending as to one other defendant. Willis also was the subject of related criminal proceedings.

Several cases involved insider trading by corporate officials, or their friends and relatives, in advance of mergers and acquisitions. In *SEC v. Ernesto Tinajero,*[13] the Commission alleged that the five defendants traded in the stock of Anchor Glass Container Corporation while in possession of material nonpublic information about a planned acquisition of Anchor Glass by Vitro, S.A., a Mexican corporation. After allegedly purchasing approximately 150,000 shares of Anchor Glass stock, they realized an aggregate profit of approximately $1.2 million. One defendant, at the time the action was filed, consented to the entry of an order by which he was enjoined and required to disgorge $47,431. Another defendant subsequently consented to the entry of an injunction and an order by which he was required to disgorge $819,868 and to pay a like amount as a civil penalty under ITSA. As of the close of the year, this action was pending as to three other defendants.

The SEC alleged in *SEC v. Louis Ferrero,*[14] that Louis Ferrero, the chairman, president and chief executive officer of Anacomp, Inc., communicated material nonpublic information concerning Anacomp's proposed acquisition of Xidex Corporation to a friend, who purchased Xidex stock, and tipped to other individuals who also traded. The traders realized profits in excess of $450,000 as a result of their purchases of Xidex stock, and avoided losses in excess of $100,000 as a result of their sales of Anacomp stock. Ferrero consented to the entry of an order enjoining him and requiring him to pay a civil penalty of $277,750. At the close of the year, this action was pending as to other defendants.

The SEC alleged in *SEC v. Robert F. Hoogstraten*[15] that Robert F. Hoogstraten, the vice president of European operations for Tandem Computers, Inc., learned of Tandem's proposed acquisition of Ungermann-Bass, Inc., and tipped this information to the head of a Dutch brokerage firm who traded, and either traded for or caused trades by the brokerage firm's employees and customers. This case was settled by consent, and two defendants were ordered to disgorge a total of $142,160 and to pay civil penalties totalling $83,000.

The SEC alleged in *SEC v. Christopher J.* Moran[16] that the defendant, a significant shareholder in the Zondervan Corporation, traded the securities issued by Zondervan while in possession of material nonpublic information concerning the inability of Zondervan's investment banker to find a purchaser for the company. At the end of the year, this matter was pending.

Market Manipulation

The Commission is charged with ensuring the integrity of trading on the national securities exchanges and in the over-the-counter (OTC) markets. The Commission staff, the exchanges, and the NASD engage in surveillance of these markets.

In *SEC v. Mark P. Malenfant,*[17] the Commission alleged that defendants were about to engage in a scheme involving manipulation of the stock of Texscan Corporation. The Commission's complaint alleged a prearranged matching of purchases and sales of Texscan common stock at increasingly higher prices; the complaint also alleged prior high-pressure promotion of the stock to induce purchases that would drive up the price. In addition to other relief, the SEC's complaint seeks civil penalties under the Remedies Act. At the close of the year, this action was pending.

The SEC filed an action against Peter Gar diner, a former employee of the High Yield and Convertible Bond Department (HYBD) of Drexel Burnham Lambert Incorporated (*SEC v. Peter R. Gardiner*[18]*).* The complaint alleges that Gardiner engaged in manipulative practices at the direction of his superiors in the HYBD, by directing or inducing security trades in the accounts of certain customers. Among other things, Gardiner often directed or induced customers, prior to the offering of convertible securities, to sell short the associated common stock, thereby depressing the price of the common stock and reducing the price at which the convertible securities would be sold. Gardiner consented to the entry of an injunction, and, in related administrative proceedings, consented to the entry of an order by which he was barred from association with any regulated entity.

The SEC filed an action against a former chairman of Madison National Bank of Virginia and a former director of James Madison, Limited, the holding company for Madison National Bank (*SEC v. John G. Broumas*[19]*).* The complaint alleges that Broumas attempted to manipulate the price of James Madison stock by "marking the close" *(i.e.,* placing the last trade of the day at a price higher than the previously executed trade) and executing "wash trades" *(i.e.,* transactions effectively involving the purchase and sale of the same security at the same time). Broumas allegedly attempted to support the price of James Madison stock to avoid margin calls and prevent his accounts from being liquidated. Broumas consented to the entry of an injunction.

The SEC exercised its cease-and-desist authority under the Remedies Act in administrative proceedings involving an alleged manipulation of the price of stock issued by TeleConcepts Corporation *(In the Matter of Andrew Doherty*[20]*).* Doherty and his registered representative at Advest, Inc. engaged in the practice of marking the close with respect to TeleConcepts stock. The purpose of this practice was to avoid or reduce margin calls in Doherty's securities accounts. In addition to other relief obtained in this matter, Doherty and his registered representative consented to the entry of a cease-and-desist order.

In *SEC v. Mark Sendo,*[21] the SEC alleged that the defendants engaged in a "free-riding" scheme, in which they ordered purchases of securities from broker-dealers without possessing the funds to pay for the purchases, and ordered sales of securities without owning the securities being sold. The defendants allegedly relied on anticipated proceeds from offsetting matched trades to provide the means to settle their transactions, and were therefore able to collectively order more than $50 million of securities trades without putting their own funds at risk. As a result of their activities, 14 brokerage firms at which the defendants maintained accounts lost more than $3.4 million. At the end of the year, this matter was pending.

In *SEC v. Peter S. Adler,*[22] the SEC alleged that Adler opened numerous brokerage accounts with various broker-dealers to conduct an elaborate free-riding scheme. Adler repeatedly ordered securities and, if their price decreased, failed to pay for them. If the price of the securities increased, however, he sold the securities, used the proceeds to pay for the initial purchase, and retained the remaining profit. Adler consented to the entry of an order by which he was enjoined and required to disgorge $230,000.

Penny Stock Cases

The SEC continued to prosecute actions involving penny stock fraud. These stocks, which were widely marketed over the last decade, may involve various types of violative activities, such as market manipulation and offering violations.

On March 11, 1991, the SEC filed an action alleging an intricate scheme by which certain shell corporations were restructured and their unregistered securities sold to the public. The complaint alleged that the scheme involved the falsification of corporate records, the rendering of false legal opinions by an attorney, and the unlawful removal of restrictive legends from stock certificates by a transfer agent (*SEC v. David D. Sterns*[23]*).* The complaint seeks, among other things, permanent injunctive relief against all defendants, restitution, and, as to David Sterns, penalties under the Remedies Act and a corporate bar. Sixteen defendants consented to injunctions in this action. Default injunctions were entered against David Sterns and six other defendants. At the end of the year, this litigation remained pending as to two defendants.

The SEC filed an action against ten individuals associated with J. T. Moran & Co., Inc., a penny stock broker-dealer (*SEC v. Robert F. Hasho*[24]*).* The SEC's complaint alleged that the defendants used fraudulent boiler room telephone sales techniques in the offer, purchase, and sale of certain speculative OTC securities. The defendants (1) made baseless predictions or guarantees of quick and substantial price increases, (2) misrepresented their possession of "inside" information, their earning of commissions on transactions, and the supply of securities, and (3) engaged in unauthorized transactions. Six defendants consented to the entry of injunctions. At the end of the year, a decision was pending in the trial of the remaining four defendants.

In *SEC v. Henry W. Lorin,*[25] the SEC alleged violations by Eugene K. Laff, Stanley Aslanian, Jr., and others. According to the SEC's complaint, the defendants engaged in a scheme to manipulate the markets for seven OTC stocks. The defendants artificially increased the price of the stocks, and artificially prevented declines following the publication of negative articles regarding the issuers, substantial short selling, and significant selling by corporate insiders. The scheme collapsed when Haas Securities, Inc., in which Laff and Aslanian were principals, ceased doing business as a result of its net capital deficiencies. Laff and Aslanian had been previously convicted in criminal actions against them. Four defendants consented to the entry of injunctions. At the end of the year, this matter remained pending as to six other defendants. In a related action that was settled by consent, *SEC v. Frank Shannon,*[26] the SEC alleged that the defendant filed a false and misleading Schedule 13D and amendment regarding ownership of a company manipulated in *Lorin.*

The SEC filed an action against Kochcapital, Inc. for alleged violations of Rule 15c2-6, the "cold call" rule, which was designed to prevent high-pressure, boiler room solicitations. The SEC alleged that the firm failed to follow procedures required by the rule and failed to obtain required documentation (*SEC v. Kochcapital, Inc.*[27]*).* Among other things, the SEC's complaint seeks civil penalties for violations occurring after the effective date of the Remedies Act. One defendant consented to the entry of an injunction. At the end of the year, this action remained pending as to Kochcapital and an individual defendant.

In *SEC v. Superior Resources, Inc.,*[28] the SEC alleged that the defendants fraudulently revived shell companies that were then sold by a penny stock promoter. At the close of the year, this case was pending.

Financial Disclosure

Actions involving false and misleading disclosures concerning the financial condition of companies and the issuance of false financial statements are often complex and require more resources than other types of cases. Their effective prosecution is essential to preserving the integrity of the disclosure system. The SEC brought 39 cases containing significant allegations of financial disclosure violations against issuers, regulated entities, or their employees. Many of these cases included alleged violations of the accounting provisions of the Foreign Corrupt Practices Act. The SEC also brought 13 cases alleging misconduct by accounting firms or their partners or employees.

The Commission filed an action against Forst-Hunter International Trade Corporation and three individuals, alleging that Forst-Hunter employed improper revenue recognition practices that resulted in materially misstated financial statements for the nine months ended January 31, 1987 (SEC *v, Forst-Hunter International Trade Corporation*[29]*).* Forst-Hunter allegedly recognized revenue by recording sales at the time a purchaser agreed verbally to purchase equipment, irrespective of the date of shipment or the date of delivery. In addition, Forst-Hunter allegedly misled its auditors by falsely indicating that certain tractors were loaded for shipment and that risk of loss had passed to the purchasers. After Forst-Hunter was advised by its independent auditor that the January 31, 1987 financial statements were materially overstated, the financial statements were nevertheless included in proxy materials filed with the SEC by Forst-Hunter. Forst-Hunter and two of the individual defendants consented to the entry of injunctions. At the close of the year, this litigation was pending as to the remaining individual defendant.

The SEC filed an action, *SEC v. Michael S. Weinstein,*[30] arising from an alleged multi-million dollar financial fraud involving Coated Sales, Inc. The complaint alleges that Michael *S.* Weinstein, the chairman and chief executive officer of Coated Sales, directed other officers and employees of Coated Sales to engage in a scheme to inflate accounts receivable and inventory. As part of the scheme, the defendants created phony invoices purporting to show sales of goods by Coated Sales, entered phony invoices onto the company's accounts receivable records, and used funds obtained from the sale by certain defendants of Coated Sales common stock to make it appear that the phony invoices were being paid. As a result of the scheme, sales and earnings were materially overstated in 1986 through 1988. The SEC's complaint further alleges that Weinstein and two other defendants sold Coated Sales common stock when they knew that the market price of the stock was based on materially false representations regarding the company's financial condition, and that certain of their sales constituted an unregistered distribution. In addition to injunctive relief, the SEC's complaint seeks disgorgement and the payment of civil penalties for insider trading violations. Two of the defendants .consented to the entry of injunctions. At the close of the year, this proceeding was pending as to seven other defendants.

In *SEC v. Michael L. Bitterman,*[31] the SEC alleged that former officers of Network Control Corporation engaged in improper revenue recognition practices that led to the material understatement of losses reported in Network's quarterly reports on Forms 10-Q for the first three quarters of 1987. These improper sales practices consisted of (1) recording transactions as sales when customers had not agreed to purchase Network equipment and equipment had not been delivered to the customers by quarter-end, (2) recording trials as sales transactions, and (3) removing inventory from Network's premises to simulate delivery of goods sold to the customer, when no such delivery had occurred. The defendants consented to the entry of injunctions.

The SEC filed a complaint against 16 former senior officers and employees of MiniScribe Corporation, alleging a series of fraudulent acts designed to inflate materially MiniScribe's reported net income (*SEC v. Q. T. Wiles*[32]*).* These fraudulent acts resulted in MiniScribe overstating its net income for 1986 by approximately $4.5 million, for 1987 by approximately $22 million, for its second quarter of 1988 by approximately $14.4 million, and for its third quarter of 1988 by approximately $17.2 million. Among a variety of acts allegedly committed by the defendants, fictitious inventory was created by shipping boxes of bricks labeled as disk drives to two distributors, and a computer program called "Cook Book" was created to generate fictitious inventory numbers. Seven of the defendants consented to the entry of orders by which they were enjoined and ordered to disgorge trading losses avoided and bonuses received and to pay civil penalties under *ITS A.*

In an action against John R. Ward, the former chairman of Datamag, Inc., and Thomas E. Weber, Datamag's former chief executive officer, the SEC alleged that the defendants engaged in a fraudulent scheme to inflate Datamag's sales and income for 1987. The company was required to show a profit as a condition to a proposed underwriting of a public offering of its common stock. The complaint alleged that Ward and Weber caused Datamag to ship defective products at the end of 1987 to four entities and caused the company to report income from these purported transactions in financial statements filed with the SEC. Among other things, the defendants allegedly coerced Datamag's customers to falsely confirm such sales to Datamag's auditors, falsified checks, invoices and shipping documents to support the transactions in question, and lied to Datamag's independent auditors to conceal their fraud (*SEC v. John R. Ward*[33]*).* At the close of the year, this matter was pending.

The SEC filed an action against Earthworm, Inc. and three individuals associated with the company (*SEC v. Earthworm, Inc.*[34]*).* The Commission alleged conduct that resulted in the material overstatement of Earthworm's net sales and cost of sales in its financial statements for the year ended December 31, 1986. According to the complaint, Earthworm overstated net sales by $4,461,000, or 22%, and overstated cost of sales by $4,394,425, or 25%, in its 1986 annual financial statements. The defendants consented to the entry of injunctions. Among other things, the court order required Earthworm to file an amended Form 10-K for 1986 and amended Forms 10-Q for the first three quarters of 1988.

In *SEC v. Ramtek Corporation,*[35] the SEC alleged that, in an effort to achieve earning targets set by its senior management, the company improperly recognized revenue from fictitious sales transactions, and prematurely recognized revenue from other transactions. The complaint further charged that Ramtek materially misstated its income (loss) and related financial statement captioned items in its financial statements filed with the SEC. The misstated financial statements also were included in a Form S-1 registration statement filed with the SEC and declared effective. Ramtek consented to the entry of an injunction in this case.

The SEC charged in *SEC v. Malibu Capital Corporation*[36] that Malibu Capital had improperly treated an exchange of stock as a purchase of another company, improperly adjusted the value of that company's assets, and omitted to state historical cost of such assets, thereby overstating its consolidated assets in financial statements filed with the SEC. This case was settled by consent. *In SEC v. Joseph Wolfer,*[37] the SEC alleged, among other things, improper recognition of revenue on a fictitious bulk sale to another company. Two of the defendants consented to the entry of injunctions. At the close of the year, this matter was pending as to two other defendants.

Accountants were sanctioned in Rule 2(e) proceedings based on allegations of significant audit failures and/or injunctions or convictions for alleged violations related to their preparation or audit of financial statements. *See, e.g., In the Matter of Michael R. Ford,* CPA;[38] *In the Matter of Raymond Bacek;*[39] *In the Matter of Bruce F. Kalem, CPA;*[40] and *In the Matter of Merle E. Bright, CPA.*[41] The Commission also instituted and settled Rule 2(e) proceedings against an attorney who allegedly drafted periodic reports, filed with the Commission on behalf of S. Taylor Companies, Inc., that contained material misstatements and omissions *(In the Matter of Ronald N. Vance*[42]*). See also SEC v. Norman Nouskajian*[43] and *SEC v. Michael*

A. Clark[44] (consent orders enjoining two attorneys for corporations controlled by J. David Dominelli from securities offering violations).

Corporate Control

The SEC's enforcement program scrutinizes corporate mergers, takeovers and other corporate control transactions, and the adequacy of disclosures made by acquiring persons and entities and their targets. The SEC recently brought cases involving Sections 13 and 14 of the Exchange Act, which govern securities acquisition, proxy, and tender offer disclosure. Increasingly, the SEC seeks orders requiring violators to disgorge profits obtained from violations.

In *SEC v. Burton R. Sugarman,*[45] the SEC alleged that a director of Rally's, Inc. failed to make timely disclosure of his plan to acquire control of Rally's during its initial public offering. A partnership formed by the director purchased 1.16 million of the 1.745 million shares in the offering before the existence of the partnership was disclosed in a Schedule 13D. The director, in addition to consenting to an injunction, agreed to disgorge $556,522, representing funds saved as a result of the failure to make timely disclosure.

The SEC instituted administrative proceedings against Morgan Stanley & Co., Inc., alleging that Morgan Stanley sold over 2.4 million shares of KaiserTech, Ltd. to satisfy margin deficiencies in an account owned by a Morgan Stanley client *(In the Matter of Morgan Stanley & Co., Inc.*[46]*).* The order alleges that Morgan Stanley, at the time of these sales, knew, or had reason to know, that its client's stock was control stock, and that it was subject to resale restrictions under Section 5 of the Securities Act. Morgan Stanley consented to the entry of an order by which it was required to adopt appropriate procedures to avoid future violations of the registration provisions. These proceedings are related to an injunctive action filed and settled in the previous year in which it was alleged that the client failed to make timely amendments to his Schedule 13D to reflect his intent to take KaiserTech private (*SEC v. Alan E. Clare*[47]*).*

In *SEC v. Asher B. Edelman,*[48] the SEC alleged that Edelman, the chairman of the board of Datapoint Corporation and a member of a Schedule 13D filing group that beneficially owned approximately 10 percent of its outstanding stock, formed a plan to defend against an attempt to replace him and the rest of Datapoint's board by purchasing additional Datapoint shares. Edelman allegedly implemented this plan by purchasing 3 million shares of Datapoint (approximately 30 percent of the outstanding stock), without promptly amending the Schedule 13D to disclose the acquisition plan. Edelman consented to the entry of an injunction.

The SEC exercised its cease-and-desist authority under the Remedies Act to enforce the beneficial ownership requirements of the Exchange Act. The SEC instituted cease-and-desist proceedings against Norman G. Baker, *In the Matter of Norman G. Baker,*[49] alleging that Baker had made false and misleading statements in a Schedule 13D filed on January 29, 1990, to report his ownership of 4.979% of the outstanding common stock of Datamag, Inc. The allegedly false and misleading statements concerned the source of the funds used by Baker for his purchases of Datamag stock, and Baker's intention and ability to purchase additional shares of Datamag. Baker consented to the entry of the cease-and-desist order.

Securities Offering Cases

Securities offering cases represent a significant portion of the SEC's enforcement activities. These cases involve the offer and sale of securities in violation of the registration provisions of the Securities

Act. In some cases, the issuers attempt to rely on exemptions to registration requirements that are not available. Offering cases frequently involve material misrepresentations concerning, among other things, use of proceeds, risks associated with investments, disciplinary history of promoters or control persons, business prospects, promised returns, success of prior offerings, and the financial condition of issuers. In appropriate cases, disgorgement, restitution, civil penalties or other relief may be ordered by the courts for offering violations.

The SEC filed an action against International Loan Network, Inc. (ILN) and two individuals (*SEC v. International Loan Network, Inc. s").* The complaint alleges that from October 1988 to the time of the filing, the defendants conducted a pyramid or "Ponzi" scheme, inducing approximately 40,000 investors to invest in ILN. The defendants made materially false and misleading statements and failed to state material facts in connection with their sale of unregistered securities. Among other things, the defendants falsely represented that investors would receive valuable returns in the form of cash payments and/or real estate with values greatly exceeding the amount invested. The court granted a preliminary injunction and an asset freeze. At the close of the year, this action was pending.

The SEC alleged in *SEC v. Latin Investment Corporation*[51] that the defendants were engaged in offering and selling the securities of Latin Investment Corporation to immigrants from Latin America. The complaint charges that these unregistered securities were sold in the form of "pass books," and that Latin Investment, through misrepresentation, induced 3,500 investors to invest $6.8 million. Investor funds allegedly were used for the personal benefit of the defendants without disclosure to investors. The Commission obtained emergency relief in the form of a temporary restraining order and an asset freeze; the court subsequently entered a preliminary injunction that strengthened the asset freeze. At the close of the year, this proceeding was pending.

In *SEC v. Eugene R. Karczewski and Eugene F. Karczewski,*[52] the Commission alleged that the defendants, through Stockbridge Funding Corporation, sold more than $34 million in unregistered, non-exempt securities to more than 1,200 individuals. While investors were informed that all funds invested with Stockbridge were to be used for loans secured by mortgages on real estate, the complaint alleged that, in fact, investor funds were misappropriated and used for purposes other than secured mortgage lending. At the end of the year, this matter was pending.

In *SEC v. Robert Elderkin,*[53] the SEC addressed allegedly fraudulent activity in connection with a "roll-up" of a real estate limited partnership. In a roll-up transaction, limited partnerships of limited duration are restructured, typically through a conversion to corporate form. In *Elderkin,* the SEC alleged that the five defendants fraudulently induced the limited partners of Pacific West Investors, Ltd. to approve a transaction in which over $4 million in real estate was exchanged for unregistered, restricted stock in Asiamerica Equities, Ltd. Among other things, the defendants allegedly made false representations concerning the true terms of the transaction, and while the general partner and individuals associated with it received over $500,000 in cash and other compensation in the transaction, the limited partners did not receive the Asiamerica stock to which they were purportedly entitled. At the end of the year, this action was pending.

The SEC alleged in *SEC v. FSG Financial Service, Inc.*[54] that FSG Financial raised at least $250,000 from investors through the sale of securities represented to be municipal bonds. The bonds purportedly sold did not in fact exist. In addition to false and misleading statements about the purchase of securities, FSG failed, among other things, to disclose to investors that a predecessor firm had been expelled from the NASD for antifraud violations. The court granted a preliminary injunction in this action which, at the close of the year, was pending.

In *SEC v. BFMF Corporation,*[55] the SEC alleged that BFMF Corporation (doing business as FMF Corporation) and three individual defendants made false and misleading statements concerning the business of FMF, including among other things, that the government of Equatorial Guinea had awarded the company a concession to dispose of radioactive waste on Guinean territory when no such concession had been granted, and that FMF had entered into and was performing under a contract with Eli Lilly & Company for the disposal of contaminated material in Guinea when in fact Lilly had never done business with FMF. The court granted the Commission a temporary restraining order and an asset freeze. In addition to a permanent injunction, the Commission's complaint seeks restitution and the imposition of civil penalties under the Remedies Act. At the close of the year, this action was pending.

The SEC filed an action against Neil E. Rogen, a former chairman of Memory Metals, Inc., in *SEC v. Neil E. Rogen*[56] alleging that Rogen caused the company to file a registration statement for an initial public offering that contained materially false or misleading statements with respect to the plan of distribution of the securities, and other matters. While selling Memory Metals securities for his own account, Rogen allegedly issued or caused to be issued to actual or prospective investors and others materially false and misleading press releases and other materials. In addition, the complaint alleged that Rogen caused Memory Metals to file an Annual Report on Form 10-K for 1985 that was materially false and misleading in that it overstated the amount of Memory Metals securities beneficially owned by Rogen. The complaint further alleges that Rogen sold at least 390,000 shares of Memory Metals securities while in possession of material nonpublic information concerning the materially false and misleading statements, press releases and other materials, that he failed to file timely statements of changes in his beneficial ownership of Memory Metals securities, and that he filed false and misleading statements of his beneficial ownership. In addition to injunctive relief, the complaint seeks disgorgement and civil penalties under ITSA. At the close of the year, this action was pending.

Broker-Dealer Violations

Each year the SEC files a significant number of enforcement actions against broker-dealers. Typical broker-dealer cases may involve fraudulent sales practices, net capital and customer protection violations, as well as violations of the books and records provisions.

The SEC instituted administrative proceedings against Michael R. Milken based upon his criminal conviction for conspiracy, aiding and abetting the failure to file a truthful and accurate Schedule 13D, securities fraud, aiding and abetting a registered broker-dealer's violation of the SEC's reporting requirements, mail fraud, and assisting the filing of a false tax return, and upon the injunction entered against him in the SEC's civil action (*SEC v. Drexel Burnham Lambert, Incorporated*[57]*).* On the same date, the SEC instituted administrative proceedings against Milken's brother, Lowell Milken, based upon the injunction entered against him in the same action. The Milkens consented to the entry of orders by which they were barred from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer *(In the Matter of Michael R. Milken*[58] and *In the Matter of Lowell J. Milken*[59]*).*

The Commission issued a Report of Investigation pursuant to Section 21 (a) of the Exchange Act concerning violations by five broker-dealers of Section 5 of the Securities Act and/or Section 15(c) of the Exchange Act and Rule 15c2-11, which requires broker-dealers, among other things, to obtain specified information about certain OTC securities before initiating or resuming quotations *(In the Matter of Laser Arms Corporation*[60]*).* The report discusses the failure by certain of these broker-dealers to conduct appropriate inquiries required prior to selling large amounts of a relatively unknown security, and the conduct of those broker-dealers that became market-makers for Laser Arms without reviewing the information required by Rule 15c2-11(a)(5).

The SEC utilized its cease-and-desist authority in proceedings against Dominick & Dominick and Werner F. Ulrich, in which it was alleged that Dominick failed to create certain required records, and failed to keep other required records accessible and make them available upon the SEC's demand *(In the Matter of Dominick & Dominick, Inc.*[61]*).* The SEC instituted related cease-and-desist proceedings against Albert Dreyfuss, formerly a registered representative with Dominick, alleging that the respondent assisted Dominick in failing to create and maintain current and accurate books and records with respect to certain accounts *(In the Matter of Albert Dreyfuss*[62]*).* Dominick and Ulrich consented to the entry of cease-and-desist orders. At the end of the year, the proceedings against Dreyfuss were pending.

In *In the Matter of Walter Capital Corporation,*[63] the SEC alleged that a broker-dealer, through its employees, made false and misleading statements during an initial public offering for the securities of Regional Funding Corporation. The broker-dealer consented to the entry of an order by which its registration was revoked.

The SEC brought actions against persons associated with broker-dealers for alleged misappropriations of customer funds in connection with the purchase or sale of securities. In *SEC v. Pilgrim Planning Associates, Inc. and John M. Mickner,*[64] the SEC alleged that Mickner, a registered representative formerly employed by Pilgrim, misappropriated approximately $329,391 from Pilgrim customers, many of whom he represented. Among other things, Mickner induced clients to write checks payable to Pilgrim for the purchase of mutual fund shares or annuities. Mickner then allegedly used all or part of the proceeds for his personal benefit. The complaint further alleged that, as a result of Mickner's conduct, Pilgrim failed to maintain the required net capital. Pilgrim consented to the entry of an injunction. At the end of the year, this action was pending as to Mickner.

The SEC alleged that Robert F. Kurtz, an account executive associated with a broker-dealer, misappropriated $1.5 million from two customer trust accounts (*SEC v. Robert F. Kurtz, Jr.*[65]*).* Kurtz and a sales assistant acting at his direction, allegedly forged customer signatures on checks as part of the scheme. The sales assistant consented to the entry of an injunction against her. The injunctive action was pending against Kurtz at the end of the year. In related administrative proceedings, Kurtz consented to the entry of an order by which he was barred.

The SEC also brought enforcement actions against broker-dealers for failure to supervise the activities of their employees. In proceedings against Dean Witter, the SEC alleged that the firm failed reasonably to supervise four registered representatives at a branch office who engaged in excessive, unauthorized, unsuitable and unapproved options trading *(In the Matter of Dean Witter Reynolds, Inc.*[66]*).* Dean Witter consented to the entry of an order by which it was censured and ordered to comply with its undertakings respecting its supervisory practices and procedures. In *In the Matter of Richard Alan Lavery,*[67] the SEC alleged that the respondent, while a branch manager for E.F. Hutton, failed reasonably to supervise four registered representatives, two of whom engaged in unsuitable options trading and two of whom engaged in excessive and unsuitable trading in government securities for small municipalities and local agencies. Lavery consented to the entry of an order by which he was suspended for a period of eight months. Proceedings were instituted against a broker-dealer for failure to supervise a registered representative who misappropriated client funds by, among other things, recommending purchase of the securities of a fictitious entity. At the end of the year, these proceedings were pending (In *the Matter of Thomas F. White and Thomas F. White & Co., Inc.*[66]*).*

Investment Adviser and Investment Company Violations

The SEC instituted several significant enforcement actions involving investment advisers and investment companies.

In administrative proceedings against Home Capital Services, Inc., the SEC alleged that the respondent, the former investment adviser to a money market fund that used the amortized cost method to value its portfolio as permitted by Rule 2a-7 under the Investment Company Act, caused the fund to purchase securities that were not "high quality" as required by Rule 2a-7, and failed to determine whether the best interests of the fund required the sale of the securities as required by the rule *(In the Matter of Home Capital Services, Inc.*[69]*).* The adviser was censured and suspended for 60 days from conducting its business as an adviser (except to service existing accounts at cost) and prohibited from acting as an adviser to a fund relying on Rule 2a-7 until it adopted policies and procedures to ensure compliance with the rule. In *In the Matter of James L Rapholz, Jr.,*[70] the SEC alleged, among other things, that an adviser to a fund failed to follow the specified investment objective of the fund. The adviser and its principal consented to the entry of an order by which the adviser's registration was revoked and the principal was barred.

The Commission instituted administrative proceedings involving claims that investment advisers permitted the interpositioning of broker-dealers between their advisory clients and the market. In *In the Matter of R.L. Kotrozo, lnc.,*[71] a firm registered as both a broker-dealer and an investment adviser purchased certain bonds in the market that were resold to a fund for which it acted as adviser and exclusive broker. The fund was allegedly charged $319,216 in markups that would have been avoided had the purchases been made directly from the sellers. The SEC's order further alleged that the firm issued false and misleading proxies regarding the payment of administrative expenses for one series of the fund, and disseminated materially false and misleading advertising regarding that series' earnings. The respondents in this matter consented to the entry of an order by which the firm's registrations (as a broker-dealer, investment adviser, and transfer agent) were revoked and the two individual respondents were barred.

In proceedings against the former president of an investment adviser, *In the Matter of Jack Alien Pirrie,*[72] the SEC alleged that Pirrie, when informed that a purchase for the adviser's largest client violated the client's investment guidelines, redistributed the stock to other clients, not at its then current market price, but at the higher price as of the original purchase date. Pirrie did not disclose the actual market price to the other clients. Pirrie consented to the entry of an order by which he was suspended for a period of nine months.

A scheme involving alleged kickbacks from certain corporations to a fund adviser was the subject of administrative proceedings in *In the Matter of Carl L. Lazzell.*[73] The Commission's order also alleged that certain purchases by the fund were in violation of limitations in the fund's prospectus, that the adviser sold securities as principal to the fund, and that he embezzled from the fund. Lazzell consented to the entry of an order by which he was barred.

SEC v. David B. Solomon[74] involved alleged activities by David B. Solomon, an investment adviser, who had developed a business relationship with Michael Milken, the manager of the High Yield Bond Department of Drexel Burnham Lambert Incorporated. The Commission's complaint alleged that this relationship involved a number of violative activities and transactions, some of which defrauded Solomon's investment advisory clients and Drexel's investment banking clients. Solomon consented to the entry of an order by which he was enjoined and ordered to pay $7,292,307 as disgorgement and $661,674 as a civil penalty for insider trading. In related administrative proceedings, Solomon consented to the entry of an order by which he was barred and his adviser's registration was revoked.

An injunction was obtained against the chairman of the board of an investment company in *SEC v. M. Wesley Groshans.*[75] The SEC's complaint alleged that the defendant sold securities to the fund in violation of the fund's investment restrictions and in violation of related party restrictions under the Investment Company Act. In addition, the chairman artificially raised the price of the stock he had sold to the fund, thereby causing an overstatement of the net asset values of four series of the fund, and caused the fund to make unauthorized loans.

In *SEC v. Renaissance Advisors, Inc.,*[76] the SEC alleged that, among other things, the defendants, the former president of a fund and the fund's investment adviser, violated the antifraud provisions of the Investment Advisers Act of 1940 by distributing advertisements for the fund that made various claims about performance of a model portfolio and an investment "formula," without cautioning recipients as to limitations and risks inherent in the formula. The advertisements also failed to account for advisory fees and commissions in calculating the performance of the model portfolio. The defendants consented to the entry of injunctions and, in related administrative proceedings, consented to the entry of an order by which the adviser's registration was revoked and its president was barred.

Sources For Further Inquiry

The SEC publishes the SEC *Docket,* which includes announcements regarding enforcement actions. The SEC's litigation releases describe civil injunctive actions and also report certain criminal proceedings involving securities-related violations. These releases typically report the identity of the defendants, the nature of the alleged violative conduct, the disposition or status of the case, as well as other information. The SEC *Docket* also contains SEC orders instituting administrative proceedings, orders making findings and imposing sanctions in those proceedings, and initial decisions and significant procedural rulings issued by Administrative Law Judges.

International Affairs

The Office of International Affairs (OLA) has primary responsibility for the negotiation and implementation of information-sharing agreements and for developing legislative and other initiatives to facilitate international cooperation. OLA coordinates and assists in making requests for assistance to, and responding to requests for assistance from, foreign authorities. OLA also addresses other international issues that arise in litigated matters, such as effecting service of process abroad and gathering foreign-based evidence using various international conventions, freezing assets located abroad, and enforcing judgments obtained by the Commission in the United States against foreign-based parties. In addition, OIAoperatesinaconsultativeroleregardingthesignificantongoinginternational programs and initiatives of the Commission's other divisions and offices.

Key 1991 Results

In September 1991, the Commission hosted the 16th Annual Conference of the International Organization of Securities Commissions (IOSCO), in Washington, D.C. Securities regulators from more than 50 nations attended the conference, which was a successful and prominent forum for the exchange of information on a wide variety of securities matters. During the annual conference, lOSCO's Technical Committee issued important reports relating to the negotiation and implementation of Memoranda of Understanding (MOU) among nations and the adoption of international capital adequacy standards.

During 1991, the Commission signed comprehensive MOUs for cooperation, consultation, and the exchange of information with the United Kingdom Department of Trade and Industry and the Securities and Investments Board, the Banking, Insurance and Securities Commission of Norway, and the Comision Nacional de Valores of Mexico. All three of these MOUs are being implemented pursuant to the authority granted the Commission in the Insider Trading and Securities Fraud Enforcement Act of 1988 and the International Securities Enforcement Cooperation Act of 1990. These MOUs dramatically strengthen the SEC's ability to obtain information located in these countries and enhance international cooperation in regulatory matters.

During 1991, the Commission signed a Joint Statement with the Commission of the European Communities, establishing a comprehensive framework for cooperation and consultation on a variety of securities-related matters. The Commission also signed a Communique with the Bank Inspection Board of Sweden and with its successor agency, the Financial Supervisory Authority of Sweden. This Communique represents a first step in developing a cooperative relationship for enforcement issues and establishes a framework for consultations regarding market oversight and other matters of mutual interest involving the United States and Swedish securities markets. In addition, the Commission signed an Understanding with the Inter-American Development Bank and the United Nations Economic Commission for Latin America and the Caribbean to facilitate the provision of technical assistance to Latin American nations. This assistance covers many aspects of the development, operation, and regulation of the securities markets of Latin American countries.

Arrangements for Mutual Assistance and Exchanges of Information

The increasing internationalization of the world's securities markets has raised many new and complex issues that affect the Commission's ability to enforce the United States federal securities laws. For example, a central problem the Commission faces is collecting information located abroad. The Commission has attempted to resolve this problem by developing information-sharing arrangements on a bilateral basis with various foreign authorities.

The information-sharing arrangements allow the Commission to obtain evidence located abroad while avoiding the conflicts that may result from differences in legal systems. In recent years, the Commission has entered into various arrangements with foreign authorities from over 15 nations. These arrangements are an effective means for obtaining information and developing cooperative arrangements between regulators. In addition, the staff coordinates closely with the regulators with whom it has information-sharing arrangements to develop ways to implement and improve the arrangements. The Commission also cooperates on an informal basis with foreign regulators with whom it does not have explicit information-sharing arrangements.

On October 18, 1990, the Commission signed a comprehensive MOU with the Comision National de Valores of Mexico on consultation, technical assistance, and mutual assistance for the exchange of information. The MOU provides for bilateral assistance regarding enforcement matters, and specifies procedures for requesting and providing assistance, and the permissible uses and confidential nature of information provided and obtained. Further, the MOU provides for continuing consultations regarding the MOU's operation and ways of enhancing bilateral cooperation. The MOU also provides for technical assistance for the development of the Mexican securities markets, and for the mutual provision of technical assistance to emerging securities markets.

On September 23, 1991, the Commission and the Financial Supervisory Agency of Sweden (FSA) entered into a Communique on the exchange of information and the establishment of a framework for cooperation. This Communique reaffirmed the terms of a June 27, 1991 Communique between the Commission and the predecessor agency to the FSA, the Bank lnspection Board of Sweden. In the Communique, the Commission and the FSA declared their intent to provide mutual assistance to the fullest extent legally possible regarding enforcement matters, and to consult and coordinate about market oversight and other matters of mutual interest. While the Communique is an important step toward a comprehensive cooperative relationship with the FSA, the signatories stated that the Communique is an interim measure, and that they contemplate the development of a comprehensive MOU on cooperation in securities matters.

Also on September 23, 1991, the Commission issued a Joint Statement with the Commission of the European Communities. In the Joint Statement, the parties declared their intention to work together to (1) facilitate the exchange of information and the provision of mutual assistance between the SEC and the relevant national authorities of the European Community (EC), (2) cooperate in maintaining the financial integrity of the participants in both securities markets, and (3) consult regularly on matters of mutual interest concerning the operation and oversight of the securities markets of the U.S. and the EC. In addition, the parties expressed their intent to commence a regular dialogue to review developments in the U.S. securities markets and those of EC member countries, and to discuss principles underlying securities regulation in both the U.S. and EC.

On September 24, 1991, the Commission signed an extensive MOU with the Banking, Insurance and Securities Commission of Norway concerning consultation and cooperation in the administration and enforcement of the U.S. and Norwegian securities laws. The Norwegian MOU covers abroad range of issues for which bilateral assistance can be provided, and establishes a framework for the fullest mutual cooperation and communication concerning enforcement and other regulatory matters.

On September 25, 1991, the Commission entered into a comprehensive MOU on mutual assistance and the exchange of information with the United Kingdom Department of Trade and Industry and the Securities and Investments Board. This MOU supersedes the MOU signed in 1986, and makes assistance available in virtually all types of cases that could arise under the securities and futures laws of the U.S. and the U.K. Further, the new MOU enables the U.S. and U.K. authorities to utilize the full range of their investigative powers, including compulsory means, to assist one another.

On September 26, 1991, the Commission entered into an Understanding with the Inter-American Development Bank and the United Nations Economic Commission for Latin America and the Caribbean to facilitate the provision of technical assistance and training to the countries of Latin America for the development, administration, operation, and regulation of those capital markets. In addition to specifying areas in which technical assistance can be provided, the Understanding calls for the signatories to conduct joint studies on a range of subjects aimed at fostering the growth and sound regulation of the Latin American securities markets. Further, the Understanding provides for periodic consultations to enhance cooperation and the promotion of stability, efficiency, and integrity of the capital markets of the region.

Trilateral Communique

Since 1989, the staff has organized and actively been involved in the Com mission's bilateral and multilateral meetings with counterpart securities regulators. Some of these periodic meetings have emerged as significant forums for the exchange of information and agreement on matters affecting international securities regulation. One of the most important of these meetings is the annual Trilateral Meeting between the securities regulators of the United Kingdom, Japan, and the United States.

On July 19, 1991, the Commission, the U.K. Department of Trade and Industry and Securities and Investments Board, and the Securities Bureau of the Ministry of Finance of Japan, met for the second time on a trilateral basis to consider issues of importance to the world's three largest securities markets. At the conclusion of their meetings, the parties issued a trilateral communiqué in which they:

• agreed that competition, openness, and disclosure are important for the integrity of markets and investor confidence;

• agreed on the need to exchange information rapidly when problems appear likely to affect the financial position of securities firms with multinational operations;

• agreed that the development of common regulatory principles could facilitate international business with institutional and other professional investors;

• noted the growing need for exchange of information between market authorities, particularly between cash markets and derivatives markets; and

• considered questions involving international cooperation in the enforcement of judgments, and agreed to investigate the possibility of improving procedures under national law.

International Organizations

During 1991, the Commission participated in the following international organizations:

The International Organization of Securities Commissions. The Commission hosted the 16th Annual IOSCO Conference in Washington, D.C. The Conference was attended by representatives of 54 nations and covered a wide range of topics, including (1) cross-border equity offerings, (2) investment management services and funds, (3) the development of strong, stable, and efficient secondary markets, (4) the protection of investors from international fraud, (5) international accounting standards, (6) the interplay between banking and securities laws, (7) automation and electronic trading, and transparency issues, and (8) challenges for international financial markets in the 1990s.

Chairman Breeden played an active leadership role in IOSCO by chairing the Technical Committee, a position he has held since 1990. Under Chairman Breeden's leadership, the Technical Committee has re-examined its mission and goals, and has undergone a significant restructuring of its organization and functions. The Technical Committee issued two significant documents during the IOSCO Annual Conference. One report endorsed a set of principles that can serve as a blueprint for the negotiation and implementation of MOUs among nations. This report reflects the Commission's approach to promoting international cooperation through the use of regulator-to-regulator MOUs. Further, the principles constitute an important step toward fulfilling IOSCO's long-held goal of fostering reciprocal assistance among members in the areas of market oversight and the prevention of fraud.

Also issued during the IOSCO Annual Conference was a Technical Committee memorandum to the Basle Committee of Banking Supervision (the international body of banking supervisors known as the Basle Committee) on capital adequacy standards. This memorandum, which presented the positions of the international securities regulators, was an important component of the efforts to establish common minimum capital standards for international securities firms and banks. During the IOSCO Annual Conference, Chairman Breeden announced that the Technical Committee members were willing, in principle, to conclude an agreement with the Basle Committee to establish minimum capital levels for holding equity and debt securities/and the types of capital that can be included as regulatory capital for international banks and securities firms.

In addition to the Commission's accomplishments at the IOSCO Annual Conference, throughout 1991 the Commission participated actively in IOSCO committees and working groups. The staff worked with its foreign counterparts to develop sound and harmonized policies on a wide range of issues, including (1) the development of international accounting standards, (2) market transparency issues and the study of screen-based trading systems, (3) coordination of the relationship between cash and derivatives markets, (4) the development of minimum capital adequacy standards, and (5) international efforts to combat money laundering and international boiler room fraud.

The Organization for Economic Cooperation and Development (OECD). The Commission staff participated in discussions at the OECD regarding the establishment of international standards governing illicit payments to government officials, the OECD codes relating to securities matters, and accounting issues.

The General Agreement on Tariffs and Trade (GATT). The Commission is an active participant in the effort, through the Uruguay Round of the GATT, to establish a multilateral framework of principles and rules for trade in financial services. Throughout 1991, the Commission consulted and coordinated with the Office of the United States Trade Representative, the Department of Treasury, and other United States government agencies, in connection with the GATT negotiations and other international trade and investment initiatives, such as the North American Free Trade Agreement negotiations.

The Wilton Park Group. This informal meeting is sponsored by the U.K. Department of Trade and Industry and includes regulators from 12 countries. During this year's meeting, the staff participated in extensive discussions to develop practical methods for facilitating the exchange of information among securities regulators.

The European Community. The Commission also has been involved with other United States governmental agencies in reviewing the plans and directives of the European Community, which is working toward achieving an internal market among its 12-member countries by December 31, 1992 (referred to as EC 92). The Commission has been involved in several different studies, and provided assistance to other United States government agencies, including the Department of the Treasury, in connection with the impact of EC 92 on the U.S. financial services markets.

Regulation of the Securities Markets

The Division of Market Regulation, together with regional office examination staff, is charged with the responsibility of overseeing the operations of the nation's securities markets and market professionals. In 1991, over 8,600 broker-dealers, 8 active registered securities exchanges, as well as the over-the-counter (OTC) markets and 15 clearing agencies were subject to the Commission's oversight.

Key 1991 Results

In 1991, the division continued to direct its attention toward a number of significant issues. The division took steps to implement market reform legislation designed to address oversight problems identified in the 1987 market decline and subsequent episodes of extreme market volatility. Rules were proposed to combat "penny stock" fraud and to maintain the financial integrity of firms servicing investors. Internationalization of the securities markets continued to influence virtually all of the division's activities. Finally, the division worked to ensure that fundamental changes in the markets, including growth in size and diversity of firms and products, proceed in a sound and orderly way and without unnecessary regulatory restraints on industry, innovation, or competition.

Securities Markets, Facilities, and Trading

Market Reform Initiatives

On September 25, 1990, Congress enacted the Market Reform Act of 1990 (Market Reform Act) to enhance the efficiency and fairness of the United States capital markets and to address the causes of precipitous market declines. The legislation authorizes the Commission to:

- establish rules for reporting pertinent financial information about broker-dealer holding companies for purposes of risk assessment;

- promulgate rules providing for large trader reporting;

- facilitate development of coordinated clearance and settlement systems;

- promulgate uniform rules, preempting state law when necessary, concerning the transfer and pledge of securities to facilitate the efficient and safe operation of the national clearance and settlement system; and

- limit trading practices that contribute significantly to extraordinary volatility.

In addition, the legislation provides the Commission, subject to disapproval by the President, with the emergency authority to halt trading in securities markets.

On August 22, 1991, the Commission proposed for comment Rule 13h-1, which would establish a large trader reporting system, as contemplated by the Market Reform Act. Rule 13h-1 envisions an efficient activity-based system for gathering information to be used by the Commission to perform time-sequenced reconstructions of trading activity for the evaluation of market volatility and other market surveillance purposes. The proposed rule would require large investors to file a form with the Commission, upon receipt of which the Commission would assign each such investor an identification number. Broker-dealers would be required to maintain, and electronically report to the Commission, records of transactions effected by large traders.

On August 30, 1991, the Commission proposed for comment Rules 17h-1T and 17h-2T, which, together with proposed Form 17-H, would establish a risk assessment recordkeeping and reporting system for registered broker-dealers concerning certain of their associated persons. The proposed rules are designed to give the Commission access to information concerning the financial and securities activities of those associated persons of the broker-dealer whose business activities are reasonably likely to have a material impact on the broker-dealer. Proposed Rule 17h-1T is a recordkeeping rule that sets forth the records and other information broker-dealers would be required to maintain with respect to their material associated persons. Proposed Rule 17h-2T is a reporting rule that would require broker-dealers to file with the Commission on proposed Form 17-H a quarterly summary of certain of the information required to be maintained by Rule 17h-1T.

In January 1991, the Commission formed the Market Transactions Advisory Committee pursuant to new Section 17A(f) of the Securities Exchange Act of 1934 (Exchange Act). The Commission also published for comment proposed Exchange Act Rule 17Ad-15, which would govern the acceptance of signature guarantees. The advisory committee's responsibilities and the proposed rule are discussed in greater detail below in the section entitled "National System for Clearance and Settlement."

Penny Stock Reforms

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Remedies Act),[82] requires the Commission to: (1) establish criteria concerning coverage of the category of penny stocks; (2) establish rules that bar disciplined persons from participating in penny stock distributions; (3) specify additional disclosure requirements or exemptions relating to transactions in penny stocks; (4) generally prevent fraud and manipulation in penny stock transactions; and (5) facilitate and oversee the establishment of self-regulatory organization (SRO) operated automated quotations systems for penny stocks.

On April 17, 1991, the Commission proposed for public comment Rule 3a51-1, Rules 15g-1 through 15g-7, and Schedule 15G under the Exchange Act.[83] The proposed rules define the term penny stock and exempt certain transactions from the disclosure requirements of the rules. The rules would require broker-dealers effecting transactions in penny stocks to provide their customers with a document describing the risks of investing in the penny stock market, information regarding market quotations, if any, information on the compensation of the broker-dealer and salesperson involved in the penny stock transaction, and monthly statements giving the market value of penny stocks held in the customer's account.

Exchange Act Rule 15c2-11 prohibits, with certain exceptions, a broker or dealer from publishing a quotation for a covered security in a quotation medium unless it has in its records and reviews specific information concerning the security and its issuer. The Commission adopted revisions to Rule 15c2-11 that require a broker-dealer to review the specified information before publishing the quotation and to have a reasonable basis under the circumstances for believing that the information is accurate in all material respects and obtained from reliable sources. The amendments also require a broker-dealer to have in its records a copy of any trading suspension order, or Exchange Act release announcing a trading suspension, issued by the Commission during the preceding 12 months respecting any of the issuer's securities, and to review the required information together with the information contained in the trading suspension order or release and any other material information concerning the issuer in the broker-dealer's knowledge or possession.[84] In addition, the Commission published for comment revisions to Rule 15c2-11 to narrow the scope of the rule's piggyback provision that currently allows broker-dealers under certain conditions to enter quotations without having the information specified by the rule.[85] The Commission also sought comment on the possible repeal of the piggyback exception.[86]

Congress also amended the Exchange Act by inserting new Section 17B, which requires the Commission to facilitate the development of one or more quotation systems for penny stocks and mandates that the Commission report in each of the five subsequent annual reports on the progress that has been made in the development of such a system. In adopting Section 17B, Congress stated that a fully implemented automated quotation system would further the information needs of investors and market participants and would add transparency to the penny stock market, as well as provide regulatory and surveillance data. Section 17B provides that the system should collect and disseminate quotation and transaction information; provide firm bid and ask quotations of participating broker-dealers, or comparable accurate and reliable pricing information; and provide for the reporting of the volume of penny stock transactions, including last sale reporting, when volume in the system reaches appropriate levels.[87]

The Commission worked closely with the National Association of Securities Dealers Inc. (NASD) to develop a system that will ultimately meet all the requirements of Section 17B. Even before the legislation was passed, the NASD had made a substantial commitment to achieving the broad goals outlined in the Remedies Act and had introduced the OTC Bulletin Board Service (Bulletin Board). The Bulletin Board provides a real-time quotation medium for NASD members to enter and display quotation information for securities traded over-the-counter that are not included in the NASDAQ System nor listed on a registered securities exchange. The Commission first approved the implementation of the Bulletin Board for a pilot term of one year,[88] and subsequently granted further extensions of the pilot program, most recently extending the pilot through March 31, 1992.[89] As of September 30, 1991, the Bulletin Board displayed quotations/indications of interest on 4,125 securities. Two hundred and thirty firms were registered as market makers, with a total of 10,429 market making positions. On average, 2.5 market making positions were displayed for each security.

Major Market System Developments

The Commission received 11 amendments to various National Market System (NMS) Plans and approved 10. In addition, the Commission received a newly adopted NMS Plan that, if approved, will govern the operation of a linkage among the various options exchanges. Finally, the Commission received 36 proposed rule changes involving NMS issues in 1991 and approved 35 during that period.

On October 10, 1991, the Commission approved a proposal submitted by the NASD to implement the NASDAQ International service for a two-year pilot period. NASDAQ International will support an early trading session in London—it will be available from 3:30 a.m. to 9:00 a.m. EST on each U.S. business day that coincides with the business hours of the London financial markets.[90] NASDAQ International is primarily designed to accommodate international trading by institutional investors in the United States, United Kingdom, and other parts of Europe. It will consist of the basic automation services currently provided during the domestic session to support market making by NASD members in NASDAQ, NASDAQ/NMS, and exchange-listed securities.

On September 6, 1991, the Commission released to the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs a staff report that explored the issues associated with increasing the market information available for high-yield debt securities. This report sought to identify whether transparency (the extent to which information about trading is made available to the public) in the high-yield debt market could be improved. The report concluded that, at least for the 40 to 50 most actively traded high-yield securities, a quote and/or trade reporting system is feasible at this time.

The Commission issued its second Automation Review Policy Statement (ARP II) on May 9, 1991.[91] ARP II provided, among other things, detailed guidelines on the independent review process for the SROs' capacity planning, systems development, contingency planning, and security review programs. ARP II represents the Commission's continuing efforts to promote safe and efficient operation of the securities markets systems and provide further guidance to the SROs for implementation of the recommendations found in the first Automation Review Policy Statement (ARP I).[92] ARP I provided that the SROs, on a voluntary basis, should establish comprehensive planning and assessment programs to determine systems capacity and vulnerability.

On February 20, 1991, the Commission approved a request by Wunsch Auction Systems Inc. (WASI) to exempt its computerized single-price auction system (Wunsch System) from exchange registration under the Exchange Act.[93] The Wunsch System permits institutional and broker-dealer participants to enter buy and sell orders for particular securities selected by WASI that are offered through an auction format. The exemption was based on the limited volume of trades expected to take place through the Wunsch System. In granting the exemption, the Commission found that it was not practicable and not necessary or in the public interest or for the protection of investors for W A SI to register under Section 6 of the Exchange Act. WASI is the first proprietary system to receive such an exemption.

In response to a congressional inquiry, the Commission issued a letter discussing the impact of computerized trading systems on the national market system.[94] In particular, the Commission's response explained that the emergence of a large number and variety of computerized trading systems had furthered the national market system goal of decreasing transaction costs, increasing the transparency of U.S. markets, improving market linkages and best execution opportunities, and enhancing competition in the markets. The Commission recognized the possibility that the number and use of such systems could change, and indicated that the Commission would reexamine the national market system structure and the incentives that Commission regulations may create in light of the burgeoning use of those systems. The Commission's response contemplated that any re-examination would cover not only the current regulatory approach to off-exchange systems, but also would review the Commission's overall approach to current market structure.

National System for Clearance and Settlement

The Commission continued to work with clearing agencies, banks, broker-dealers and other federal regulators to enhance all components of the national system for clearance and settlement. For example, on January 14, 1991, the Commission formed the Market Transactions Advisory Committee pursuant to Section 17A(f) of the Exchange Act.[95] The Advisory Committee's responsibilities include assisting the Commission in identifying state and federal laws that may impede the safe and efficient clearance and settlement of securities transactions and advising the Commission on whether and how to use its authority, under the Market Reform Act, to adopt, in certain circumstances, uniform federal rules regarding the transfer and pledge of securities.

Work continued between the Commission and the United States Group of Thirty Working Committee concerning its recommendations aimed at improving the efficiency and safety of securities markets. These recommendations included moving settlement from the fifth day after trade date to the third day after trade date, using same-day funds in settlement, and adopting direct registration.

Temporary clearing agency registration of Participants Trust Company (PTC),[96] Government Securities Clearing Corporation (GSCC),[97] and MBS Clearing Corporation (MBSCC)[98] was extended by the Commission for another year. PTC provides depository services for mortgage-backed securities, GSCC provides automated trade comparison and netting services for U.S. government securities, and MBSCC provides trade comparison and netting services for mortgage-backed securities.

The Commission published for comment proposed Exchange Act Rule 17Ad-15, which would govern the acceptance of signature guarantees." The rule prohibits inequitable treatment of eligible guarantor institutions, requires transfer agents to establish written standards for the acceptance of signature guarantees, and enables transfer agents to reject a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program.

Government Securities Markets

In 1991, the Commission completed a joint report required by the Government Securities Act of 1986 (GSA) entitled *Study of the Effectiveness of the Implementation of the Government Securities Act of 1986* (October 1990). The report examined the regulatory structure established under the GSA and concluded that the implementation of regulations promulgated under the GSA had met the objectives of Congress. [10°] Further, the Commission supported legislative improvements in the regulatory structure established by the GSA and undertook a joint study with the Department of the Treasury and Federal Reserve System of the oversight of the government securities market in light of allegations of abuse in that market.[101] Recognizing that the overall level of regulation in the market for government securities is lower than for the equities markets, the Commission supported legislation to increase the transparency of the government market, to eliminate gaps in the regulation of abusive sales practices by government securities brokers and dealers, and to prohibit misleading written statements to issuers of government securities in connection with a primary offering.

The Commission supported legislation re-authorizing the Department of the Treasury to promulgate rules in areas specified by the GSA. In addition, the Commission advocated additional regulatory protection for the government market. Specifically, the Commission sought backstop regulatory authority to improve market transparency[102] by requiring government securities brokers and dealers to disseminate transaction and quotation information, on a real-time basis, to all those willing to pay the appropriate fees. Such backstop authority would be triggered only if private sector initiatives prove inadequate.

The Commission also supported legislation that would remove gaps in the NASD's regulation of sales practices. Specifically, the Commission proposed that Congress, by removing certain statutory restrictions on NASD regulation, permit the NASD to apply its rules, including sales practice standards, to transactions by its members in government securities. In supporting such legislation, the Commission sought to allow the NASD to regulate government securities transactions on the same basis as transactions in non-exempt securities.

Finally, the Commission recommended legislation that would amend the general antifraud and anti-manipulation provisions of the Exchange Act to specifically define the use of false or misleading written information in connection with any primary offering of government securities as an express violation of the federal securities laws.

Internationalization

During 1991, the Commission continued its efforts to widen internationalization of financial markets. Many of these developments are discussed in other sections such as " Major Market System Developments" and "National System for Clearance and Settlement" above, as well as sections below on " Options and Other Derivative Products," "Foreign Broker-Dealers," "International Offerings," "Financial Responsibility Rules," and "Oversight of Self-Regulatory Organizations."

In addition to the initiatives mentioned elsewhere, the Commission provided technical assistance to several emerging market countries, including Greece, Hungary, Bulgaria, and Poland. The Commission's assistance in this area has centered on providing advice regarding regulatory structures for the government and SROs, practical advice on clearance and settlement systems, and review of proposed legislation and rules.

The Commission has been an active participant in the working groups of the International Organization of Securities Commissions (IOSCO). In particular, as a member of the Working Party on the Regulation of Secondary Markets, the Commission discussed issues concerning the coordination between cash and derivative markets, screen-based trading systems, and the importance of transparency in order-driven and dealer markets. At the annual meeting of IOSCO in September 1991, the Commission staff presented a paper discussing critical issues raised by automation in the securities markets, including the nature of regulatory structures appropriate for automated trading systems, market efficiency goals in such an environment, and system integrity in computerized markets.[103]

The Commission also participated actively in the Working Party on Regulation of Market Intermediaries. The primary focus of this Working Party has been determining capital adequacy standards for multinational securities intermediaries. Capital adequacy rules are critical to the soundness of securities firms. With the increasing amount of cross-border activities by such firms, the financial status of a firm in one country may affect the firm or its affiliates' activities in other countries.

Options and Other Derivative Products

During 1991, the Commission approved changes to SRO rules intended to address market volatility concerns, particularly those arising in the markets for equity securities and derivative instruments related to the equity markets. For example, the Commission extended the effectiveness of New York Stock Exchange (NYSE) Rule 80A, which provides for a pilot program that places conditions on the execution of index arbitrage orders to buy or sell component stocks of the Standard & Poor's 500 Stock Price Index (S&P 500 Index) when the Dow Jones Industrial Average (DJIA) advances or declines by 50 points or more from its closing value on the previous day.[104]

The Commission also approved rule changes submitted by the American Stock Exchange (Amex), Midwest Stock Exchange (MSE), NYSE, Philadelphia Stock Exchange (Phlx), and NASD to extend the effectiveness of their circuit breaker procedures.[105] In general, the circuit breaker procedures provide that trading in all markets will halt for one hour if the DJIA declines 250 points or more from the previous day's closing level and, thereafter, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close.

A proposal by the Chicago Board Options Exchange (CBOE) to reduce from 15 minutes to five minutes the time interval that the CBOE can declare a delayed opening in index options was approved by the Commission.[106] Under the new procedures, if an opening delay is declared by the CBOE, the CBOE can open at 8:35 a.m., 8:40 a.m., or at the end of any succeeding five-minute interval.

The Commission also approved proposals to permit trading of new financial instruments, including:

• Trading in long-term equity options on the Amex and long-term equity and stock index options on the Pacific Stock Exchange (PSE) and Phlx, which options are designed to provide investors with additional means to hedge investment portfolios against long-term market risk.[107]

• Trading in long-term options on reduced value indexes on the CBOE, Phlx, and Amex.

• Listing and trading warrants based on the CAC-40 Index on the Amex, CBOE, MSE, NYSE, Phlx, and PSE. The CAC-40 is an internationally recognized, capitalization-weighted index consisting of 40 leading stocks listed and traded on the Paris Bourse and calculated by the Societe des Bourses Franchises.[108]

• Trading in warrants based on the Financial Times-Stock Exchange 100 Index (FT-SE 100 Index) on the CBOE and the MSE. The FT-SE 100 Index is an internationally recognized capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the London Stock Exchange.[109]

• Listing and trading of currency warrants on the PSE, subject to the same minimum listing and trading criteria that apply to index warrant issues.[110]

The Commission proceeded with several proposals relating to financial futures. The division issued a letter to the Commodity Futures Trading Commission (CFTC) indicating that the division would not object if the CFTC staff were to take a no-action position to allow the offer and sale to U.S. citizens of futures contracts overlying the All Ordinaries Stock Price Index, a broad-based index of Australian stocks.[111] The division also sent a letter to the CFTC indicating that the SEC does not object to designation of the Chicago

Board of Trade (CBT) as a contract market to trade options on Major Market Index (MMI) futures.[112]

Finally, the Commission proposed amendments to Rule 3al2-8 under the Exchange Act that would designate debt obligations issued by the Republics of Ireland and Italy as exempted securities. The purpose of these proposed amendments is to permit the marketing and trading of futures contracts on those securities in the United States.[113]

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

Broker-Dealer Examination Program

The primary purpose of the broker-dealer examination program is to provide Commission oversight of the SROs responsible for the routine examination of those broker-dealers conducting a public securities business. This oversight evaluation process is accomplished primarily through the examination of broker-dealer firms recently examined by a SRO. Additionally, cause examinations are conducted when the Commission becomes aware of circumstances that warrant direct Commission inquiry rather than a SRO review.

During 1991, 442 oversight examinations and 121 cause examinations were completed. Findings from 65 examinations were referred to the Commission's enforcement staff and referrals to SROs were made in 53 examinations.

The number of oversight examinations increased by 19% over the number of oversight examinations completed in 1990. However, fewer cause examinations were completed than in 1990 because that staff conducted more examinations of penny stock firms on an oversight rather than a cause basis. In addition, the NASD examined a large number of penny stock broker-dealer branch offices that the staff had planned to examine on a cause basis.

A significant aspect of the broker-dealer examination program involved examinations of franchised branch offices of penny stockbroker-dealers. Particular concern focused on whether registered broker-dealers were exercising sufficient control over the activities of these offices, and, if not, whether the franchised branch office should be separately registered as a broker-dealer. In coordination with the NASD, the staff reviewed supervisory procedures and recordkeeping at these offices, looking particularly for evidence of unregistered salespersons and broker-dealer operations as well as sales practice abuses. An unregistered broker-dealer was discovered during one of these examinations and legal action was promptly instituted against the firm.

During 1991, the oversight examination staff examined 75 NYSE member firms, including comprehensive financial and operational reviews of four of the largest NYSE member firms. Several complex issues related to one firm's possession and control of securities and the maintenance of its special reserve bank account (for the exclusive benefit of customers) arose during the examination. The issues were resolved through the combined efforts of the Commission and other securities industry regulators. At another firm, errors in net capital and customer reserve formula computations were identified as well as serious systemic weaknesses in the firm's compliance with credit restrictions of Regulation T. In addition to the above 4 examinations, the Commission's staff examined 71 other NYSE member firms.

Transfer Agent Examinations

The regional offices conducted 140 examinations of registered transfer agents and 10 examinations of federally regulated banks. In total, the program resulted in 93 deficiency letters, 18 registration cancellations or withdrawals, 9 referrals to the Division of Enforcement, 5 staff conferences with delinquent registrants, and 3 referrals to federal bank examiners.

Form BD Amendments

As the result of ongoing discussions between Commission staff, the North American Securities Administrators Association's Forms Revision Committee, representatives of the NASD and the securities industry, in September 1991 the Commission published for comment amendments to Form BD, the uniform registration form for broker-dealers under the Exchange Act.[114] The amendments would update the disciplinary background provisions of the form to reflect the amendments to the federal securities laws made by the Market Reform Act and the International Securities Enforcement Cooperation Act of 1990,[m] and eliminate reporting of certain minor SRO rule violations. The amendments also would revise the content and structure of the form's schedules to provide the Commission and the SROs with more useful information concerning applicants for registration. In addition, the amendments would eliminate duplication of information filed on various forms with the NASD through the Central Registration Depository system and clarify certain items contained in the form.

Foreign Broker-Dealers

The Commission issued several no-action letters in 1991 in response to developments in the international capital markets. Of particular note is a no-action letter issued to the NASD[116] permitting United Kingdom broker-dealers affiliated with registered United States broker-dealers that are members of the NASD to participate in the NASD's NASDAQ International service during the period of time for which the Commission has approved the operation of the service,[117] without registering with the Commission as broker-dealers under Section 15(b) of the Exchange Act. The NASD represented that approved U.K. affiliates would be permitted to enter quotations in the service for certain eligible U.S. securities only as agent for their sponsoring NASD member broker-dealers. Sponsoring NASD member broker-dealers would be responsible, among other things, for ensuring that their affiliated U.K. broker-dealers comply with the NASD's rules governing the service.

International Offerings

During 1991, the Commission addressed several types of transactions involving concurrent U.S. and foreign distributions, rights offers and tender offers, including:

• Rule 10b-6, which proscribes certain conduct by persons participating in a distribution to prevent artificial conditioning of the market for a security to facilitate the distribution;

• Rule 10b-7, which governs market stabilization activities during an offering;

• Rule 10b-8, which governs the market activities of participants in a rights offering; and

• Rule 10b-13, which prohibits participant purchases otherwise than pursuant to a tender or exchange offer from the time such offer is publicly announced until the offer expires.

The Commission granted relief under these anti-manipulation rules for multinational offerings to permit non-U.S. persons to continue certain customary market activities in foreign jurisdictions during multinational transactions, subject to certain conditions designed to prevent a manipulative impact on the U.S. market. Several examples are listed below.

• An exemption was granted to permit distribution participants and their affiliated purchasers (except issuer affiliates) to continue ordinary market making activity in certain foreign markets, when the issuer is distributing Rule 144A securities to qualified institutional buyers in the United States.[118]

• Common share specialists affiliated with an underwriter were granted an exemption to make bids for and to purchase shares on the Montreal Exchange during a multinational distribution by a Canadian issuer.[119]

• Certain Mexican banks affiliated with the government of Mexico, a selling shareholder, were permitted to continue their ordinary trading activity prior to and during a multinational offering of a Mexican issuer's securities.[120]

• Affiliated market makers on the Paris Options Market were granted an exemption to continue market making in standardized options during a distribution of the underlying security, subject to certain conditions.[121]

• In connection with a rights offering of a Danish issuer, underwriters were permitted to bid for or purchase common shares and rights on the Copenhagen Stock Exchange and on the London Stock

Exchange's SEAQ International system, subject to certain conditions.[122]

In connection with the adoption by the Commission of the United States-Canadian Multijurisdictional Disclosure System (MJDS), which is designed to facilitate cross-border capital formation,[123] the Commission granted exemptions from Rules 10b-6 and 10b-13 to permit securities purchases that are allowed under Canadian provincial tender offer rules, subject to certain conditions.[124] Also, the Commission permitted "passive market making" in specialist-type arrangements on the Toronto Stock Exchange and the Montreal Exchange in connection with cross-border distributions qualifying for MJDS.[125]

In the context of cross-border rights offerings pursuant to certain proposed Securities Act rules and forms, the Commission proposed to issue an order to exempt distribution participants from Rules 10b-6, 10b-7, and 10b-8, subject to certain conditions.[126] The Commission proposed exemptions from Rules 10b-6,10b-7, and 10b-13 during tender and exchange offers conducted pursuant to certain proposed rules and forms designed to facilitate the inclusion of United States investors in tender and exchange offers for a foreign target's securities.[127] The Commission also proposed an exemption from Rule 10b-13 for tender and exchange offers for United Kingdom issuers subject to certain United Kingdom regulations.[128]

Public Disclosure of Material Short Positions

The Commission issued a concept release soliciting public comment on whether to require public reporting of material short positions in publicly traded securities in a manner analogous to the annual reporting requirement for material long security positions.[129]

Financial Responsibility Rules

On February 28, 1991, the Commission adopted final amendments to the net capital rule that relate to the ability of an affiliate of a registered broker-dealer, including its holding company, to withdraw capital from the broker-dealer. The amendments stemmed from concerns raised in large part by the Commission's experience in the liquidation of Drexel Burnham Lambert, Inc.

The amendments, which became effective May 5, 1991:

- prohibit withdrawals of capital that would cause the broker-dealer's net capital to decline below 25 percent of its deductions related to securities positions under the rule, unless the broker-dealer has the prior approval of the Commission;

- require the broker-dealer to notify the Commission two business days in advance of withdrawals of capital that would exceed 30 percent of the broker-dealer's excess net capital, or within two business days of withdrawals that would exceed 20 percent of the broker-dealer's excess net capital (notice would not be required in the event of a withdrawal of less than $500,000); and

- permit the Commission, by order, to prohibit withdrawals of capital for a period of up to 20 business days if the proposed withdrawals would exceed 30 percent of the broker-dealer's excess net capital and the Commission believed such withdrawals would be detrimental to the financial integrity of the firm or would unduly jeopardize the broker-dealer's ability to pay its customers or creditors.

In 1991, two rating agencies were added to the list of nationally recognized statistical rating organizations (NRSROs): IBCA Limited and its subsidiary, IBCA Inc., and Thomson Bankwatch, Inc. The staff specified in no-action letters issued to the rating agencies the types of debt for which they may be considered NRSROs.[130] On July 9, 1991, the division issued a no-action letter to the Phlx and CBOE indicating that broker-dealers computing charges under Rule 15c3-1(c)(2)(x) or Rule 15c3-1a may, if in compliance with conditions set forth in the letter, (i) treat foreign currency futures contract positions as underlying securities when such positions are used to offset foreign currency option positions in the same underlying currency, and (ii) treat options on foreign currency futures contracts as security options.

On the same date, the Commission issued a no-action letter to the CBOE indicating that broker-dealers may utilize a free allocation method in computing certain net capital charges for options positions.

Lost and Stolen Securities

Rule 17f-1 under the Exchange Act sets forth participation, reporting, and inquiry requirements for the Lost and Stolen Securities Program (Program). As of September 31, 1991,23,402 institutions were registered in the Program. Statistics for calendar year 1990 (the most recent year available) reflect the Program's continuing effectiveness. During that year, registered institutions reported as lost and stolen, missing or counterfeit 651,305 certificates valued at $2,593,031,073. Those institutions also reported the recovery of 121,819 certificates valued at $784,063,449. At the end of 1990, the aggregate value of securities contained in the Program's database was $18,434,695,610. Program participants *(e.g.,* banks and broker-dealers) made inquiries concerning 2,695,945 certificates. Inquiries concerning 13,418 certificates valued at $130,852,732 matched reports of lost, stolen, or missing securities on file in the database.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 1991, there were eight active securities exchanges registered with the Commission as national securities exchanges: Amex, Boston Stock Exchange (BSE), CBOE, Cincinnati Stock Exchange (CSE), MSE, NYSE, Phlx and PSE.[131] During 1991, the Commission granted exchange applications to delist 95 debt and equity issues and two options issues, and granted applications by issuers requesting withdrawal from listing and registration for 37 issues. In addition, the Commission granted 1,016 exchange applications for unlisted trading privileges.

The exchanges submitted 248 proposed rule changes to the Commission during 1991. Many of these filings are described in the section above entitled "Securities Markets, Facilities, and Trading." Among the most notable other rule filings that were approved by Commission were proposals by the Amex, BSE, MSE, NYSE, Phlx, and PSE to initiate limited off-hours trading sessions. The NYSE's Off-Hours Trading (OHT) facility extended the NYSE's daily trading hours beyond the regular hours of 9:30 a.m. to 4:00 p.m. (eastern time) to establish two new trading sessions: Crossing Session I, which permits the execution of single-stock, single-sided closing-price orders, and crosses of single-stock closing-price buy and sell orders at 5:00 p.m. (eastern time); and Crossing Session II, which allows the execution of crosses of multiple-stock aggregate-price buy and sell orders from 4:00 p.m. to 5:15 p.m. (eastern time). The Commission approved the OHT facility on May 20, 1991 for a two-year temporary period ending May 24, 1993. It began operation on June 13, 1991.[132]

The Commission also approved an Amex proposal to permit the execution after the close of single-sided, closing-price orders and crosses of closing-price buy and sell orders.[133] In response to the NYSE and Amex proposals, several of the regional stock exchanges established requirements that their specialists provide primary market protection to limit orders designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours sessions.[134] In addition, the PSE's post-l:00 p.m. (pacific time) auction trading market hours were extended to 1:50 p.m. (pacific time), permitting the entry and execution of the same types of orders as during the PSE's current 1:00-1:30 p.m. (pacific time) trading session.[135]

The Commission approved a proposed rule change authorizing the CBOE to trade stocks, warrants, and other securities instruments and contracts. The CBOE was previously only a marketplace for options contracts.[136]

The Division issued a report entitled *Market Analysis of October 13 and 16, 1989* (December 1990) that contained a detailed analysis of market performance on these two days of heavy trading volume and extreme price decline and volatility. The report analyzes the performance of the U.S. securities and options markets in three distinct areas: market maker and specialist performance, clearance and settlement, and exchange operations. While the division found that performance in all three areas has improved substantially as a result of the implementation of many of the recommendations contained in the division's 1987 Market Break Report, the division nevertheless made specific recommendations in several areas where performance could be further improved.

National Association of Securities Dealers

The NASD, with over 5,800 member firms, is the only national securities association registered with the Commission. It is the operator of the NASDAQ System, the second largest stock market in the United States, and the third largest in the world (after the Tokyo Stock Exchange and the NYSE). In 1991, the NASD reported a total of 922 final disciplinary actions, which consisted of 781 formal and summary disciplinary actions by its district committees and 141 formal and summary actions by its NASDAQ and market surveillance committees.

In addition, the Commission received 68 proposed rule changes filed by the NASD and approved 57 proposed rule changes in 1991. Among the significant changes approved by the Commission was a proposal to revise the criteria for initial and continued inclusion for regular (non-NMS) NASDAQ securities.[137] These requirements were last amended in 1981. Since that time, significant changes in the NASDAQ market and in the regulatory regime under which it operated, had occurred. For example, since 1981 the number of issues included in the NASDAQ system (regular and NMS) increased 28% from 3,687 issues in 1981 to 5,144 issues in 1988. The revised initial authorization criteria include a minimum of two market makers per issue, total issuer assets of at least $4 million, capital and surplus of at least $2 million, a minimum bid price per share of $3, and a minimum public float market value of $1 million. The revised maintenance criteria include a minimum of two market makers per issue, a minimum of $2 million in total issuer assets, minimum capital and surplus of $1 million, a minimum bid price per share of $1, and a public float market value of at least $200,000.

The Commission also approved a series of four proposals to amend the NASD's rules regarding the operation of the Small Order Execution System (SOES).[138] SOES was designed by the NASD as an efficient and economical system for the automated execution of retail customer orders of limited size. The four rules: (1) expand the definition of professional trading account; (2) expand the definition of day trading; (3) establish a 15-second delay between SOES executions to permit market makers to update their quotations; and (4) allow market makers to specify the firms from which they are willing to receive preferenced orders.

In addition, the Commission approved a NASD proposed rule change that grants permanent approval to the limit order capability for SOES.[139] The limit order processing capability serves the purpose of permitting NASD members, and in particular members that do not have proprietary systems with such capability, to enter and store limit orders. The limit order capability, as approved, contains the following features: (1) an alert that will bring to the SOES market maker's attention those limit orders that are priced within the inside market and that potentially match another order already pending on the limit order file; (2) a take-out function that allows a market maker to execute limit orders at a specific price without changing its quote; and (3) a matching function that will automatically match and execute orders in the limit file if after five minutes the matched order has not been executed. The limit order file became operative in December 1990.

The Commission also approved a rule change that amended the NASD By-Laws to incorporate, for NASDAQ/NMS securities only, the language set forth in SEC Rule 19c-4[140] regarding shareholder voting rights. The rule essentially prohibits the quotation of a NASDAQ / NMS issuer's common stock or other equity securities if the issuer issues any class of stock or takes other corporate action that would have the effect of nullifying, restricting or disparately reducing the per share voting rights of outstanding common stock shareholders. Thus, the proposal prohibits the disenfranchisement of existing holders of an outstanding class or classes of common stock of a NASDAQ/NMS issuer. The amended rule sets forth the following actions, which are presumed to be disenfranchising: (1) time-phased voting, (2) capped voting plans, (3) super voting stock distributions, and (4) exchange offers. On the other hand, the following actions are presumed not to be disenfranchising, and thus are permitted: (1) initial public offerings, (2) subsequent issuances of lower voting stock, (3) bona fide mergers and acquisitions, and (4) stock dividends.

The Commission also approved a proposed rule change that prohibits NASD members from receiving compensation for soliciting votes or tenders from participants in connection with a roll-up of a direct participation program (DPP) unless such compensation meets certain criteria.[141] The compensation must be: (1) payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively on the proposed roll-up; (2) in the aggregate, not in excess of two percent of the exchange value of the newly created securities; and (3) paid regardless of whether the participants reject the proposed roll-up. In addition, the rule prohibits members or persons associated with a member firm from participating in the solicitation of votes or tenders in conjunction with the roll-up of a DPP unless the general partner or sponsor proposing the roll-up agrees to pay all soliciting expenses related to the roll-up, including all preparatory work related thereto, in the event the roll-up is not approved.

Arbitration

The Commission has approved proposed rule changes by both the NASD and national securities exchanges that strengthen the arbitration rules for disputes between investors and broker-dealers. The arbitration rules of the NASD, the Amex, the CBOE, and PSE were amended to facilitate the joinder and consolidation of different parties' claims.[142] The NASD and CBOE also amended their arbitration rules to clarify their ability to institute disciplinary actions against members and associated persons of members that fail to honor awards issued by arbitrators.[143] The NASD and Amex expanded the required contents of arbitrators' awards to include the name of counsel (if any) and the type of securities product(s) involved in the dispute.[144] The Amex, CBOE, and PSE also amended their rules to require the prompt payment of arbitration awards and the payment of interest on those awards in certain instances.[145]

Clearing Agencies

During 1991, the Commission received 100 proposed rule changes from registered clearing agencies. The Commission approved 98 such proposed rule changes and three proposed rule changes were withdrawn by the clearing agencies. The approved rules included the following proposals:

• Depository Trust Company's (DTC) establishment of a repurchase (repo) agreements tracking system that allows DTC to isolate the portion of each participant's position that is subject to a repo transaction;[146]

• GSCC's comparison and netting of trades in U.S. Treasury securities that occur prior to the U.S. Treasury auction;[147]

• GSCC's expansion of its netting service to include book-entry zero coupon securities;[148]

• Options Clearing Corporation's (OCC) extension of its Theoretical Intermarket Margin System to equities;[149]

• OCC and Intermarket Clearing Corporation expansion of their respective valued securities programs *(i.e.,* the forms of acceptable margin) to include certain preferred stock and corporate debt issues;[150]

• PTC elimination of the pro rata charge to PTC participants for the cost of financing principal and interest advances;[151]

• permit PTC to join the Securities Clearing Group;[152] and

• National Securities Clearing Corporation, Midwest Clearing Corporation and PTC establishment of liability notice procedures for book-entry, deliverable instruments that have exercise privileges.[153]

Municipal Securities Rulemaking Board

The Commission received seven proposed rule changes from the Municipal Securities Rulemaking Board (MSRB) and approved six. Of particular note, on June 6, 1991, the Commission approved a proposed rule change that permits the MSRB to establish and operate a central electronic facility, the Municipal Securities Information Library, through which information regarding municipal securities and their issuers would be made available to market participants and information vendors. The Commission also approved a proposed rule change that amends MSRB Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB.

Inspections of SRO Surveillance and Regulatory Compliance

The staff conducted an inspection of the NYSE oversight programs for specialist trading. The inspection generally revealed improvement in all program areas since the previous inspections in 1987 and 1988. In particular, the staff found that the NYSE has developed effective automated surveillance programs for specialist trading and specialist financial standing. Significant changes were made in the allocation procedures for equity securities and in performance reviews. Similarly, enhancements were made in the monitoring of the financial condition of exchange specialists. Finally, the staff found that both the Member Trading Analysis Department and the Enforcement Department were functioning adequately.

An inspection of the NASD's Market Surveillance Committee (MSC) revealed that the MSC was performing its duties properly. Nonetheless, in connection with investigations filed without action, the staff recommended that the NASD forward additional information to the MSC, thereby facilitating its review. The inspection team also suggested that the MSC consider the severity and repetitiveness of violations as well as prior disciplinary history when determining appropriate sanctions.

In March and April 1991, the staff evaluated the corporate bond markets following discussions with broker-dealers, SROs, and institutional investors. The staff recommended that bond trading surveillance systems be enhanced by the SROs with responsibility for the most active bond markets, *i.e.,* the NASD and the NYSE.

An inspection of the surveillance, investigatory, and disciplinary programs of the PSE found that these programs were functioning adequately. Recommendations made in the previous inspection had been implemented. According to the inspection staff, however, some areas warranted continued consideration and improvement. In particular, the staff recommended that the PSE improve the accuracy of its audit trail information and the efficiency of its automated surveillance capabilities, and make improvements to the PSE specialist financial surveillance procedures.

The staff conducted an inspection of the BSE. The staff found that the BSE's surveillance and compliance programs for primary issues were functioning adequately, and that the exchange was currently establishing a comprehensive surveillance program for its secondary issues. The staff suggested that the BSE develop a formal case tracking system, routinely request information from member firms concerning trade activity in the securities of certain issuers, and request issuer chronologies in all insider trading investigations. The staff also recommended that the BSE review its automated parameters for detecting possible marking-the-close and prearranged trading. In a follow-up inspection of the Boston Stock Exchange Clearing Corporation (BSECC), the staff recommended that the BSECC monitor its specialists more closely, seeking additional clearing fund deposits where necessary, and increase the specialists' minimum net capital requirements.

The staff also conducted routine inspections of the surveillance, investigatory, and disciplinary programs of the MSE and CSE. While the programs were functioning adequately at both exchanges, the staff recommended enhancements to the surveillance reviews, improved documentation and coordination with other SROs, as well as more stringent sanctions for trading violations.

The staff conducted two inspections of the NYSE's Division of Member Firm Regulation. The first inspection evaluated the NYSE's Sales Practice Review Unit's (SPRU) effectiveness in implementing NYSE examination procedures and the adequacy of detection and disposition of sales practice abuses uncovered through its routine and special examination program. The staff concluded that, overall, SPRU generally conducts a satisfactory review of member firms' sales practice activities. Although the staff found that the NYSE had made significant improvements in the review of member firms' sales practice activities, the staff noted the need for additional work on improving the depth and quality of options sales practice examinations. Other minor deficiencies were discovered concerning implementation of examination procedures and the documentation of examination findings. The staff made several recommendations and urged the NYSE to continue to improve its programs for monitoring sales practice examinations.

The second inspection of the NYSE Division of Member Firm Regulation evaluated the programs used by the exchange to monitor the transfer of customer accounts by NYSE member firms. The staff concluded that, overall, the NYSE has adequately addressed deficiencies noted in the staff's 1989 inspection of customer account transfers and currently is conducting a satisfactory review of the transfer of customer accounts by NYSE member firms. The staff cited the NYSE's continued efforts to improve its transfer of accounts supervision through the improvement of the existing programs and the implementation of new programs. The staff nevertheless found minor deficiencies in the NYSE's programs. These deficiencies involved procedures for monitoring and enforcing compliance with NYSE governing standards (Rule 412) and the documentation of the transfer of account process. The staff made several recommendations to correct these deficiencies.

The Commission's 9 regional offices conducted routine oversight inspections of regulatory programs administered by 9 of the NASD's 11 districts. In 1991, the NASD reorganized and reconfigured its district offices. Although the number of NASD offices remained at 14, the number of actual NASD districts has been reduced from 14 to 11. Inspections of NASD district offices included evaluations of the districts' broker-dealer examinations, their financial surveillance and formal disciplinary programs, as well as investigations of customer complaints, terminations of registered representatives for cause, and members' notices of disciplinary action. Although the inspections disclosed minor deficiencies involving a variety of issues, the inspections revealed that, overall, the NASD districts conduct effective regulatory programs for member firms.

The staff conducted comprehensive inspections of the arbitration programs administered by the arbitration departments at the PSE, MSRB, and CBOE. These inspections were designed to evaluate the effectiveness of these SRO programs in the processing and resolution of disputes between members and their customers. In particular, the staff reviewed the adequacy of case documentation, the efficiency of the case management systems, and the role each department played in processing its cases.

The PSE arbitration inspection disclosed that the PSE generally administers a satisfactory arbitration program. The staff, however, noted several deficiencies relating to arbitrator disclosure and case processing methods. Arbitrator profiles contained insufficient disclosure on employment history and were not updated each time an arbitrator was used. With regard to case processing, the staff found delays in executing service of the statement of claim on respondents, and noted that requests for extension of time for filing an answer were made and granted after the date the answer was due. The staff made several recommendations to remedy these weaknesses.

The MSRB arbitration inspection revealed that the MSRB generally administers its program satisfactorily. Nevertheless, the staff discovered certain deficiencies. The more serious deficiencies were similar to those identified in the PSE arbitration inspection, *i.e.,* inadequate disclosure in arbitrator profiles and delay in the service of process. Among other recommendations, the staff suggested that the MSRB have another trained member of its staff help process claims when MSRB arbitration staff members are absent.

The CBOE arbitration inspection disclosed that the CBOE generally administers its arbitration program satisfactorily and revealed deficiencies similar to those found in the PSE and MSRB arbitration inspections. The staff also discovered that CBOE staff batches several simplified claims together before sending them to an arbitrator for review. The staff found that this policy needlessly injected delay into the processing of some simplified claims. Moreover, the CBOE used only a few different arbitrators. For example, only two arbitrators were used in all 28 simplified arbitration claims during the two-year span covered by the staff's review. The staff made recommendations to remedy these and other minor deficiencies found in the inspection.

During 1991, the staff continued to develop the automated data collection and analysis capabilities for its Market Watch program. Existing Market Watch systems were upgraded substantially, and new systems providing access to data regarding the Wunsch Auction System and Instinet were added. Expanded programs were implemented to monitor when-issued and regular-way trading and financing activity in United States Treasury securities. In addition, stand-alone databases have been established for monitoring significant positions in index options and futures prior to expirations. Other databases have been developed in a variety of other areas, such as futures-related data shared with the staff by the Tokyo Stock Exchange. Finally, the staff updated frequently the Commission's Market Volatility Contingency Plan (MVCP).

Applications for Re-entry

During 1991, the Commission received 47 SRO applications to permit persons subject to disqualifications, as defined in Section 3(a)(39) of the Exchange Act, to become or remain associated with broker-dealers. The distribution of filings among the SROs was NASD, 39 and NYSE, 8. Of the filings processed in 1991, including those received but not completed in 1990,2 were subsequently withdrawn and 45 were completed. No applications were denied.

SRO Final Disciplinary Actions

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

In 1991, the Amex filed 32 Rule 19d-1 reports; the BSE filed 3; the CBOE filed 126; the MSE filed 8; the NYSE filed 290; the Phlx filed 47; the PSE filed 62; the registered clearing agencies, the Cincinnati and Spokane Stock Exchanges filed none; and the NASD filed 922.

Securities Investor Protection Corporation (SIPC)

The SIPC Fund amounted to $662.5 million on September 30, 1991, an increase of $105.1 million from September 30, 1990. Further financial support for the SIPC program is available through a $500 million confirmed line of credit established by SIPC with a consortium of banks. In addition, SIPC may borrow up to $1 billion from the United States Department of the Treasury, through the Commission.

Investment Companies and Advisers

The Division of Investment Management oversees the regulation of investment companies and investment adviser sunder two companion statutes, the Investment Company Act of 1940 (Investment Company Act) and the Investment Advisers Act of 1940 (Investment Advisers Act), and administers the Public Utility Holding Company Act of 1935 (Holding Company Act).

Key 1991 Results

In 1991, the Commission tightened the regulation of money market funds in amendments to Rule 2a-7 under the Investment Company Act, redirected its inspection resources to inspect funds in the 100 largest investment company complexes and all money market funds, and continued its reexamination of the regulation of investment companies.

Investment Company and Adviser Inspection Program

The number of registered investment companies increased by nearly four percent during 1991. Many investment companies combine several separate portfolios or investment series in one investment company registration statement. The number of series generally ranges from three to ten. However, some unit investment trusts group as many as 900 separate series under one Investment Company Act registration. In addition, the Commission was responsible for regulating 17,500 investment advisers at the end of 1991, a 28 percent increase since 1987.

Although the Investment Advisers Act establishes a system of registration and regulation designed to disclose to clients the basic facts about an adviser and to hold the adviser to the highest standards of honesty and loyalty expected of a fiduciary, the primary means by which the SEC enforces the Investment Advisers Act is through a program of periodic inspections.

Redirection of Program Resources

A program of annual inspection of funds in the largest 100 investment company complexes and all money market funds was instituted in 1991. The inspection program redirected its resources away from routine examination of all investment companies and advisers. Investment advisers managing at least $1 billion of non-investment company money were put on a three-year inspection cycle. These changes were made in response to the increasing concentration of money under management by these large entities. In addition, the staff conducted inspections of other investment companies and investment advisers in response to customer complaints and other indications of possible problems.

Investment companies in the 100 largest complexes have approximately 87 percent of the investment company industry's assets while the 500 largest investment advisers managed 61 percent of all the assets under management. Money market mutual funds have approximately $550 billion of assets and have become a popular alternative to insured bank deposits for the liquid savings of many Americans. By focusing the Commission's examination resources on these large pools of capital, the staff is able to monitor more closely those entities where a major problem could have a significant negative impact on investor confidence and willingness to participate in the nation's financial markets.

Results Achieved by the Program

The staff conducted inspections of funds within each of the 100 largest investment company complexes, focusing on portfolio management activities. Each of the 999 money market mutual funds also was inspected. Total assets of funds inspected were $1.1 trillion. The staff inspected 574 investment advisers managing nearly $1.6 trillion of non-investment company assets. These inspections covered approximately 3 percent of registered investment advisers and about 39 percent of non-investment company assets under management. These inspections, among other things, resulted in 427 deficiency letters and 37 references to the Commission's Division of Enforcement.

Regulatory Policy

Significant Investment Company Developments

In February 1991, the Commission adopted amendments to rules and forms affecting money market funds, including amendments to Rule 2a-7 under the Investment Company Act, which permits money market funds to maintain a stable price of $1.00 per share.[154] The amendments require prominent disclosure that an investment in a money market fund is neither insured nor guaranteed by the United States government and that there is no assurance that the money market fund will be able to maintain a stable price per share. The amendments reduce the maximum dollar-weighted average portfolio maturity of money market funds from 120 days to 90 days and require that no money market portfolio security (other than U.S. government securities held by certain types of money market funds) have a maturity in excess of 397 days.

Under the amendments, money market funds may invest only in eligible securities. Eligible securities are those that have received at least the second highest rating from a nationally recognized statistical rating organization (NRSRO) or, if more than one NRSRO has rated the securities, from two NRSROs, or are unrated securities of comparable quality. In addition, money market funds (other than tax-free money market funds) may not invest (1) more than five percent of fund assets in securities of any one issuer, except for U.S. government securities and temporary investments in securities of the highest quality, (2) more than five percent of total fund assets in "second tier" securities, *i.e.,* eligible securities that are not "first tier" securities (eligible securities that have received the highest rating from a NRSRO or, if more than one NRSRO has rated the securities, from two NRSROs, or are unrated securities of comparable quality), and (3) more than one percent of fund assets in the second tier securities of any one issuer. The amendments also specify the actions that a money market fund must take if it holds securities that have gone into default or the ratings of which have been downgraded and clarifies the circumstances under which a money market fund board of directors may delegate certain portfolio management responsibilities to the fund's investment adviser. Finally, the rule prohibits any registered investment company from holding itself out as a money market fund unless it meets the conditions of Rule 2a-7 relating to portfolio diversification, quality, and maturity.

In October 1991, the Commission adopted new Rule 3a-6 (and amendments to certain related rules) under the Investment Company Act to exempt foreign banks and insurance companies from the definition of the term "investment company" as used in the Investment Company Act.[155] The new rule eliminates the need for these foreign entities and, subject to certain conditions, their holding companies and finance subsidiaries to obtain exemptive orders from the Commission in order to offer and sell their securities in the United States.

The division's task force, responsible for reexamining the regulation of investment companies, is finalizing its recommendations. The division expects to recommend both legislative and rule changes to reform the treatment of investment companies under the Investment Company Act. During 1991, the task force reviewed and analyzed over 200 comment letters received in response to the Commission's request for comment on issues identified as meriting reexamination, which included (1) internationalization and cross-border sales of investment company and investment advisory services, (2) alternative structures for investment companies, (3) securitization of assets under the Investment Company Act, (4) distribution of the shares of open-end investment companies, (5) repurchase of shares by closed-end investment companies, (6) advertising by open-end companies under the Securities Act of 1933 and the prospectus delivery requirements for unit investment trusts and open-end companies, (7) reform of insurance product regulation, and (8) bank involvement with investment companies.[156]

Significant Insurance Products Developments

During 1991, there were a number of insurance company insolvencies. In those instances where the insurance companies were the sponsors of separate accounts registered as investment companies that sell variable insurance contracts, the insolvencies raised novel legal issues regarding the relationship between state insurance law and the Investment Company Act. When a troubled insurance company is placed under state supervision, a state court usually imposes restraints on surrender and withdrawal rights under insurance contracts issued by the company. Variable insurance contracts, however, are subject to the Investment Company Act, which prohibits the suspension of redemptions for more than seven days. When state regulators seized an insurance company, the staff conferred directly with state insurance regulators to ensure that the responsible state court did not impose any restraints on surrenders or withdrawals under variable insurance contracts absent a Commission order.

Insurance companies that wish to maintain continuous offerings of variable life insurance and variable annuity contracts must file post-effective amendments to the registration statements of the separate accounts funding these contracts. On November 15, 1991, the staff issued a letter to insurance company sponsors/ depositors of separate accounts registered as investment companies to assist registrants in preparing disclosure documents. The letter included comments about recent substantive and procedural developments. For example, several recent variable annuity registration statements have included a chart or graph designed to demonstrate the advantages of tax-deferred investment. The letter described those factors registrants should consider in developing tax-deferral charts that are accurate and fair.

As a result of recent inspections of insurance company separate accounts, the staff became concerned that agents of insurance companies were not promptly forwarding applications and payments to the companies, and, hence, that investors were not acquiring interests in the separate accounts at their current offering prices. The staff also became concerned about the pricing and payments of death benefits under variable insurance contracts. An industry comment letter advised registrants that these practices will continue to be an important focus of separate account inspections.

Significant Institutional Disclosure Program Developments

Section 13(f)(l) of the Securities Exchange Act of 1934 and Rule 13f-1 require "institutional investment managers" exercising investment discretion over accounts holding certain equity securities with a fair market value of at least $100 million to file quarterly reports on Form 13F. Under Rule 13f-2T, these managers may file the report on magnetic tape submitted to the SEC's pilot Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. For the quarter ended September 30, 1991, 983 managers filed Form 13F reports, for total holdings of $1.7 trillion.

Form 13F reports are available to the public at the SEC's Public Reference Room promptly after filing. Two tabulations of the information contained in these reports are available for inspection—an alphabetical list of the individual securities showing the number held by the managers reporting the holding, and an alphabetical list of all reporting managers showing the total number of shares of securities held. These tabulations are generally available two weeks after the date on which the reports must be filed.

Significant Public Utility Holding Company Act Developments

The Commission regulates interstate public-utility holding company systems engaged in the electric utility business and/or the retail distribution of gas. The Commission's jurisdiction also covers natural gas pipeline companies and other non-utility companies that are subsidiary companies of registered holding companies. There are three principal areas of regulation under the Holding Company Act which include (1) the physical integration of public utility companies and functionally related properties of holding company systems, including the simplification of intercorporate relationships and financial structures of such systems, (2) the financing operations of registered holding company systems, the acquisition and disposition of securities and properties, and affiliate transactions, and (3) exemptive provisions relating to the status under the Holding Company Act of persons and companies.

As of June 30, 1991,13 public-utility holding company systems were registered with the SEC. The 13 registered systems are comprised of 73 public-utility subsidiaries, 113 non-utility subsidiaries, and 37 inactive companies, for a total of 223 companies operating in 24 states.[157] These registered systems had aggregate assets of $93.8 billion as of June 30, 1991, an increase of $700 million over June 30, 1990. Total operating revenues for the 12 months ended June 30, 1991 were $36.6 billion, a $1.2 billion increase from the 12 months ended June 30, 1990.

During 1991, the Commission authorized registered holding company systems to issue $5.5 billion in short-term debt, $2.5 billion in long-term debt, and $1.8 billion in common and preferred stock. The Commission also approved pollution control financings of $700 million, investments in qualified cogeneration facilities of $163 million, and nuclear fuel procurement financings of $470 million.

Total financing authorizations of $10.7 billion represented a 5.9 percent increase over such authorizations during 1990. Whereas long-term debt decreased by 36 percent in 1991 primarily as a result of fewer refinancings, short-term debt increased by 20 percent and pollution control financing increased by 167 percent.

The SEC audits service companies and special purpose corporations. It also reviews the fuel procurement activities, accounting policies, annual reports of registered holding company subsidiary service companies and fuel procurement subsidiaries, and quarterly reports by registered holding companies' non-utility subsidiaries. The SEC's activities, which uncovered misapplied expenses and inefficiencies, directly resulted in approximately $27 million in savings to consumers during 1991.

Significant Interpretations and Applications

Investment Company Matters

The staff stated that it would not recommend enforcement action if the Resolution Trust Corporation (RTC) organized certain wholly-owned entities (Issuers) to purchase non-investment grade debt securities and issue senior and subordinated notes collateralized by those securities without registering the RTC or the Issuers under the Investment Company Act in reliance on Section 2(b). The staff also stated that no integration would occur between the Issuers and certain private investment companies with the same adviser as the Issuers.[158]

The staff said that it would not recommend enforcement action if a company that manages and services real estate loans acquired from other entities did not register as an investment company in reliance on Section 3(c)(5)(C) under the Investment Company Act. The staff stated that in order for loans to be included as mortgages and other liens on and interests in real estate, each loan would have to be secured by a mortgage or deed of trust on one or more tracts of real estate, 100 percent of the principal amount of the loan would have to have been secured by real estate at the time the loan was originated, and 100 percent of the fair market value of the loan would have to be secured by real estate at the time the company received the loan. The staff noted that the value of the real estate securing the loans would have to be determined by recent independent third party appraisals.[159]

The staff stated that it would not recommend enforcement action if an entity acted as a foreign custodian for registered investment companies. The staff's position was based, in particular, on the entity being both a clearing agency and, with the exception of the central system for certain Mexican Government securities, the only central securities depository for all securities traded on the Mexican Stock Exchange and other securities that are publicly traded in Mexico.[160]

The staff concluded that institutional investment managers should continue to report loaned securities on Form 13F as being held by the manager for purposes of complying with Section 13(f) of the Exchange Act and Rule 13f-1 thereunder. The staff said that it was more consistent with the purposes of Section 13(f) to consider loaned securities to continue to be held in accounts under the investment discretion of the lender.[161]

For purposes of recordkeeping and reporting under Rule ITj-1 (c)(l) under the Investment Company Act and Rules 204-2(a)(12) and (13) under the Investment Advisers Act, the staff stated that beneficial ownership should be determined in accordance with both parts of the definition of beneficial owner in Rule 16a-1 under the Exchange Act.[162] The staff subsequently modified this position so that for purposes of the rules, beneficial ownership would be determined in accordance with the definition of beneficial owner in Rule 16a-l(a)(2) only, *i.e.,* that a person must have a " direct or indirect pecuniary interest" to nave beneficial ownership.[163]

The staff indicated that it would not recommend enforcement action if a bank established and operated a collective trust fund without registering the fund under the Investment Company Act in reliance on Section 3(c)(l 1). The staff's position was based, in particular, on the representation that group trusts would not participate in the fund.[164]

The Commission issued a conditional order on an application filed by The Drexel Burnham Lambert Group, Inc. (Drexel), a holding company.[165] The order under Sections 6(c) and 6(e) of the Investment Company Act exempts Drexel from all the provisions of the act except Sections 8(a), 9, 10(a), 17(a), 17(d), 17(e), 31 (as modified), and 36 through *53.* The order also exempts certain companies controlled by Drexel from all provisions of the act except Sections 9,17(a), 17(d), 17(e), and 36 through *53* as well as certain transactions from Sections 17(a) and 17(d) of the act and Rule 17d-1 thereunder. Drexel and certain companies controlled by Drexel filed petitions for reorganization under Chapter 11 of the Bankruptcy Code. The order grants the exemptions to Drexel while its activities are subject to the jurisdiction and supervision of the bankruptcy court, and permits the transactions exempted from Sections 17(a) and 17(d) if they are authorized by Drexel's board of directors and by either the bankruptcy court or its designee.

The Commission granted an order under Section 26(b) of the Investment Company Act approving, prospectively only, the substitution of a government bond fund sponsored by First Investors Corporation (First Investors) as the investment vehicle for two periodic payment plan unit investment trusts, one of which invested entirely in the shares of one open-end investment company distributed by First Investors, and the other of which invested entirely in the shares of another open-end investment company distributed by First Investors. The order also, under Section 6(c) of the act, exempted the trusts from Section 12(d)(1) to permit them to hold securities issued by two investment companies. Finally, under Sections 11(a) and 11(c) of the act, the Commission approved certain offers of exchange.[166] The two open-end investment companies had suspended sales of new shares in response to civil and administrative proceedings brought by the states of New York and Massachusetts in November 1990 alleging unlawful sales practices and failure to make proper disclosures. As a result, each trust was unable to purchase more shares, and each trust would have been required to terminate if shares of its underlying fund were unavailable for 90 days and First Investors did not substitute shares of another fund as the trust's investment vehicle.

The Commission issued a conditional, permanent order relieving Robert W. Baird & Co. Incorporated, a registered broker-dealer and investment adviser, from any ineligibility under Section 9(a) of the Investment Company Act resulting from its employment of an individual who is subject to a securities-related injunction.[167] The individual, one of Baird's directors, also is employed by Baird to provide research and publish a newsletter concerning the oil and gas industry. One of the investment companies advised by Baird sometimes invests in oil and gas securities. In granting the relief, the Commission required Baird to agree to a number of conditions that are usual for applicants under Section 9(c) and, in addition, to take into account the individual's actions as a director of Baird and a supervisor of the newsletter.

The Commission issued a temporary conditional order to the Emerging Germany Fund, Inc. (Fund) and its investment advisers granting them an exemption from Section 15(a) of the Investment Company Act to permit the advisers to continue to provide advisory services to the Fund.[168] The Fund's initial advisory contract provided that it would terminate unless approved at the Fund's first meeting of public shareholders. The Fund had a large percentage of foreign shareholders, many of whom failed to vote on the advisory contract. Although over 90 percent of the shares cast on the advisory contract voted for approval, the Fund was unable to obtain a "required majority" as mandated by the act. Relief was granted to provide the Fund with additional time to solicit shareholders for approval of the Fund's advisory contracts.

In connection with the issuance of securities by certain grantor trusts, the Commission issued an order of exemption from all provisions of the Investment Company Act, except Sections 26 (with certain exceptions), 36,37, and, to the extent necessary to implement the foregoing sections, 38 through 53.[169] Each trust, which holds a single note evidencing a loan to Israel, issues a single class of non-redeemable certificates of beneficial interest representing the right to receive a *pro rata* share of the payments of principal and interest on the note held by that trust. The trusts were established by the government of Israel to implement financing authorized by the United States and contained in the Dire Emergency Supplemental Appropriations Bill (Public Law 101-302) (May 1990). The bill in turn enabled the Agency for International Development (AID) to guaranty up to $400 million in loans to Israel for the purpose of providing housing and related infrastructure in Israel for Soviet refugees. AID and Israel then developed a program for directing and monitoring the use of the proceeds of the proposed financing.

Insurance Company Matters

The Commission approved, with certain conditions, several exchange programs that permit investors to transfer investments among variable insurance products and public mutual funds. In one application, the Commission approved exchanges among public mutual funds, variable annuity contracts, and variable life insurance policies. Although Rules 11 a-2 and 1 la-3 under the Investment Company Act do not apply to exchange offers between variable life insurance policies and variable annuity contracts, or to exchange offers between separate accounts and public mutual funds, the Commission found that the exchange program was consistent with the policies underlying these rules.[170] In another application, the division, under delegated authority, approved an exchange program that allowed variable annuity contract owners to make contract payments by requesting that Scudder Fund Distributors, Inc. redeem shares of one of its public funds and apply the proceeds to certain variable annuity contracts.[171]

In two related cases, the staff considered the status under the Investment Company Act of investment advisory contracts where the adviser's parent entered court-ordered rehabilitation or bankruptcy. In the first case, the investment companies claimed that the appointment of a rehabilitator for the parent, an insurance company, did not constitute an assignment of the investment advisory agreement. Because there had been no change in the actual control of the adviser, the staff granted no-action relief under Sections 2(a)(4), 15(a)(4) and 15(b)(2) of the Investment Company Act to allow certain investment advisers and underwriters, who were indirect subsidiaries or partners of the parent insurance company, to perform under existing advisory and underwriting agreements without a new shareholder vote.[172]

In the second case, an investment company stated that an assignment of its advisory contract occurred upon the appointment of a trustee in bankruptcy for the investment adviser's parent corporation, an insurance company holding company. The investment company asserted that the delay and uncertainty surrounding the bankruptcy proceedings made it impossible to hold a shareholder vote within the 120-day period specified in Rule 15a-4, or obtain an exemption from the Commission within that time. The staff agreed not to recommend enforcement action if the investment company did not obtain shareholder approval of the investment advisory contract under these circumstances. However, the staff made clear that in the future, investment companies seeking an extension of the 120-day period in Rule 15a-4 should obtain an exemption through the application process.[173] The staff concluded that an investment company affected by bankruptcy proceedings could anticipate that related events may delay a shareholder vote beyond 120 days.

Holding Company Act Matters

The Commission authorized Northeast Utilities (Northeast), a registered holding company, to acquire the largest electric utility in New Hampshire, Public Service Company of New Hampshire (PSNH).[174] PSNH, which is operating under a confirmed plan of reorganization in bankruptcy, owns a 35.6 percent share of the Seabrook Nuclear Power Generating Project (Seabrook). The City of Holyoke Gas and Electric Department and the Massachusetts Municipal Wholesale Electric Company petitioned the Commission for rehearing. They alleged, among other things, that the Commission had failed to analyze sufficiently the anti-competitive effects of the acquisition, particularly with respect to the allocation of excess generating capacity and transmission access. Upon reconsideration, the Commission reiterated its decision and issued a supplemental order in which it addressed these issues more fully.[175] The Commission's decision, as supplemented, has been appealed to the United States Court of Appeals for the District of Columbia.[176]

In a related decision, the Commission authorized Eastern Utilities Associates (EUA), a registered holding company, to pay up to $8 million in common stock dividends out of capital surplus. EUA experienced financial difficulties related to its investment in Seabrook. A write-off of $147.7 million resulted in negative retained earnings of $78.3 million.[177]

The Commission authorized The Southern Company (Southern), a registered holding company, and certain of its subsidiary companies to acquire common stock and other securities of Gulf States Utilities Company (Gulf States), a non-associate public utility and exempt holding company, in the settlement of litigation involving long-term power sales contracts.[178] Under a voting agreement, the Secretary of Gulf States will vote the shares, on behalf of the Southern companies, proportionately to the votes cast by all shareholders on a given issue. The Commission reserved jurisdiction over various issues, including the exercise of any rights that might accrue to the Southern companies upon a default by Gulf States under the settlement.

The Columbia Gas System, Inc. (Columbia), a registered holding company, and its principal non-utility subsidiary, Columbia Gas Transmission Corporation, filed for protection under Chapter 11 of the United States Bankruptcy Code.[179] The Commission authorized Columbia, as a debtor-in-possession, to borrow up to $275 million through September 1993, to fund the system's operating needs.[180]

The Commission issued a supplemental memorandum opinion and order in WPL *Holdings, Inc.,* finding that the formation of a new holding company over Wisconsin Power and Light, a public utility and exempt holding company, tended toward the efficient and economical development of an integrated public-utility system.[181]

The staff gave assurance in *Nevada Sun-Peak Limited Partnership* that it would not recommend enforcement action with respect to the indirect acquisition by SCEcorp, an exempt holding company, of a 50 percent limited partnership interest in an electric generating facility near Las Vegas, Nevada.[182]

Full Disclosure System

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

Key 1991 Results

Capital raising activities were affected by the economic environment and worldwide events in 1991. During the latter part of calendar year 1990, there were some signs of recovery from the significant downturn that immediately followed Iraq's invasion of Kuwait, with some sizable equity offerings completed and the market for new debt issues strong. This potential was realized for both equity and debt during the next six months, particularly in the second quarter when the new issues market was particularly strong. Volume slowed somewhat in the next three months, although by the end of the quarter investment grade debt issues had already surpassed record levels. The dollar amount of securities registered with the SEC during the year reached nearly $500 billion, the record amount since 1987. The decline in acquisition activity continued during the year, with third party tender offer filings reaching an eight-year low, and merger/proxy statements also dropping markedly. Blank check offerings continued to constitute nearly half of the Form S-18 registration statements processed by the regional offices.

The staff reviewed 2,660 publicly held issuers that file reports under the Securities Exchange Act of 1934 (Exchange Act). These reviews included over 360 issuer reviews conducted by a special task group of accountants devoted to reviewing banks and savings and loan associations. The task group reviews were in addition to reviews of financial institutions making transactional filings.

The Commission also (1) issued an interpretive release emphasizing the necessity for clear and concise disclosure in roll-ups and partnership offerings, (2) proposed and adopted new roll-up disclosure rules, and (3)proposed amendments to the proxy rules, which will be re-proposed in the coming year. The proxy rule amendments were designed to facilitate security holder communication, and thus promote informed proxy voting, and to reduce the costs of compliance for issuers, security holders and other persons engaged in proxy solicitation.

The implications of continued internationalization of the securities markets continued to be a major focus of the full disclosure program in 1991. In the international area, the Commission adopted a multijurisdictional disclosure system (MJDS) with Canada, which permits eligible cross-border offerings and tender offers to proceed on the basis of home country requirements. To address the problem of discriminatory treatment of United States holders of foreign securities in rights, tender and exchange offers on a more global basis, the Commission proposed small issue exemptive rules and forms.

The Commission began a review of the American Depositary Receipts (ADR) marketplace. It issued a concept release soliciting information and comment with respect to the function and characteristics of the ADR marketplace and various regulatory issues relating to ADRs.

The staff is actively involved in planning the transition from paper to electronic filing, and is developing rules for the operational Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. The phase-in of the first group of mandated filers will be accomplished during 1993.

Review of Filings

During 1991, the staff reviewed 2,660 reporting issuers' financial statements and related disclosures. The reporting issuer reviews were accomplished through the full review of 1,066 registration statements and post-effective amendments to registration statements filed under the Securities Act of 1933 (Securities Act), 1,557 annual and subsequent periodic reports, and 188 merger and going private proxy statements. In addition, the staff completed 712 full financial reviews of annual reports.

The table below describes the number of selected filings reviewed during the last five years. The decline in reviews of initial public offerings (IPOs), tender offers, contested solicitations, and going private transactions, which are not subject to selective review, reflects the reduction in the number of transactional filings received by the agency.

The Division's financial institutions task group is conducting comprehensive reviews of the financial statements, management's discussion and analysis (MD&A), and other related disclosures in the Exchange Act reports of certain banks and savings and loan associations selected for review on the basis of their financial condition. During the year, the task group completed reviews of 390 filings by 367 financial institutions, with 26 issuers being referred to the Division of Enforcement for further inquiry or investigation, in addition to the other 119 referrals made by the Division.

Rulemaking, Interpretive, and Legislative Matters

Multijurisdictional Disclosure System

The Commission adopted its MJDS with Canada, including rules, forms, and schedules intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers.[183] Canadian securities regulators concurrently adopted a parallel system for United States issuers. The MJDS permits Canadian issuers meeting eligibility criteria to satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities. The MJDS also allows cash tender and exchange offers for securities of Canadian issuers to proceed in accordance with Canadian tender offer requirements, instead of in accordance with Commission tender offer requirements, where no more than 40 percent of the target's shares are held in the U.S. and other offeror eligibility conditions are met. In connection with the adoption of the MJDS, the Commission also revised existing rules and forms to permit registration and reporting by Canadian foreign private issuers on the same basis as other foreign private issuers.

Foreign Issuer Rights Offerings

The Commission published for comment a release proposing adoption of a small issue exemptive rule under Section 3(b) of the Securities Act, covering up to $5 million of equity securities offered or sold in the U.S. in an eligible rights offering.[184] The release also proposes adoption of a new registration form, which would permit registration of rights offerings of any size under the Securities Act by eligible issuers on the basis of home country disclosure and procedures. Finally, proposed amendments to Securities Act registration Form F-3 would permit foreign private issuers that file periodic reports under the Exchange Act to register rights offerings and offerings in connection with dividend or interest reinvestment plans, conversion of convertible securities, or exercise of warrants on that Form without the requirement that the issuer satisfy the reporting history or public float tests of Form F-3.

International Tender and Exchange Offers

The Commission published proposed tender offer exemptive rules and registration procedures intended to facilitate the inclusion of U.S. investors in tender offers and exchange offers for a foreign target company's securities.[185] If adopted, the tender offer proposals will permit third-party and issuer tender offers for a foreign private issuer that are predominately foreign to be made in the U.S. on the basis of the procedural requirements and documentation mandated by the foreign target's home jurisdiction. The proposed rules would implement a two-tier system to facilitate exchange offers for foreign securities made to U.S. holders that would normally require compliance with the SEC's registration procedures. The rules would provide a registration exemption for the foreign issuer's securities offered in exchange for a foreign target company's securities, provided that the aggregate dollar amount of the securities being offered in the U.S. does not exceed $5 million. An exemption also would be provided for registration on the basis of home country disclosure documents, if five percent or less of the foreign target company's securities are held by U.S. holders and certain other conditions are met. The release also proposed procedures to be made available for tender and exchange offers for United Kingdom companies to allow for compliance with both the Williams Act and the United Kingdom Qty Code on Takeovers and Mergers.

Roll-up Transactions

Interpretive Release. On June 17, 1991, the Commission issued an interpretive release providing guidance on disclosure with respect to roll-up transactions and the offerings of limited partnership interests.[186] Specifically, the release provides guidance on the presentation of information, quality of disclosure, updating information, and regulatory requirements applicable to matching services and crossing arrangements. The release notes that information should be presented in the disclosure document in a clear and concise manner, preferably in short explanatory sentences or bullet lists. With respect to roll-up transactions, investors in each partnership involved in a roll-up must be provided information from which to evaluate the potential risks, adverse effects and merits of the transaction for their particular partnership interests.

Rulemaking. On October 30, 1991, the Commission adopted rules designed to enhance the quality of information provided to investors in connection with roll-up transactions and to establish a minimum solicitation period for such offerings.[187] Under the new rules, a roll-up is defined as any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more finite-life partnerships, provided securities of a successor issuer will be issued in the transaction. The rules require distribution of disclosure documents to investors at least 60 calendar days in advance of a meeting, unless under applicable state law the maximum period permitted for giving notice is less than 60 calendar days. The rules also require inclusion of (1) separate disclosure supplements for each partnership involved in the transaction, (2) a clear, concise and comprehensible summary of the roll-up transaction, (3) disclosures concerning the risks and effects of the transaction, (4) a brief description of the background of each partnership involved in the transaction, (5) disclosure regarding the reasons for the transaction and alternatives considered by the general partner, (6) information about the possibilities of liquidating or continuing the partnerships, (7) information regarding the fairness of the roll-up transaction, (8) information that reveals any possible "opinion shopping," (9) a dear and concise summary description of each material federal income tax consequence, and (10) specified new financial information.

American Depositary Receipts (ADRs)

The Commission published a concept release soliciting public comment on a variety of issues relating to ADRs and ADR market participants that arise under the Securities Act and Exchange Act, including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary ADR markets.[188] After studying the information and comments received in response to this release, the Commission will determine whether rulemaking or other action is appropriate.

Transaction Reporting by Officers, Directors and Ten Percent Holders — Section 16

The Commission adopted amendments to its rules and forms, as well as related disclosure requirements for issuers, regarding the filing of ownership reports by officers, directors, and principal security holders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of Section 16 of the Exchange Act and related provisions of the Investment Company Act of 1940 (Investment Company Act) and the Public Utility Holding Company Act of 1935.[189] The Commission also issued a separate interpretive release setting forth its views regarding shareholder approval for amendments to employee benefit plans intended to comply with Rule 16b-3 under Section 16, as well as technical amendments to the rules.[190]

Shareholder Communications Rules

The Commission adopted amendments to the shareholder communications and information statement rules to implement provisions of the Shareholder Communications Improvement Act of 1990.[191] The amendments require (1) investment companies registered under the Investment Company Act to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of the registrant, and (2) brokers and banks that hold shares for beneficial owners of securities in nominee names to forward to the beneficial owners the proxy statements of investment companies registered under the Investment Company Act, as well as the information statements of both Investment Company Act registrants and companies with a class of securities registered under Section 12 of the Exchange Act.

Blank Check Offerings

The Commission proposed for comment new Rule 419 under the Securities Act, new Rule 15g-8 under the Exchange Act, and an amendment to Securities Act Rule 174.[192] As mandated by the Securities Enforcement and Remedies Penny Stock Reform Act of 1990, these rules would provide special registration procedures for offerings by blank check companies. A blank check company is a company that (1) is devoting substantially all of its efforts to establishing a new business in which planned principal operations have not commenced, or have commenced but have not generated any significant revenue, (2) is issuing penny stock, and (3) either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

Proxy Review

On June 17, 1991, as part of its ongoing proxy rule review, the Commission proposed amendments to its rules designed to facilitate security holder communications and informed proxy voting, and to reduce the costs of compliance with such rules for issuers, shareholders, and all other persons engaged in a proxy solicitation.[193] The proposals would provide for (1) a new exemption from the filing and disclosure requirements for solicitations by shareholders and other persons in response to a proposal by management or other shareholders, so long as the soliciting party was not seeking to act as a proxy or had a financial interest in the matter to be voted upon, (2) elimination of the preliminary filing requirement for all soliciting materials other than proxy statements and proxy cards, (3) elimination of nonpublic treatment of all preliminary materials, and (4) enhanced access to security holder lists and more information about security holders.

Over 800 comment letters were received in response to the proposals. The Commission has announced that, in light of suggestions contained in those letters, it will revise the proposals and seek further comment prior to proceeding with the adoption of new rules and exemptions.

Requirements Governing Age of Financial Statements of Foreign Private Issuers

The Commission published for comment proposed amendments to Regulation S-X, Rule 3-19, Rule 15d-2, and Forms F-2 and F-3, relating to the age of financial statements of foreign private issuers that register securities for sale under the Securities Act.[194] The proposed amendments generally would conform the requirements governing the age of financial statements in registration statements to the financial statement updating requirements of the home jurisdictions of a substantial majority of foreign issuers.

Trust Indenture Act Rules

The Commission adopted new rules and a new form and revised existing rules and forms to implement amendments to the Trust Indenture Act of 1939 effected by the Trust Indenture Reform Act of 1990.[195] The new and revised rules and forms are to be used in applying for (1) exemptions from one or more provisions of the act, (2) post-effective determinations of the eligibility of trustees under indentures relating to securities to be offered on a delayed basis, (3) determination of the eligibility of foreign persons to act as sole trustee under qualified indentures, and (4) orders staying a trustee's duty to resign.

Conferences

SEC Government-Business Forum on Small Business Capital Formation

The tenth annual SEC Government-Business Forum on Small Business Capital Formation was held in Washington, D.C. on September 30 and October 1, 1991. Approximately 200 small business representatives, accountants, attorneys, and government officials attended the forum. Numerous recommendations were formulated with a view to eliminating unnecessary governmental impediments to small businesses' ability to raise capital. A final report setting forth a list of recommendations for legislative and regulatory changes approved by the forum participants was prepared and provided to interested persons, including Congress and regulatory agencies.

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

On April 19, 1991, approximately 40 SEC senior officials met with approximately 40 representatives of the North American Securities Administrators Association in Washington, D.C. to discuss methods of effecting greater uniformity in federal and state securities matters. After the conference, a final report summarizing the discussions was prepared and distributed to interested persons.

Accounting and Auditing Matters

The Chief Accountant is the principal advisor to the Commission on accounting and auditing matters arising from the administration of the various securities laws. The primary Commission activities designed to achieve compliance with the accounting and financial disclosure retirements of the federal securities laws include:

• *rulemaking that supplements private sector accounting standards, implements financial disclosure requirements, and establishes independence criteria for accountants;*

• *review and comment process for agency filings directed to improving disclosures in filings, identifying emerging accounting issues (which may result in rulemaking or private sector standard-setting), and identifying problems that may warra.nl enforcement actions;*

• *enforcement actions that impose sanctions and serve to deter improper financial reporting by enhancing the care with which registrants and their accountants analyze accounting issues; and*

• *oversight of private sector efforts, principally by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA), which establish accounting and auditing standards designed to improve the quality of audit practice.*

Key 1991 Results

The Commission oversaw a number of significant public and private sector initiatives intended to enhance the reliability of financial reporting and to ensure that the accounting profession meets its responsibilities under the federal securities laws. Notably, the Commission continued to provide policy direction to the accounting profession to move toward using appropriate market-based measures in accounting for financial instruments. The Commission also continued to devote significant resources to initiatives involving international accounting, auditing, and independence requirements. The accounting staff issued three Staff Accounting Bulletins (SABs) to address certain accounting and financial disclosure issues.

Mark-to-Market Accounting

In the Commission's annual report for 1990, the agency emphasized the importance of the FASB's continuing project to improve accounting guidance for investments in financial instruments.[196] As part of this project, the FASB recently issued Statement 107 to require disclosure of the fair value of financial instruments.[197]

The FASB delayed action on the appropriateness of market value accounting for investment securities, a project that Chairman Breeden encouraged in testimony before the Senate Committee on Banking, Housing and Urban Affairs on September 10, 1990.[198] The accounting staff will closely monitor this project to ensure progress and to determine whether additional agency initiatives are necessary.

Accounting-Related Rules and Interpretations

The agency's accounting-related rules and interpretations supplement private sector accounting standards, implement financial disclosure requirements, and establish independence criteria for accountants. The agency's principal accounting requirements are embodied in Regulation S-X, which governs the form and content of financial statements filed with the SEC.

Staff Accounting Bulletins. The accounting staff periodically issues SABs to inform the financial community of the staff's views on accounting and disclosure issues. Three SABs were issued during 1991 concerning (1) required financial statements when a troubled financial institution is acquired in a business combination, 19[9] (2) certain disclosure issues concerning the bankruptcy of an accounting firm with public company clients, and relief that may be sought by its former clients,[200] and (3)accounting for the income tax benefits associated with the bad debts of thrifts pending adoption of a new standard on accounting for income taxes.[201]

Management Reports. The Commission proposed a rule that, if adopted, would require a company's report on Form 10-K and its annual report to shareholders to include a report from management. The proposed report would describe management's responsibilities for preparing financial statements and for establishing and maintaining a system of internal control directly related to financial reporting. It also would provide management's assessment of the effectiveness of that internal control system.[202]

Significant congressional interest in management reports continued during 1991. A bill was introduced in the House of Representatives that would require a Commission study of registrants' compliance with the accounting and internal control provisions of the Foreign Corrupt Practices Act and Section 13(b)(2) of the Securities Exchange Act of 1934. The study also would focus on the extent to which this compliance and reliability of registrants' financial statements would be improved by a requirement for annual public reports by management and their auditors on the adequacy of registrants' internal control structures.

Loan Splitting. In March 1991, the Federal Financial Institutions Examination Council (FFIEC) requested public comment on a proposed accounting rule for use in regulatory reporting to banking and thrift regulators. This proposed rule would permit a non-accrual loan to be returned to accrual status if its recorded amount is reduced by a partial charge-off. Use of the accounting method, referred to as "loan splitting," would have been optional and could have been selectively applied to different qualifying loans. The Commission issued a request for public comment on the use of loan splitting in filings with the agency because of questions concerning whether such a method would comply with generally accepted accounting principles (GA AP) and whether application of the method to only selected loans would depart from acceptable accounting practice. After considering the views of commentators, the Commission announced that the proposed accounting method would not be acceptable in agency filings.[203]

Oversight of Private Sector Standard-Setting

The SEC monitors the structure, activity, and decisions of the private sector standard-setting organizations. These organizations include the FASB and Financial Accounting Foundation (FAF). The Commission and its staff work closely with the FASB and the FAF in an ongoing effort to improve the standard-setting process, including the need to respond to various regulatory, legislative, and business changes in a timely and appropriate manner. An oversight committee formed by the FAF to monitor the FASB's operations issued a report on the FASB's systems and procedures for meeting the objectives of the FASB's mission statement. The committee found that the FASB is generally achieving the objectives of its mission statement, and that the mission statement continues to be appropriate for monitoring the effectiveness of the accounting standard-setting process.

The FASB developed and adopted a "strategic plan" for its international activities to achieve greater consistency between United States accounting standards and those promulgated by other national standard-setters and by the International Accounting Standards Committee (IASC)[204]. Consistent with that plan, the FASB developed and implemented a policy of issuing comment letters to the IASC on amendments to existing IASC standards.

The agency's Chief Accountant requested that the six largest accounting firms survey and analyze certain accounting standards and practices as compared to IASC standards and the standards employed by certain developed countries. The firms conducted their surveys in late 1990 and early 1991, in the context of then-Commissioner Philip Lochner's inquiries concerning the cost and complexity of U.S. standards in a global environment.[205] The findings indicate that in several areas U.S. accounting standards are more complex than those in other countries, and there are significant differences in accounting methods used by enterprises in the surveyed countries that may hamper comparative analysis by users of financial information.

The FASB issued a standard on employer's accounting for health care and other forms of post-retirement benefits other than pensions.[206] Under the new accounting standard, an obligation for health care and other post-employment benefits (OPEBs) is recognized as services are performed. The new standard will result in a dramatic change in the manner in which many public companies account for OPEBs and generally is effective for years beginning after December 15, 1992. Prior to adoption of the new standard, SEC registrants are expected to provide disclosure of the anticipated impact of adopting the new standard as set forth in SAB No. 74, *Disclosure of the Impact that Recently Issued Accounting Standards* *mil have on the Financial Statements of the Registrant when Adopted in a Future Period.*

The FASB devoted substantial resources to a revised standard on accounting for income taxes. The issue of income tax accounting has been controversial since the FASB issued Statement 96 in December 1987 to supersede Accounting Principles Board OpinionNo.il. The effective date of Statement 96 has been delayed three times to allow the FASB to consider possible amendments to (1) change the criteria for recognition and measurement of deferred tax assets and (2) reduce complexity. Subsequent to year-end, the FASB issued a revised standard under which entities would recognize and measure a deferred tax asset for an entity's deductible temporary differences and operating loss and tax credit carry forward. A valuation allowance would be recognized if it is more likely than not that some portion or all of the deferred tax asset will not be realized.[207]

Oversight of the Accounting Profession's Initiatives

The Commission oversees the process for setting auditing standards and various other activities of the accounting profession. This includes oversight of initiatives by the AICPA, ASB, SECPS, and AcSEC.

AICPA. The agency oversaw the following AICPA activities: (1) the Auditing Standards Board (ASB), which establishes generally accepted auditing standards; (2) the Accounting Standards Executive Committee (AcSEC), which provides guidance on specific industry practices through its issuance of statements of position and practice bulletins and prepares issue papers on accounting topics for consideration by the FASB; and (3) the SEC Practice Section (SECPS), which seeks to improve the quality of audit practice by member accounting firms that audit public companies through various requirements, including peer review.

ASB. The staff worked closely with the ASB to enhance the effectiveness of the audit process. With the encouragement of the Commission's staff, the ASB issued a new auditing standard that establishes requirements for an auditor to inform management and, in certain situations, audit committees of probable material misstatements affecting interim financial information filed or to be filed with the SEC or the various banking agencies.[208] The accounting staff also monitored a new auditing standard on changes in the GAAP hierarchy[209] and is continuing to monitor an ongoing project on examination and reporting on management's assertions about the effectiveness of an entity's internal control structure.

The ASB also continued to issue Audit Risk Alerts to provide auditors with an overview of recent economic, professional, and regulatory developments that may affect audits they perform. This procedure enables the AICPA to play a more visible role in focusing auditor attention on high risk areas. A third series of annual Audit Risk Alerts was issued to assist auditors in performing 1991 year-end audits. This procedure was initially suggested by the agency's Chief Accountant.

SECPS. Two programs administered by the SECPS are designed to ensure that the financial statements of SEC registrants are audited by accounting firms with adequate quality control systems. A peer review of member firms by other accountants is required every three years and the Quality Control Inquiry Committee (QCIC) reviews on a timely basis the quality control implications of litigation against member firms that involves public clients. In 1990, the AICPA adopted a bylaw that requires firms that employ AICPA members and audit SEC clients' financial statements to be members of the SECPS. This action caused an additional 631 firms, which are auditors to approximately 1,170 SEC registrants, to join the SECPS.[210]

The agency oversaw the activities of the SECPS through frequent contact with the Public Oversight Board (FOB) and members of the executive, peer review, and quality control inquiry committees of the SECPS. The staff reviews POB files and selected working papers of the peer reviewers. This oversight has shown that the peer review process contributes significantly to improving the quality control systems of member firms and, therefore, enhances the consistency and quality of practice before the Commission.

The staff also reviews POB files and dosed case summaries of the QCIC. This review and discussions with the POB provide the staff with a better understanding of the QCIC process. The SEC believes that the QCIC process provides added assurances, as a supplement to the SECPS peer review program, that major quality control deficiencies, if any, are identified and addressed in a more timely fashion. Therefore, the agency believes that the QCIC process benefits the public interest. The SEC understands that additional improvements are being implemented, such as more frequent review of other work of the engagement teams involved in matters reported to the QCIC and better documentation of the POB's oversight of the QCIC The SEC believes that ongoing improvements such as these will provide even greater assurance of the efficacy of the QCIC process.

AcSEC. The AcSEC has a key role in identifying accounting practices, particularly those that impact specialized industries, such as financial institutions, insurance, and computer software. During 1991, for example, the AcSEC issued statements of position on the appropriate financial reporting by entities in reorganization under the bankruptcy code[211] and on accounting by continuing care retirement communities.[212] AcSEC also made significant progress during 1991 towards developing a statement of position on revenue recognition in the computer software industry. The statement of position was completed shortly after year-end[213] and should eliminate the diversity of practice previously existing in this industry. Because of recent changes in the GA AP hierarchy approved by the ASB, the agency's staff no longer requires accounting firms to furnish preferability letters to support changes in accounting policies adopted by their clients to conform with standards established in AcSEC documents that have been cleared by FASB.

International Accounting and Auditing Standards

Significant differences in accounting and auditing standards currently exist between countries. These differences serve as an impediment to multinational offerings of securities. The SEC, in cooperation with other members of the International Organization of Securities Commissions (IOSCO), actively participated in initiatives by international bodies of professional accountants to establish appropriate international standards that might be considered for use in multinational offerings. For example, the staff worked with the IASC to reduce accounting alternatives as an initial movement toward appropriate international accounting standards. The IASC also commenced projects to address issues relating to the extent of implementation guidance, adequacy of disclosure requirements, and the completeness of international accounting standards. In 1991, the IASC issued five exposure drafts related to projects concerning cash flow statements, research and development activities, inventories, capitalization of borrowing costs, and financial instruments.[214]

The staff also continued working with the International Federation of Accountants (IFAC) to revise international auditing guidelines. Auditors in different countries are subject to different independence standards, perform different procedures, gather varying amounts of evidence to support their conclusions, and report the results of their work differently. The staff, as part of an IOSCO working group, worked closely with the IFAC to expand and revise international auditing guidelines to narrow these differences, and significant progress was made. For example, in October 1990 the IFAC revised International Auditing Guideline No. 12 to require the performance of analytical review procedures in the planning phase of an audit and as an overall review at the final stage of the audit.

Independence

The staff began a study of the various national and international requirements for auditor independence. The staff has received detailed information about the nature and extent of such requirements in several major countries. The IFAC issued a set of guidelines to be used by national standard-setters in developing independence requirements. Also, at the staff's request, the IFAC agreed to undertake a project to develop a set of specific independence requirements that would apply to auditors of transnational issuers.

The EDGAR Project

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

Key 1991 Results

The EDGAR pilot system completed its seventh full year of successful operation on September 24, 1991. During these seven years, almost 100,000 filings were electronically received. The pilot system has demonstrated clearly the feasibility of receiving, processing, storing, and retrieving electronic filings.

The SEC continued to develop the operational EDGAR system. Among the many important milestones achieved during 1991 were:

- opening the first release of the operational system for test filings by pilot participants on May 1;

- mailing the initial versions of the EDGAR Filer Manual and EDGARLink filer assistance software to pilot filers, filing agents, and training agents;

- designing and programming substantial portions of the second release of the operational system;

- delivering approximately 200 additional workstations to staff users and continuing staff training on workstation applications;

- installing the remaining portions of the primary hardware and operating software for the operational system;

- convening two public meetings (December 1990 and June 1991) for filers and other persons interested in the status of operational EDGAR; and

- planning the successful move of the EDGAR system in November 1991 to the new SEC Operations Center in Alexandria, Virginia.

Pilot System

The EDGAR pilot serves a group of volunteer companies whose filings are processed by staff in the Office of Filings, Information, and Consumer Services and the Divisions of Corporation Finance and Investment Management. At the end of 1991,624 registrants had participated fully in the pilot. In addition, numerous other registrants had participated partially in the pilot by submitting electronic filings of certain forms. This group of partial participants included:

- 1,329 investment companies submitting semi-annual reports on Form N-SAR;

• 78 registered public utility holding company systems or subsidiaries submitting forms required under the Public Utility Holding Company Act; and

• 16 institutional investment managers submitting Forms 13F-E to report securities held in their managed accounts.

No enhancements have been or will be added to the EDGAR pilot since the award of the operational system contract. The pilot system serves solely to permit the already participating volunteer filers to continue to file and the staff to access filings until the operational system is available in 1992. After the operational system becomes available, the EDGAR pilot will be dismantled.

Operational System

The SEC is in the third year of an eight-year contract to design, implement, and operate the EDGAR system. The primary contractor is BDM International. Disclosure Information Services is the subcontractor under the EDGAR contract that provides the SEC with microfiche and paper reproduction services. Bechtel Information Services, the former subcontractor, was purchased by Disclosure in 1991.

At the agency's request, the National Institute of Standards and Technology (NIST) conducted a technology assessment of the EDGAR system. MIST concluded that the project is generally on course and that the system is fundamentally sound. NIST has suggested and the agency has agreed that additional research should be conducted in several areas. Specifically, in order to ensure that the system will perform as expected when live filing begins, the SEC will: (1) conduct a security assessment; (2) undertake validation and verification of system architecture documentation; and (3) update an earlier capacity analysis.

The initial version of the operational system opened for test filings on May 1, 1991. The agency provided access codes, filer manuals and the EDGARLink filer assistance software to pilot filers, filing agents, and training agents. By the end of 1991, 1,021 test filings had been received from 81 different filers. In addition, design and programming of the next release of the EDGAR and EDGARLink software was begun.

The staff continued to develop and review proposed rules to accommodate mandatory electronic filing. The Commission is expected to publish the initial EDGAR rules for comment and modify and adopt the temporary rules for the EDGAR pilot prior to the commencement of live filing, currently scheduled for July 1992.

Approximately 200 additional workstations were installed for SEC staff members. A total of 198 classes were held and attended by 1,307 staff members. The curriculum included classes on the OS/2 operating system, Presentation Manager, WordPerfect (word processing), EXCEL (spreadsheet), cc:Mail (electronic mail), and use of the local area network (LAN).

Continuing its long-standing concern for the public interest in the EDGAR system, the staff convened public meetings in December 1990 and June 1991 for filers, financial printers, and other persons interested in the status of operational EDGAR. Nearly 300 people attended each of these meetings.

Litigation and Legal Activities

The General Counsel represents the SEC in all litigation in the United States Supreme Court and the courts of appeals. The General Counsel defends the Commission and its employees when sued in district courts, prosecutes administrative disciplinary proceedings against securities professionals, appears amicus curiae in significant private litigation involving the federal securities laws, and oversees the regional offices' participation in corporate reorganization cases. The General Counsel analyzes legislation that would amend the federal securities laws, drafts congressional testimony, prepares legislative comments, and advises the Commission on all regulatory and enforcement actions under the securities acts. In addition, the General Counsel advises the Commission in administrative proceedings under various statutes.

Key 1991 Results

The office experienced a substantial increase in workload as reflected in the table below.

[table omitted]

Significant Litigation Developments

Insider Trading

In *United States v. Chestman,*[216] the U.S. Court of Appeals for the Second Circuit, *en bane,* as urged by the Commission as *amicus curiae,* upheld Securities Exchange Act (Exchange Act) Rule 14e-3 by a ten to one vote and affirmed defendant Robert Chestman's conviction for violations of that rule. The court held that the Commission acted within its authority under Section 14(e) of the act in promulgating a rule that departs from common law fraud by omitting breach of fiduciary duty as an element. The court, however, by a six to five vote, reversed Chestman's conviction under Exchange Act Rule 10b-5, holding that the relationship of husband and wife does not, in itself, create a fiduciary duty sufficient to establish criminal liability under the misappropriation theory.

In *SEC v. Cherif*[217] the United States Court of Appeals for the Seventh Circuit, joining three other courts of appeals, adopted the misappropriation theory of insider trading. In doing so, the court affirmed a preliminary injunction entered against one of two defendants, Cherif, whom the Commission alleged had violated the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 by trading while in possession of material nonpublic information which he stole from his former employer after his employment had ended. Although the Commission did not allege that the other defendant, Sanchou, violated the securities laws, it sought disgorgement from him of illegal profits obtained from trades made by Cherif in Sanchou's account. The court acknowledged that the Commission could obtain a freeze of a non-violator's assets if it establishes that the party has no legitimate claim to them, but remanded the case to permit the district court to make findings with respect to ownership of the funds held by Sanchou. Agreeing with the Commission, the court also held that a defendant has no constitutional right to use assets frozen in a civil case to pay attorneys fees.

Definition of a Security

In *SEC v. Reynolds,*[218] the United States Court of Appeals for the Ninth Circuit agreed with the Commission that two programs that

Reynolds sold to investors were securities and expressly limited the reach of its earlier decision against the Commission in *SEC v. Belmont Reid.*[219] The first program, the gold program, involved buyers investing in a common fund by purchasing gold ore, and depending for their profits on the efforts of others in developing a gold mining enterprise. The court found this program governed by the investment contract analysis in *SEC v. W.J. Howey* Co.[220]

The second program, Managed Account Program, involved analysis of promissory notes under the test established by the Supreme Court in *Reves v. Ernst & Young.*[221] The Ninth Circuit held that the notes were securities, not, as Reynolds had argued, personal loans. The court said that the exception contained in the Securities Act of 1933 (Securities Act) and the Exchange Act for short-term notes of less than nine months maturity should not be read literally, but, rather, should be read to effectuate congressional purpose. In reaching this conclusion, the Ninth Circuit joins the Tenth Circuit in disagreeing with the four-justice minority in *Reves,* who said that any note of less than nine months maturity is excluded from the definition of a security in the Exchange Act.

Liability in Private Actions

In *Lampf, Pleva, Upland, Prupis & Petigraw v. Gilbertson,*[222] the Supreme Court adopted a uniform limitations period for implied private actions under Section 10(b) of the Exchange Act. The Commission, as *amicus curiae,* had urged the Court to adopt a uniform five-year limitations period based on recently enacted Section 20A of the Exchange Act (for insider trading actions by contemporaneous traders). Although agreeing that a uniform federal period was preferable to one drawn from the law of the state in which the district court sat, the Court adopted a rule drawn from Section 9(e) of the Exchange Act, requiring plaintiffs to file actions within one year after discovery of the facts constituting the violation, and no later than three years after the violation occurred. The Court applied its holding to dismiss the action as time-barred, even though the lawsuit had been timely filed under the established law of the circuit. Legislation was enacted by Congress at the end of 1991 to prohibit retroactive application of the holding to cases filed before the Court's decision.

In *Anixter v. Home-Stake,*[223] the Court of Appeals for the Tenth Circuit held that a securities fraud lawsuit was time-barred because plaintiffs were put on inquiry notice of the defendant's fraud by a prior consent judgment in an unrelated Commission action against the defendants. In so holding, the court rejected the Commission's argument that Section 9(e) of the Exchange Act does not include an inquiry notice requirement.

As urged by the Commission in an *amicus curiae* brief, the Supreme Court in *Gollust v. Mendel*[224] unanimously affirmed a decision of the United States Court of Appeals for the Second Circuit. The Court of Appeals had held that a shareholder who had properly instituted suit under Section 16(b) of the Exchange Act to recover short-swing profits from an issuer's statutory insiders, but who was subsequently divested of his shares by a merger that resulted in an exchange of the plaintiff's stock for cash and stock in the issuer's new corporate parent, was not divested of standing to maintain his suit. The decision holds that a plaintiff who properly institutes a Section 16(b) suit may continue to prosecute that suit even when divested of his security, provided that he maintains "some financial interest in the outcome of the litigation."

Actions Involving the Proxy Antifraud Provisions

In *Virginia Bankshares, Inc. v. Sandberg,*[225] the Supreme Court held, as urged by the Commission in *amicus curiae* brief, that the statement of belief or reason by corporate directors about a recommended course of action could be materially false and misleading in violation of the federal proxy requirements of Section 14(a) and Rule 14a-9 thereunder. The majority of the Court, however, concluded that where minority shareholders were unable to block a proposed freeze-out merger, no causation had been shown. In so doing, the Court rejected the argument that the plaintiffs could show damages by demonstrating that they might have been able to pressure the majority shareholders into abandoning or altering their plans. The Court left open the possibility that minority shareholders in other cases could show damages by showing that they might have obtained state court relief or preserved a state appraisal remedy if the true facts had been disclosed.

In *Kamen v. Kemper Financial Services,*[226] the Supreme Court, as urged by the Commission as *amicus curiae,* unanimously reversed a decision by the United States Court of Appeals for the Seventh Circuit in an action under the Investment Company Act of 1940 (Investment Company Act) that had announced a new rule of federal common law requiring a shareholder, prior to filing a complaint in a derivative lawsuit, to make demand on the corporation, regardless of whether demand would be futile. The Court held that the issue is governed by its decision in *Burks v. Lasker*[227] which held that rules governing the allocation of power within a corporation should be drawn from state law, unless those rules are inconsistent with federal policy. The Court then held that a futility exception is not inconsistent with the regulatory objectives of the Investment Company Act, because the act imposes controls and restrictions on directors of investment companies, but does not give such directors greater power over shareholder suits than they have under state law.

Actions Against Professionals Under Commission Rule2(e)

During 1991, the new group formed within the Office of the General Counsel to litigate administrative professional disciplinary cases under Rule2(e)of the Commission's Rules of Practice concluded several important cases. In *In re Combellick and Reynolds,*[228] the Administrative Law Judge found that the accounting firm of Combellick, Reynolds & Russell, Inc. and two of its partners had engaged in improper professional conduct by violating generally accepted auditing standards during 1983, 1984, and 1985 audits of George Risk Industries, Inc. Each respondent was suspended from appearing or practicing before the Commission for three months. No appeal to the Commission was taken from the ruling.

In *In re Frederick S. Todman &* Co., the accounting firm of Frederick S. Todman and one of its partners, Victor Marchioni, consented to a Commission Order under Rule 2(e) finding that they engaged in improper professional conduct during the 1984 audit of Bevill Bresler & Schulman, Inc., a registered broker-dealer formerly engaged in trading in government and municipal securities. The order found in part that the respondents had failed to discover a shortfall of approximately $29 million in collateral in trading accounts with a related party. The Commission censured the firm and suspended Marchioni from appearing or practicing before it for six months.

In *In re Cecil S. Mathis,* the Commission, pursuant to Rule 2(e), permanently barred attorney Cecil S. Mathis from appearing or practicing before it. The bar was based on an antifraud injunction entered against Mathis in *SEC v. Lifeline Healthcare Group, Inc.* The SEC alleged that Mathis, a former Assistant Regional Administrator of the agency's Fort Worth Regional Office, participated in the preparation of certain false and misleading filings and press releases disseminated to the public by Lifeline as part of an aggressive campaign to artificially inflate the price of Lifeline's stock.

Motions to Vacate Permanent Injunctions

In *SEC v. Sloan,* the United States District Court for the Southern District of New York denied defendant Samuel H. Sloan's motion to vacate an injunction entered against him 17 years ago. This injunction enjoined him from violating bookkeeping and net capital provisions of the securities laws. The court also found that, in light of Sloan's long history of securities law violations and noncompliance with court orders, the injunction continued to serve a useful purpose.

In *SEC v. Fabregas,* the SEC successfully opposed defendant Stephen W. Porter's motion to vacate a permanent injunction enjoining him from violating antifraud provisions of the federal securities law. The United States District Court for the Central District of California denied Porter's motion without opinion.

Actions Against the Commission and Staff

In *Fleet/Norstar Financial Group, Inc. v. SEC,* the United States District Court for the District of Maine denied Fleet's motion to nullify a Commission investigative subpoena served on Fleet to obtain bank records. The Court dismissed Fleet's motion, agreeing with the Commission that the Court did not have subject matter jurisdiction to entertain an action challenging a Commission investigative subpoena.

In *SEC v. Henry Lorin,* defendant Eugene K. Laff, who previously had been convicted for criminal violations of the federal securities laws, filed a counterclaim against the Commission and six former and current SEC staff members alleging staff misconduct in its handling of a Commission investigation into his trading of various securities in the over-the-counter market. The United States District Court for the Southern District of New York dismissed the counterclaim, finding that it was barred by Section21(g)of the Exchange Act, which prohibits the consolidation of Commission injunctive actions with any private action without the Commission's consent. The court also found that the counterclaim against the Commission was barred by sovereign immunity.

Requests for Access to Commission Records

The Commission received approximately 75 subpoenas for documents and/or testimony in 1991. In some of these cases, the Commission declined to produce the requested documents or testimony because the information sought was privileged. The Commission's assertions of privilege were upheld virtually 100% of the time when the issuer of the subpoena challenged the assertion in court. On the one occasion in which the Commission was ordered to produce documents, the court ordered the documents produced under a strict confidentiality order. Among the most significant of these challenges was *United States v. Ling,*[229] a criminal case. The defendants served a pre-trial subpoena on the Commission, seeking production of several categories of documents. The Commission moved to nullify the subpoena on the grounds that disclosure of the documents could (1) reasonably be expected to impair an ongoing Commission investigation and (2) reveal the staff's legal advice to the Commission, as well as the policy and legal deliberations of the Commission and the work product of its attorneys. The United States District Court for the District of Maryland agreed and nullified the subpoena.

In *In SIPC v. Blinder, Robinson & Co., Inc.,* the United States Bankruptcy Court for the District of Denver denied Intercontinental Enterprises, Inc's motion for an order to permit depositions of one former and three current SEC staff members and to obtain agency documents. The court concluded that Intercontinental had inappropriately sought to use Bankruptcy Rule 2004 to discover information beyond the limit of the rule. The court adopted the Commission's reasoning that the proposed depositions of the agency officials would increase significantly the estate's fees and expenses without any demonstrated benefit to the estate. The court also concluded that Intercontinental sought without permission to obtain access to possibly privileged information to support its proposed lawsuit against the SEC and that such information was irrelevant to the bankruptcy case, as contended by the Commission.

In *Banes v.* SEC,[230] petitioners requested copies of the investigative transcripts of prior testimony they had given during a Commission investigation. The Commission denied their requests on the ground that providing copies at that time could impair the investigation. The petitioners appealed this decision in the United States Court of Appeals for the Ninth Circuit, arguing that it was a final order, subject to direct appellate review. The United States Court of Appeals for the Ninth Circuit Court held that the Commission's decision to withhold the transcripts during the pendency of its investigation was neither a final order nor a collateral order and dismissed the petition for lack of subject matter jurisdiction.

The SEC received 1,799 requests and appeals under the Freedom of Information Act (FOIA) for access to agency records and 4,256 confidential treatment requests and appeals from persons who submitted information. There were 126 appeals to the SEC's General Counsel from initial denials by the FOIA office. None resulted in court actions against the agency.

The SEC obtained a favorable decision in a FOIA lawsuit filed against it in 1989. In *Safecard Services, Inc. v.* SEC,[231] the United States Court of Appeals for the District of Columbia Circuit affirmed a district court decision granting summary judgment for the SEC and denying access to attorney work-products. The court of appeals also agreed with the agency that personal identifying information regarding persons whose names appear in SEC investigatory files is categorically exempt from release under Exemption 7(C).

Actions Under the Right to Financial Privacy Act

Nine actions were filed against the SEC under the Right to Financial Privacy Act (RFPA), to block Commission subpoenas for customer information from financial institutions.[232] All of the challenges, except one which is still pending, were dismissed after the courts found, in each case, that the agency was seeking the records for a legitimate law enforcement inquiry, and the records were relevant to those investigations. Of particular note is *Kuhlman v. SEC*,[233] in which the United States District Court for the District of Nebraska was faced with the argument, by the law firm whose account was subpoenaed, that the records were protected by the attorney-client privilege because they were contained in a bank account maintained for the benefit of the firm's clients. The court found that the challenger's claim of attorney-client privilege could not be sustained.

Significant Adjudication Developments

Substantial progress was made in addressing the backlog of appeals awaiting staff review. The number of cases reviewed on the merits increased 117 percent over FY 1990, and there was a significant improvement in the age of the staff's case inventory. The case inventory was reduced by 16 percent, although the number of fullybriefed cases received in 1991 increased by 36 percent over the number received in 1990.

Significant Adjudicatory Decisions Concerning Broker-Dealers and Market Professionals

In *Arthur J. Huff,*[234] the Commission, in two separate opinions, dismissed proceedings against Huff, a vice president and senior registered options principal of PaineWebber Incorporated (PW). Huff had been charged with failing to exercise reasonable supervision over Dennis E. Greenman, a salesman in PW's Miami branch office, who incurred heavy losses using customers' funds for options trading without their authorization.

In *James C. McLamb*[235] the Commission affirmed disciplinary action taken by the New York Stock Exchange (NYSE) against McLamb, a former assistant vice president and registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. The Commission found, as had the NYSE, that from October 1983 to July 1984 McLamb took advantage of an in-house system for trading odd-lot market orders by executing 73 trades at prices that were more favorable to himself and his customers than the prices allowed by the firm's procedures.

In *Doughs Jerome Hellie,*[236] the Commission affirmed a National Association of Securities Dealers (NASD) disciplinary action against Hellie, a partner in the investment adviser firm of Hellie, Walch & Co. The Commission found, as had the NASD, that Hellie made unsuitable recommendations with respect to a client's account. In affirming the sanctions assessed by the NASD, the Commission stated that Hellie had ignored his fundamental obligation of fair dealing, thereby causing his customer to suffer a substantial loss.

In *Brian G, Allen,*[237] the Commission affirmed disciplinary action taken by the NASD against Alien for forging a check payable to himself from an affiliate of his employer and converting the proceeds. In affirming the sanctions imposed by the NASD, the Commission noted that "there can hardly be more serious misconduct in the securities business than forgery and theft."

Significant Legislative Developments

Jurisdictional Proposal

On January 14, 1991, Senators Leahy, Lugar, Kerrey, Bond, Dodd, and Heinz introduced S. 207, the Futures Trading Practices Act of 1991. Title III of the act consisted of the Intermarket Coordination Act of 1991, a compromise on the intermarket and Jurisdictional issues reached by leaders of the Senate Agriculture, Nutrition, and Forestry Committee and the Senate Banking, Housing, and Urban Affairs Committee. Title I of S. 207 contained the Commodity Futures Trading Commission's five-year authorization and Title II consisted of a package to reform trading practices on the futures exchanges. On March 6, 1991, the Senate Agriculture Committee ordered reported an amended version of S. 207. On April 18, 1991, the Senate passed S. 207 as H.R. 707, which the House had previously passed without the lntermarket Coordination Act of 1991. No further action was taken on the legislation in 1991.

Bank-Related Legislation and Testimony

On December 19, 1991, the President signed into law the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991,[238] Considerably narrower than earlier versions of bank reform legislation considered by the 102nd Congress, the act generally focused on bank supervision and took some steps toward limiting the expansion of the federal deposit insurance system by reining in the too big to fail doctrine.

In February 1991, the Department of the Treasury submitted its report on the banking system to Congress. The Department subsequently submitted to Congress the Administration's legislative proposal, the Financial Institutions Safety and Consumer Choice Act of 1991, which was based on the report.

The Administration's proposal generally would have, among other things: (1) provided for more stringent calculation of limits on insured deposits; (2) limited pass-through deposit insurance; (3) permitted banks to affiliate with securities, insurance, and other financial services firms; (4) repealed the exemptions in the Securities Act for securities issued by banks and thrifts; (5) removed the blanket exclusions from the Exchange Act's definition of broker and dealer and from the definition of investment adviser in the Investment Advisers Act; (6) codified limitations on the scope of the bank common trust fund exclusion from the definition of investment company in the Investment Company Act; (7) provided for prompt corrective action by banking regulators; (8) authorized nationwide banking in three years; (9) established a new bank regulatory agency within the Department of the Treasury and abolished the Office of Thrift Supervision and the Office of the Comptroller of the Currency; and (10) authorized the Federal Deposit Insurance Corporation to borrow funds from any Federal Reserve System bank.

On March 20, 1991, Senators Riegle and Garn introduced the Administration's proposal as S. 713. The Senate Banking Committee produced a Committee Print based on S. 713 and S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. The Committee marked up the Committee Print and reported it out as S. 543 on August 2, 1991. Also on March 20, 1991, Congressmen Gonzalez and Wylie introduced the proposal as H.R. 1505.

Chairman Breeden testified concerning H.R. 1505 before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs on April 30, 1991 and before the Senate Committee on Banking, Housing, and Urban Affairs on May 7, 1991. After markup, H.R. 1505 was reported out with amendments and renumbered as H.R. 6. On November 4, 1991, the House voted down H.R. 6. Chairman Breeden also discussed H.R. 1505 in his testimony before the House Subcommittee on Telecommunications and Finance on June 20, 1991.

Roll-up Transactions

In response to concern about practices connected with so-called roll-up transactions, which typically involve the combination of multiple limited partnerships into a single public company, several legislative initiatives were introduced in 1991. Chairman Breeden testified concerning roll-up transactions before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs and the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on February 27 and April 23, 1991, respectively. James R. Doty, the SEC's General Counsel, testified before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce and the Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance concerning roll-up transactions on July 10 and 16, 1991, respectively.

Government Securities

The Government Securities Act of 1986 authorized the Department of the Treasury to adopt rules applicable to the government securities market and provided that such authority be terminated after five years. Before congressional action to renew the Department's rulemaking authority was taken, disclosures of certain abuses received widespread publicity and triggered intense scrutiny of the market for government securities. As a result, the Department's rulemaking authority expired on October 1, 1991.

On June 12, 1991, Chairman Breeden testified before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs concerning possible amendments to the Government Securities Act. On September 4, 1991, Chairman Breeden testified before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce concerning disclosures of certain abuses in the government securities market and the implications of such activities with respect to the regulation of transactions in government securities. Chairman Breeden recommended several changes in law if Congress decided to reauthorize the act pending a general evaluation of other changes. On September 11, 1991, Chairman Breeden testified again before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs concerning the government securities market.

RICO Reform

On April 25, 1991, Commissioner Mary Schapiro testified before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary in support of H.R. 1717, The

RICO Amendments Act of 1991, which was introduced in the House by Congressman Hughes.

Statute of Limitations Legislation

In *Lampf*, *Pleva, Lipkind, Prupis & Petigrow v. Gilbertson,*[239] a case decided by the Supreme Court on June 20, 1991, the Court held that private actions brought under Section 10(b) of the Exchange Act must be commenced within one year after discovery of the alleged violation and not more than three years after the violation occurred. Prior to the decision in *Lampf,* the relevant judicial precedents in a majority of circuits provided a substantially longer period of time for filing private actions under Section

On October 2, 1991, Chairman Breeden testified before the Subcommittee on Securities of the Senate Banking, Housing, and Urban Affairs Committee in support of legislation that would establish an express statute of limitations providing that private antifraud actions maybe brought within two years after discovery of the violation and five years after the violation occurred. On November 21, 1991, Chairman Breeden testified before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce in support of similar legislation.

In response to *Lampf,* the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act, enacted on December 19, 1991, added a new Section 27A of the Exchange Act to apply to "any private civil action implied under Section 10(b) . . . that was commenced on or before June 19, 1991." For those cases, the applicable statute of limitations period is that "provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991." The statute also allows the reinstatement of any case that may have been dismissed as the result of the decision in

Lampf. Such actions can be reinstated on motion of the plaintiff not later than 60 days after the enactment of Section 27A.

Corporate Reorganizations

The Commission acts as a statutory advisor in reorganization cases under Chapter 11 of the Bankruptcy Code to see that the interests of public investors are adequately protected. During a reorganization, the debtor generally is allowed to continue business operations under court protection while negotiating a plan to rehabilitate the business and to pay the company's debts. Although Chapter 11 relief is available to businesses of all sizes, the Commission typically limits its participation to cases involving debtors that have publicly traded securities registered under the Exchange Act.

In 1990, the Commission authorized a review of its role in reorganization cases and of the adequacy of public investor protections under Chapter 11. During 1991, the staff completed its review of the bankruptcy program. Recommendations resulting from the staff's review are expected to be considered by the Commission in 1992.

Committees

Official committees are empowered to negotiate with a debtor on the administration of a case and to participate in all aspects of the case, including formulation of a reorganization plan. In addition to a committee representing unsecured creditors, which must be appointed in all Chapter 11 cases, the Bankruptcy Code allows the court or a United States Trustee to appoint additional committees for stockholders and others where necessary to assure adequate representation of their interests. During 1991, the Commission moved for, and the court approved, the appointment of a committee to represent investors in one Chapter 11 case.[240]

In a case having practical significance for the representation of both equity security holders and public debtholders by official committees, *In re Federated Department Stores, Inc. and Allied Stores Corp.,*[241] the bankruptcy court adopted the position advocated by the Commission and held that an institutional member of an official committee did not violate its fiduciary duties as a committee member if it is engaged in the trading of securities as a regular part of its business and has implemented an appropriate information blocking device (commonly known as a Chinese Wall) that was reasonably designed to prevent misuse of nonpublic information obtained through participation on the committee.

Estate Administration

The Commission protects the interests of public investors in reorganization cases by participating in selected matters involving administration of the debtor's estate.

In *Kaiser Steel Resources v. Action Traders, Inc.,*[242] a case having major significance for the protection of shareholders whose companies are taken over in leveraged buyouts, the United States Court of Appeals for the Tenth Circuit, agreeing with the position urged by the Commission, held that payments made to Kaiser's former shareholders in a 1984 leverage buyout (LBO) were protected from recovery under the fraudulent conveyance laws by Section 546(e) of the Bankruptcy Code. That section shields from the normal operation of the Code's avoidance provisions settlement payments made "by or to" stockbrokers, financial institutions, or securities clearing agencies.

The court first held that the Kaiser LBO payments were settlement payments for purposes of Section 546(e), basing its analysis on the plain meaning of the term settlement payments as understood in the securities industry. The court then rejected Kaiser's argument that Section 546(e) does not protect a settlement payment made *by a* stockbroker, financial institution, or clearing agency unless that payment is to another participant in the securities clearance and settlement system. The court noted that the provision on its face applies to payments "by or to" the entities enumerated in the statute, and that nothing in the legislative history indicates that following the statute's plain meaning would produce an unreasonable result. In this regard, the court noted that Section 546(e) was designed to avoid disruption of the securities markets, which would be an inevitable result if LBOs could be undone years after they occurred.

In *In re Amdura Corp.,*[243] the Commission filed a brief in an appeal to the district court expressing its view that class claims are permissible in bankruptcy.[244] The bankruptcy court had rejected a class proof of claim on the ground that the decision of the Tenth Circuit in *In re Standard Metals,* 817 F.2d 625 (10th Cir. 1987), concluding that a class claim is not permissible in bankruptcy, was controlling authority. The Commission argued that that decision is dictum and the issue remains open in the Tenth Circuit. The Commission also pointed out that the better reasoned view, represented by several subsequent circuit and district court decisions,[245] is to permit class proofs of claim in bankruptcy cases. The matter is pending.

In *In re LTV Corp.,*[246] the United States Court of Appeals for the Second Circuit dismissed an interlocutory appeal on the class claim issue for lack of jurisdiction.[247] The Commission had filed a brief in the Second Circuit arguing that the district court's ruling permitting the filing of class claims[248] should be affirmed. The Second Circuit's dismissal left intact the district court's decision.

In *SIPC v. Blinder, Robinson & Co., Inc.,*[249] the Commission, in an appeal to the United States Court of Appeals for the Tenth Circuit, filed a brief joining in the arguments of the Securities Investor Protection Corporation (SIPC) that under the bankruptcy laws and the Securities Investor Protection Act (SIPA), Blinder, a broker-dealer, was not eligible to utilize Chapter 11 of the Bankruptcy Code and was properly placed in a SIPC liquidation. The district court found that, as a matter of law, Blinder was a stockbroker and therefore expressly prohibited from reorganizing under Chapter 11. The court further found that a trustee should be appointed pursuant to the provisions of SIP A because Blinder, by placing itself in Chapter 11, became "unable to meet its obligations as they mature," a statutory ground for liquidation pursuant to SIPA. The appeal is pending.

In *In re Revco D. S., Inc.,*[250] the Commission disagreed with the proposition that an indenture and related debentures are executory contracts subject to assumption or rejection under Section 365 of the Bankruptcy Code. The indenture trustee had moved to require the debtor to assume the indenture and debentures, claiming they were executory contracts. The Commission argued that assumption of the indenture as requested by the indenture trustee, which would automatically secure an administrative expense priority for its services, is contrary to the statutory scheme established in the Bankruptcy Code for compensating indenture trustees for services rendered in connection with reorganization proceedings. The bankruptcy court denied the debtor's motion without reaching the executory contract question.

Disclosure Statements/Plans of Reorganization

A disclosure statement is a combination proxy and offering statement used to solicit acceptances of a plan of reorganization. Such plans often provide for the issuance of new securities to creditors and shareholders in exchange for part or all of their claims or interests in the debtor, pursuant to an exemption in Section 1145 of the Bankruptcy Code from registration under the Securities Act. Under the Code, the adequacy of disclosure is to be determined without regard to whether the information provided would otherwise comply with the disclosure requirements of the federal securities laws. However, in recognition of its special expertise on disclosure questions, the Code gives the Commission the right to be heard, distinct from its special advisory role, on the adequacy of disclosure. The staff limits its review to disclosure statements of publicly-held companies or companies likely to be traded publicly after reorganization. During 1991, the staff reviewed 152 disclosure statements and commented on 92. The vast majority of the Commission's comments were adopted by debtors without the need to file a formal objection.

The Commission filed a formal objection in *In re Banyan Corp,*[251] to a disclosure statement for a plan that sought to discharge claims of creditors of a substantially assetless publicly-held shell corporation. The debtor sought through the plan to emerge from Chapter 11 as a publicly-traded company without assets or liabilities and to merge with operating businesses at some unspecified time in the future. The Commission contended that this would contravene Section 1141(d)(3) of the Bankruptcy Code, which precludes a debtor from obtaining a discharge if it has liquidated all or substantially all of its assets and does not engage in business after consummating the reorganization plan. The matter is pending.

In *In re Amdura Corp.*[252] and *In re Banyan Corp.,*[253] the Commission filed objections to the confirmation of proposed plans, arguing, as it has on several other occasions,[254] that plan provisions purporting to release non-debtor third parties from liability were beyond the discharge of liability provided for debtors in the Bankruptcy Code. The Commission argued that under Section 524(e) of the Code, a bankruptcy court can affect only the relationships of debtors and creditors, and cannot discharge the liabilities of a non-debtor. In *Amdura,* the court overruled the Commission's objections in light of a settlement between the debtor and securities law claimants. In *Banyan,* the matter is pending.

In *In re Southland Corp.,*[255] the Commission raised concerns about the discharge of non-debtor parties as objections to the debtor's disclosure statement. In response to the Commission's objections, the debtor amended its plan and provided a separate vote, unrelated to a vote on the plan itself, for those creditors who chose voluntarily to release their claims against non-debtors.

Conduct Regulation Matters

The General Counsel oversees the agency's ethical conduct program. During 1991, the General Counsel implemented five new government-wide ethics provisions concerning procurement integrity, post-employment restrictions, an honorarium ban, amendments to public financial disclosure provisions, and government-wide host paid travel. The General Counsel also submitted extensive comments on the proposed Standards of Ethical Conduct for Employees of the Executive Branch to the Office of Government Ethics. In addition, expansion of the Commission's activities into the areas of bank holding companies, government securities, and the internationalization of securities markets resulted in a great increase in the volume and complexity of ethics inquiries from members and senior staff. During 1991, the number of conduct regulation matters handled by the staff rose from 87 in 1990 to 249.

Economic Research and Analysis

The Office of Economic Analysis provides technical support and analysis to assist in evaluating the economic aspects of the Commission's regulatory program. The economics staff provides the Commission with research and advice on rule proposals, policy initiatives, and enforcement actions. The staff also monitors developments in capital markets around the world and major program initiatives affecting the United States financial services industry, markets, and investors.

Key 1991 Results

The staff reviewed rule proposals encompassing the full range of the Commission's regulatory program. The staff also provided advice, technical assistance, and empirical analyses of issues of concern to the Commission and its operating divisions. In addition, monitoring programs were maintained to study the implementation of major rules, new trading facilities, and developments in the domestic and international securities markets.

Liaison, Planning and Review

A comprehensive program of economic and policy analysis is provided by the economics staff, focusing on issues related to corporate restructuring, stock price volatility, mutual fund performance, financial disclosure, insider trading, and market manipulation. During the year, the economics staff directed its attention towards a number of issues. For example, debate in the securities market continued over the effectiveness and economic consequences of circuit breaker mechanisms. The Market Reform

Act of 1990 required the staff to examine the practices found to contribute significantly to market volatility. In the investment company area, the proliferation of funds and fund types, coupled with marketing techniques by investment companies, including the use of 12b-1 fees, resulted in complex disclosure issues.

The number of bankruptcies and financial difficulties for firms that engaged in going private transactions increased in 1991. Continued discussion of further reforms, or outright repeal, of the Glass-Steagall Act required analysis of the economic implications of merging banking, insurance, and broker-dealer activities. The need for such analysis remained critical due to the deepening concerns over the United States system of deposit insurance.

Economic Studies

The staff completed studies related to deposit insurance and institutional ownership, among other things. The staff also studied the effects of mark-to-market accounting for banks, the effect of state merit regulation, and the performance of limited partnership roll-up transactions.

Technical Assistance

The staff prepared capital markets briefing reports that assessed the economic, institutional, and regulatory developments outside the U.S. that impact the international competitiveness of the U.S. securities market and the Commission's regulatory program. The staff evaluated the European Economic Community's move toward a unified capital market by 1992, analyzed changes in the Japanese and other capital markets around the world, and closely monitored developments in the international bond and equity markets. The staff also provided technical support to the Office of International Affairs concerning international securities regulation and enforcement matters.

As a result of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, the enforcement staff required additional technical assistance from the economics staff in analyzing trading events. The Commission's effort to combat fraud in the penny stock market also required increased attention by the staff. In addition, the staff provided technical advice and assistance to the Commission's operating divisions on a wide variety of issues. The Office of Economic Analysis, for example, furnished the Commission and divisions with a quarterly report on the financial health of the securities industry. In the enforcement area, the staff worked on a wide variety of cases, including insider trading, disclosure violations, suitability, and market manipulation.

Management and Program Support

Management and Program Support provides the Commission and operating divisions with management and administrative services in support of the agency's objectives. Management support includes overseeing the allocation and expenditure of agency funds, liaison with Congress, disseminating information to the press, facilitating Commission meetings, and developing and executing management policies. Administrative support includes services such as accounting, data processing, staffing, and space management.

Key 1991 Results

A number of significant activities were highlighted during 1991. In particular, the Commission held 75 meetings and considered 335 matters. Major activities of the Commission included: (1) establishing a multijurisdictional disclosure system intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers; (2) proposing rules to establish an activity-based large trader reporting system; (3) proposing temporary rules to establish a risk assessment system pursuant to the Market Reform Act of 1990; and proposing amendments to the proxy rules which will be reproposed in the coming year.

Among other significant accomplishments were the collection of fee revenue of $259 million compared to a final appropriations level of $196 million-a $63 million net gain to the United States Treasury. Additionally, a Memorandum of Understanding with the General Services Administration (GSA) that transferred to the SEC several GS A leases, including the headquarters' lease for approximately 300,000 square feet of office and related space, was completed.

The Executive Staff

The executive staff supported the Commission in fulfilling its leadership role with respect to the globalization of securities markets. The staff assisted in preparing for the Sixteenth Annual Meeting of the International Organization of Securities Commissions (IOSCO) conference that was held during September 1991 in Washington, D.C. The Commission played a key role in developing policy and technical recommendations adopted by IOSCO. Also, the executive staff directed the Emerging Markets Advisory Committee and programs offered by the International Institute for Securities Market Development (Institute). The Institute, an intensive two-week program for foreign regulators, consists of comprehensive training in all aspects of securities markets and their regulation. Representatives from over 30 countries attended the inaugural session in April.

Office of the Secretary

The Commission held 75 meetings in 1991, during which it considered 335 matters, including rule proposals, enforcement actions, and other items that affect significantly the stability of the markets and the nation's economy. Significant actions taken by the Commission included:

- adopting amendments to Rule 2a-7 under the Investment Company Act of 1940 to tighten requirements for portfolio quality, maturity, and diversity of money market funds;

- adopting comprehensive amendments to long-standing Commission rules on disclosure of securities transactions by officers, directors, and principal security holders of reporting companies;

• establishing a multijurisdictional disclosure system intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers;

• proposing rules to establish an activity-based large trader reporting system;

• proposing temporary rules to establish a risk assessment system pursuant to the Market Reform Act of 1990; and

• proposing amendments to the proxy rules, which will be reproposed in the coming year.

Office of Legislative Affairs

During 1991, the Congress actively considered a number of important pieces of legislation relating to issues under the Commission's jurisdiction, all of which remained pending at the end of the year. These were most notably:

• omnibus reform of the regulation of financial services in the United States, including modernization of the Glass-Steagall Act, the Bank Holding Company Act, and other United States financial laws;

• government securities regulation coupled with the agency's inquiry into the activities of Salomon Brothers and other participants in the government securities market;

• problems with real estate partnership "roll-ups" and their impact on limited partner investors;

• setting an explicit statute of limitations for implied rights of private action in violations of the Securities Exchange Act of 1934 (an issue raised by the decision of the Supreme Court in *Lampf, Pleva, Upland, Prupis and Petigraw v. Gilbertson, 111 S.Ct.* 2773); and

• reforms relating to accountants' responsibilities and shareholders' rights relative to executive compensation levels.

Congressional interest in the agency's activities and initiatives reached new levels. The Commission and staff members testified at 29 congressional hearings during the year, more than a 50 percent increase over the prior year.

Office of Public Affairs

The Office of Public Affairs communicates information on agency activities to those interested in or affected by Commission actions, including the press, the general public, regulated entities, and employees of the agency, through ongoing programs and special projects. The office publishes the SEC *News Digest* daily, which provides information on rule changes, enforcement actions against individuals or corporate entities, acquisition reports, releases, decisions on requests for exemptions, upcoming Commission meetings, upcoming testimony by Commission members and staff, lists of Section 16 letters, and other events of interest. Information on Commission activities also is disseminated through notices of administrative actions, litigation releases, and other materials.

Special projects, such as support for activities related to IOSCO, the Institute, and meetings of the Emerging Markets Advisory Committee, the Market Transactions Advisory Committee and the Market Oversight and Financial Services Advisory Committee, also are undertaken by the office in support of the agency's mission.

Another important function is the coordination of the agency's interaction with the press. Many of the agency's actions are of national and, increasingly, international interest. When appropriate, these actions are brought to the attention of regional, national, and international press. The office also issues press releases on upcoming events, agency programs, and special projects. A total of 78 news releases were issued during the year. Additionally, congressional testimony and speeches presented by Commissioners and senior staff are retained and disseminated in response to requests from the public. The office responded to over 85,000 requests for specific information on the agency or its activities. Programs for 255 foreign visitors were coordinated during the year.

Office of the Executive Director

The agency's management staff initiated or continued special projects such as coordinating the effort to develop the automation systems mandated by the Market Reform Act of 1990 and developing a plan to implement a comprehensive audit follow-up program. The management staff worked closely with the Chairman and other senior officials in formulating the agency's budget submissions for the Office of Management and Budget and the Congress.

Equal Employment Opportunity. The Office of the Executive Director also implemented improvements to the agency's Equal Employment Opportunity (EEO) programs. These improvements included:

• hiring an EEO Manager with specialized experience in managing and developing EEO affirmative employment programs;

• establishing the Hispanic and Black Employment Programs and Committees to provide advice and recommendations to the EEO Manager and EEO Director;

• implementing a comprehensive evaluation program for the agency's

affirmative employment program to evaluate staffing patterns, promotions, disciplinary actions, and other personnel areas monitored by the EEO office;

• publishing statements by Chairman Breeden on equal employment opportunity and prevention of sexual harassment;

• distributing a model EEO and Human Resources Management performance standard to provide managers and supervisors guidance in evaluating performance in EEO and personnel management;

• developing an EEO Handbook titled *Employee Guide to the Commission's Equal Employment Opportunity Program* to provide employees with information about the SEC's Equal Employment Opportunity Program, EEO counseling, and discrimination complaints processing;

• creating an EEO task force to plan sexual harassment awareness initiatives and to make recommendations to the Commission on conducting sexual harassment training for all agency employees;

• conducting special seminars under the sponsorship of the Federal Women's Program Committee;

• creating a system to monitor data on senior vacancies within the agency; and

• reestablishing an Upward Mobility Program within the agency to provide career advancement opportunities to clerical and support personnel.

The agency continued to actively recruit minorities and women. At the end of the year, women accounted for 48.3 percent of the total agency workforce; Black Americans accounted for 27 percent; Hispanic Americans accounted for approximately 3 percent; and Asian-Americans made up 2.4 percent.

Administrative Support

The administrative support offices provide the financial, data processing, personnel, and facilities support necessary for the agency to carry out its mission. Under the direction of the Office of the Executive Director, these support services are provided by the Offices of the Comptroller, Information Systems Management, Human Resources Management, Administrative Services, and Filings, Information and Consumer Services.

Commission Operations. In 1991 for the ninth consecutive year, the agency collected revenue for the United States Treasury in excess of its appropriation. The agency collected fee revenue of $259 million compared to a final appropriations level of $196 million—a $63 million net gain to the United States Treasury. The $196 million appropriation level included an initial $157.5 million in budget authority, a $1.6 million supplemental, and $36.9 million in offsetting fee collections. For 1991, offsetting collections were generated as a result of a fee rate increase under Section 6(b) of the Securities Act of 1933 (Securities Act) to one-fortieth of one percent from one-fiftieth of one percent.

Fee revenue is collected from four basic sources: registrations under Section b(b) of the Securities Act (comprising 70 percent of total 1991 fee revenue); transactions on securities exchanges (24 percent); tender offer and merger filings (3.5 percent); and miscellaneous filings (2.5 percent).

Financial Management. The agency completed its third year of operating the new accounting system, the Federal Financial System (FFS). The FFS provided the agency with significant automation improvements such as:

- entering voucher and payment data directly into the system;
- creating travel authorization and procurement documents;
- providing decentralized data throughout the agency;
- accomplishing voucher research on-line; and
- making management data more readily available.

The agency continued to improve its automated collection and processing of annual fee revenue through electronic funds transfer and developed systems and procedures to make the voluntary Treasury-designated "lockbox" fee collection system mandatory. The agency received over 43,000 separate fee payments of differing amounts for transactions of exchange listed securities and required and elective reports from about 15,000 companies. The staff processed a 10 percent increase in payroll actions (10,710), an 8 percent increase in electronic fund transfers (82,498), a 112 percent increase in electronic fee deposits (4,500), a 20 percent increase in travel vouchers (8,716), and an 8 percent increase in miscellaneous invoices (12,450).

The SEC's staff completed much of the work in the design of an automated fee tracking, reporting, and accounts receivable system. The Office of the Comptroller also developed a five-year plan to strengthen the agency's financial management system.

Information Systems Management. During 1991, the Office of Information Systems Management continued to modernize the agency's automated data processing and information services with a number of significant information initiatives that will reduce the time spent by SEC staff in collecting and processing information. These efforts included:

• implementing the development of the agency's Automated Correspondence Tracking system to replace the Office of Consumer Affairs Complaints System and the Chairman's Correspondence Tracking System;

• initiating system development for tine new Entity Filing Fee System (EFF) that will consolidate all entity information, filings, and their associated fees;

• completing the functional and data requirements for EDGAR/EFF interface that will enhance the automatic acceptance functions in the EDGAR system;

• completing the functional requirements for the Operational Interface

between the National Association of Securities Dealers' Central Registration Depository system and the agency's Broker-Dealer system;

• developing and implementing the 6(b) Fee Collection Reporting system that allows monitoring of fees collected for filings made pursuant to Section 6(b) of the Securities Act; and

• integrating the agency's two separate electronic mail services into a single seamless system.

Human Resources Management. The Office of Human Resources Management activities include employee compensation and benefits, recruitment and staffing, training, position management and classification, labor relations, counseling, disciplinary actions, employee recognition, and maintenance of official employee records. The staff monitor turnover to assist in formulating hiring strategies to avoid personnel shortfalls and their adverse effects on productivity.

During 1991, a new Personnel Operating Policies and Procedures Manual was published to provide managers and employees with updated guidance to implement various new authorities under the Federal Employee Pay Comparability Act (FEPCA) of 1990. New policies were issued on recruitment bonuses, appointments above the minimum of a grade based on superior qualifications, positions designated under the performance management and recognition system, and performance standards on EEO and human resources management for executives, managers and supervisors. As part of FEPCA, interim geographic differentials and the new Administrative Law Judge pay system were implemented.

Due to a significant increase in the agency's staffing level in 1991 and continued turnover at higher than the government-wide average, the agency continued an aggressive recruitment campaign. Particular emphasis was placed on the hiring of attorneys, accountants, securities compliance examiners, computer specialists, and secretaries through use of the agency's delegated examining authorities, special OPM hiring programs, advertising, and attendance at Office of Personnel Management (OPM) job fairs. Recruitment brochures and other materials also were redesigned. The agency's upward mobility program was reactivated and restructured. A total of 26 positions, representing about one percent of the agency's total work force, was approved for inclusion in the program.

In addition, 1991 was the first full year that contract services under the employee assistance program were available to all SEC employees and their families. Use of this counseling and referral service increased by 82 percent to 40 persons in 1991. The employee assistance counselors also support the agency's drug-free workplace plan by providing education, consultation, and referral services.

Despite budget constraints from October to early December 1990, SEC employees attended 3,370 training courses during the year. Areas emphasized were computer applications, the Electronic Data Gathering, Analysis and Retrieval system, EEO, cultural diversity, and international securities regulation training. A survey and initial plans were completed for *a* series of professional development symposia.

To recognize excellence in performance, more than $1.48 million in incentive and performance awards was paid to employees. In addition, the agency implemented the new recertification requirements for members of the Senior Executive Service (SES).

The staff participated in a number of OPM task forces and external working groups, such as the OPM interagency work group to simplify SES procedures, the interagency advisory group committee on automated classification, a focus group on revising the classification system, and an interagency interview team to identify key human resources initiatives throughout the Federal Government.

Facilities Management. The Office of Administrative Services manages the agency's facilities and provides a wide range of logistic and office support services. Since obtaining independent leasing authority in November 1990, the agency has obtained new space that is of higher quality and has resulted in improved working conditions for several of its field offices, such as Atlanta, Chicago, Miami, Denver, and Salt Lake City. In addition, an 81,000 square foot facility in Northern Virginia was obtained to house the agency's computer operations and training facilities. A Memorandum of Understanding with the GSA was completed. As a result, several GSA leases, including the headquarters' lease for approximately 300,000 square feet of office and related space, was transferred to the agency.

The agency awarded contracts and purchase orders in excess of $30 million during 1991. The total number of actions was 2,613, a 5 percent increase over 1990. A significant portion of the increase is attributed to computer equipment, software, and support services acquisitions. In other areas, printing production increased from 60 million units to 61 million units; incoming mail increased by approximately 6 percent, while outgoing mail increased by approximately 10 percent. A comprehensive telecommunications study was initiated to review and evaluate existing telecommunications systems and to plan future systems.

Consumer Affairs. The Office of Filings, Information and Consumer Services is responsible for: (1) responding to investor complaints and inquiries; (2) screening information received to make referrals to SEC program divisions, self-regulatory organizations, states, or other federal agencies; (3) collecting and analyzing complaint information and trends to help target regulatory and enforcement activities; (4)

preparing educational materials to assist investors in protecting their interests; and (5) developing and implementing the agency's consumer protection program.

The staff responded to 41,216 contacts in 1991. Of the 41,216 contacts, 19,280 were complaints, 11,636 were inquiries, and 10,300 were a combination of complaints and inquiries. Approximately 44 percent of the complaints (8,466) involved broker-dealers. The remainder of the complaints was divided among issuers, mutual funds, banks, transfer agents, and investment advisers. The single largest category of complaints against broker-dealers (1,968) involved allegations of high pressure or fraudulent sales tactics.

The new computerized correspondence tracking system, Agency Correspondence Tracking System (ACTS), was implemented in June 1991. ACTS permits a more thorough analysis of complaint information and trends and increases the timeliness of the agency's response to investors and members of the public.

Public Reference. The Office of Filings, Information and Consumer Services is responsible for making company filings, Commission rules, orders, studies, reports and speeches available to the public in the public reference room. Visitors may review and copy all public documents. In addition, copies may be ordered by writing the agency, and/or telephoning the agency's dissemination contractor.

During 1991, the staff answered questions and completed requests for documents from 46,700 visitors to the headquarters public reference room. A total of 334,944 paper documents and 363,941 microfiche records were added to the existing library of publicly available information, which was maintained amid constant use by visitors. A total of 4,816 requests for paper filings was processed while 114,897 telephone inquiries regarding filings were answered. In addition, the staff processed 507 formal requests for certifications of Commission filings.

Endnotes

[1]*SEC v. Bank of New England Corp.,* Accounting and Auditing Enforcement Release No. 286 Dec. 21, 1990), 47 SEC Docket 2028.

[2]*In the Matter of Fleet/Norstar Financial Group, Inc.,* Accounting and Auditing Enforcement Release No. 309 (Aug. 14, 1991), 49 SEC Docket 882.

[3]*In the Matter of Excel Bancorp., Inc.,* Accounting and Auditing Enforcement Release No. 316 (Sept. 11, 1991), 49 SEC Docket 1325.

[4]SEC *and Federal Deposit Insurance Corporation v. Robert J. Aulie,* Litigation Release No. 12899 (July 9, 1991), 49 SEC Docket 548.

[5]*SEC v. Ernst &Young,* Accounting and Auditing Enforcement Release No. 301 (June 13, 1991), 49 SEC Docket 95.

[6]*SEC v. Peoples' Bank of Brevard, Inc.,* Litigation Release No. 12753 (Jan. 14, 1991), 47 SEC Docket 2284.

[7]*SEC v. CapitalBancCorp.,* Accounting and Audi ting Enforcement Release No. 303 (Sept. 18, 1991), 49 SEC Docket 0243.

[8]*SEC v. Phillip J. Stevens,* Litigation Release No. 12813 (Mar. 19, 1991), 48 SEC Docket 841.

[9]*SEC v. Baruch Rosenberg,* Litigation Release No. 12986 (Sept. 24, 1991), 49 SEC Docket 1618.

[10]*SEC v. John L Petit,* Litigation Release No. 12693 (Nov. 5, 1990), 47 SEC Docket 1340.

[11]*SEC v. Stephen R. Rasinski,* Litigation Release No. 12701 (Nov.

13, 1990), 47 SEC Docket 1396.

[12] *SEC v. Robert H. Willis,* Litigation Release No. 12754 (Jan. 14, 1991), 47 SEC Docket 2285.

[13] *SEC v. Ernesto Tinajero,* Litigation Release No. 12843 (Apr. 22, 1991), 48 SEC Docket 1363.

[14] *SEC v. Louis Ferrero, et al,* Litigation Release No. 12799 (Mar. 7, 1991), 48 SEC Docket 614.

[15] *SEC v. Robert F. Hoogstraten,* Litigation Release No. 12791 (Mar. 6, 1991), 48 SEC Docket 606.

[16] *SEC v. Christopher J. Moran,* Litigation Release No. 13013 (Sept. 30, 1991), 49 SEC Docket 1734.

[17] *SEC v. Mark P. Malenfant,* Litigation Release No. 12848 (May 1, 1991), 48 SEC Docket 1438.

[18] *SEC v. Peter R. Gardiner,* Litigation Release No. 12818 (Mar. 27, 1991), 48 SEC Docket 944.

[19] *SEC v. John G. Broumas,* Litigation Release No. 12999 (Sept. 27, 1991), 49 SEC Docket 1722.

[20] *In the Matter of Andrew Doherty,* Securities Exchange Act Release No. 29545 (Aug. 12, 1991), 49 SEC Docket 859.

[21] *SEC v. Mark Sendo,* Litigation Release No. 12894 June 27, 1991), 49 SEC Docket 0408.

[22] *SEC v. Peter S. Adler,* Litigation Release No. 12945 (Aug. 15, 1991), 49 SEC Docket 962.

[23] *SEC v. David D. Sterns,* Litigation Release No. 12802 (Mar. 11, 1991), 48 SEC Docket 705.

[24]*SEC v. Robert F. Hasho,* Litigation Release No. 12732 Dec. 13, 1990), 47 SEC Docket 1749.

[25]*SEC v. Henry W. Lorin,* Litigation Release No. 12707 (Nov. 20, 1990), 47 SEC Docket 1465.

[26]*SEC v. Frank Shannon,* Litigation Release No. 12708 (Nov. 20, 1990), 47 SEC Docket 1467.

[27]*SEC v. Kochcapital, Inc.,* Litigation Release No. 12847 (Apr. 22, 1991), 48 SEC Docket 1437.

[28]*SEC v. Superior Resources, Inc.,* Litigation Release No. 12898 (July 5, 1991), 49 SEC Docket 0548.

[29]*SEC v. Forst-Hunter International Trade Corp.,* Accounting and Auditing Enforcement Release No. 311 (Aug. 20, 1991), 49 SEC Docket 1074.

[30]*SEC v. Michael S. Weinstein,* Accounting and Auditing Enforcement Release No. 282 (Oct. 26, 1990), 47 SEC Docket 1284.

[31]*SEC v. Michael I. Bitterman, et al,* Accounting and Auditing Enforcement Release No. 279 (Oct. 11, 1990), 47 SEC Docket 0879.

[32]*SEC v. Q. T. Wiles,* Accounting and Auditing Enforcement Release No. 308 (Aug. 14, 1991), 49 SEC Docket 957.

[33]*SEC v. John R. Ward,* Accounting and Auditing Enforcement Release No. 319 (Sept. 26, 1991), 49 SEC Docket 1624.

[34]*SEC v. Earthworm, Inc.,* Accounting and Auditing Enforcement Release No. 291 (Feb. 28, 1991), 48 SEC Docket 531.

[35]*SEC v. Ramtek Corp.,* Accounting and Auditing Enforcement Release No. 280 (Oct. 23, 1990), 47 SEC Docket 1120.

[36]*SEC v. Malibu Capital Corp.,* Litigation Release No. 12635, (Sept.

26, 1990), 47 SEC Docket 0651.

[37]*SEC v. Joseph Wolfer,* Litigation Release No. 12758 (Jan. 17, 1991), 47 SEC Docket 2289.

[38]*In the Matter of Michael R. Ford, CPA,* Accounting and Auditing Enforcement Release No. 297 (May 6, 1991), 48 SEC Docket 1552.

[39]*In the Matter of Raymond Bacek,* Accounting and Auditing Enforcement Release No. 296 (Apr. 22, 1991), 48 SEC Docket 1368.

[40]*In the Matter of Bruce F. Kalem, CPA,* Accounting and Auditing Enforcement Release No. 294 (Mar. 25, 1991), 48 SEC Docket 954.

[41]*In the Matter of Merle E. Bright, CPA,* Accounting and Auditing Enforcement 295, (Mar. 25, 1991), 48 SEC Docket 0868.

[42]*In the Matter of Ronald N. Vance,* Securities Exchange Act Release No. 28625 (Nov. 19, 1990), 47 SEC Docket 1404.

[43]*SEC v. Norman Nouskajian,* Litigation Release No. 13009 (Sept. 30, 1991), 49 SEC Docket 1731.

[44]*SEC v. Michael A. Clark,* Litigation Release No. 13010 (Sept. 30, 1991), 49 SEC Docket 1732.

[45]*SEC v. Burton R. Sugarman,* Litigation Release No. 12914 (July 18, 1991), 49 SEC Docket 620.

[46]*In the Matter of Morgan Stanley & Co., Inc.,* Securities Exchange Act Release No. 28990 (Mar. 20, 1991), 48 SEC Docket 747.

[47]*SEC v. Alan E. Clore,* Litigation Release No. 12377 (Feb. 13, 1990), 45 SEC Docket 1114.

[48]*HSEC v. Asher B. Edelman,* Litigation Release No. 12835 (Apr. 11, 1991), 48 SEC Docket 1107.

[49]*In the Matter of Norman G. Baker,* Securities Exchange Act Release No. 29108 (Apr. 22, 1991), 48 SEC Docket 1297.

[50]*SEC v. International Loan Network,* Inc., Litigation Release No. 12858 (May 16, 1991), 48 SEC Docket 1623.

[51]*SEC v. Latin Investment Corp.,* Litigation Release No. 12742 (Dec. 21, 1990), 47 SEC Docket 2027.

[52]*SEC v. Eugene R. Karczewski and Eugene F. Karczezvski,* Litigation Release No. 12845 (Apr. 24, 1991), 48 SEC Docket 1366.

[53]*SEC v. Robert Elderkin,* Litigation Release No. 12972 (Sept. 10, 1991), 49 SEC Docket 1382.

[54]*SEC v. FSG Financial Service, Inc.,* Litigation Release No. 12931 (Aug. 5, 1991), 49 SEC Docket 0828.

[55]*SEC v. BFMF Corp.,* Litigation Release No. 12725 (Dec. 6, 1990), 47 SEC Docket 1661.

[56]*SEC v. Neil E. Rogen,* Litigation Release No. 12812 (Mar. 18, 1991), 48 SEC Docket 841.

[57]*SEC v. Drexel Burnham Lambert, Inc.,* Litigation Release No. 11859 (Sept. 7, 1988), 41 SEC Docket 1294.

[58]*In the Matter of Michael R. Milken,* Securities Exchange Act Release No. 28951 (Mar. 11, 1991), 48 SEC Docket 645.

[59]*In the Matter of Lowell J. Milken,* Securities Exchange Act Release No. 28950 (Mar. 11, 1991), 48 SEC Docket 643.

[60]*In the Matter of Laser Arms Corp.,* Securities Exchange Act Release No. 28878 (Feb. 14, 1991), 48 SEC Docket 292.

[61]*In the Matter of Dominick & Dominick, Inc.,* Securities Exchange Act Release No. 29243 (May 29, 1991), 48 SEC Docket 1740.

[62]*In the Mailer of Albert Dreyfuss,* Securities Exchange Act Release No. 29242 (May 29, 1991), 48 SEC Docket 1740.

[63]*In the Matter of Walter Capital Corp.,* Securities Exchange Act Release No. 29028 (Apr. 1, 1991), 48 SEC Docket 0962.

[64]*SEC v. Pilgrim Planning Associates Inc., and John M. Mickner,* Litigation Release No. 13117 Dec. 10, 1991), 50 SEC Docket 0775.

[65]*SEC v. Robert F. Kurtz, Jr.,* Litigation Release No. 12989 (Sept. 23, 1991),49 SEC Docket 1623.

[66]*In the Matter of Dean Witter Reynolds, Inc.,* Securities Exchange Act Release No. 29447 (July 18, 1991), 49 SEC Docket 578.

[67]*In the Matter of Richard Alan Lavery,* Securities Exchange Act Release No. 28707 (Dec. 18, 1990), 47 SEC Docket 1789.

[68]*In the Matter of Thomas F. White & Co., Inc.,* Securities Exchange Act Release No. 29745 (Sept. 27, 1991), 49 SEC Docket 1638

[69]*In the Matter of Home Capital Services, Inc.,* Investment Advisers Act Release No. 1276 (May 8, 1991), 48 SEC Docket 1535.

[70]*In the Matter of James L* Raplozol, Investment Advisers Act Release No. 1265 (Jan. 9, 1991), 47 SEC Docket 2185.

[71]*In the Matter of R.L. Kotrozo, Inc.,* Investment Advisers Act Release No. 1257 (Oct. 3, 1990), 47 SEC Docket 0722.

[72]*In the Matter of Jack Alien Pirrie,* Investment Advisers Act Release No. 1270 (Jan. 31, 1991), 48 SEC Docket 154.

[73]*In the Matter of Carl L. Lazzell,* Investment Advisers Act Release No. 1260 (Oct. 18, 1990), 47 SEC Docket 0948.

[74]*SEC v. David B. Solomon,* Litigation Release No. 12712 (Nov. 27,

1990), 47 SEC Docket 1552.

[75]*SEC v. M. Wesley Groshans,* Litigation Release No. 12677 (Oct. 19, 1990), 47 SEC Docket 1122.

[76]*In the Matter of Renaissance Advisors, Inc.,* Investment Company Act Release No. 18245 (July 22, 1991), 49 SEC Docket 683.

[77]Figures are approximate.

[78]The 1990 total for SEC requests to foreign governments is composed of: 173 enforcement assistance requests; 2 enforcement referrals; and 2 technical assistance requests. Prior to 1990, separate totals for enforcement referrals and technical assistance requests were not maintained.

[79]The 1990 total for foreign requests to the SEC is composed of: 98 enforcement assistance requests; 2 enforcement referrals; and 30 technical assistance requests.

[80]The 1991 total for SEC requests to foreign governments is composed of: 145 enforcement assistance requests; and 6 enforcement referrals.

[81]The 1991 total for foreign requests to the SEC is composed of: 160 enforcement assistance requests; 7 enforcement referrals; and 44 technical assistance requests.

[82]Pub. L. No. 101-429, 104 Stat. 931 (1990).

[83]Securities Exchange Act Release No. 29093 (Apr. 17, 1991), 48 SEC Docket 1168.

[84]Securities Exchange Act Release No. 29094 (Apr. 17, 1991), 48 SEC Docket 1205.

[85]Securities Exchange Act Release No. 29095 (Apr. 17, 1991), 48 SEC Docket 1215.

[86]Id.

[87]15 USC § 78q-2 (1990).

[88]Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[89]Securities Exchange Act Release No. 29261 (May 31, 1991), 56 FR 29297.

[90]Securities Exchange Act Release No. 29812 (Oct. 11, 1991), 56 FR 52082.

[91]Securities and Exchange Act Release No. 29185 (May 9, 1991) 48 SEC Docket 1498.

[92]Securities Exchange Act Release No. 27445 (Nov. 16, 1989) 44 SEC Docket 2037.

[93]Securities Exchange Act Release No. 28899 (Feb. 20, 1991) 48 SEC Docket 408.

[94]Letter from Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, to Richard C. Breeden, Chairman, SEC, dated May 16, 1991; letter from Richard C. Breeden, Chairman, SEC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, dated July 11, 1991.

[95]Securities Exchange Act Release No. 29801 (Oct. 9, 1991), 56 SEC Docket 52080.

[96]Securities Exchange Act Release No. 29024 (Mar. 28, 1991), 48 SEC Docket 0901.

[97]Securities Exchange Act Release No. 29236 (May 24, 1991), 48

SEC Docket 1717.

[98]Securities Exchange Act Release No. 29751 (Sept. 27, 1991), 49 SEC Docket 1647.

[99]Securities Exchange Act Release No. 30146 (Jan. 10, 1992), 50 SEC Docket 11.

[100]The Report, which was submitted jointly by the Department of the Treasury, Federal Reserve System, and the Securities and Exchange Commission, did not reach a conclusion whether additional regulation of the government securities market was necessary. The Joint Report did conclude, however, that "expanded access to government securities information would serve the public interest." *See Study of the Effectiveness of the Implementation of the Government Securities Act of 1986* (Oct. 1990), at 87.

[101]Department of the Treasury, Securities and Exchange Commission, and Federal Reserve System, *Joint Report on the Government Securities Market* (Jan. 1992).

[102]Transparency is the degree to which real-time information about completed transactions and firm quotations in a given market is made available to the public.

[103]*Automated Securities Trading: A Discussion of Selected Critical Issues,* Prepared by the Division of Market Regulation, for the 1991 IOSCO Annual Meeting, Panel on Automated Trading, Washington D.C., Sept. 26, 1991.

[104]Securities Exchange Act Release No. 29498 (July 30, 1991), 49 SEC Docket 0721.

[105]Securities Exchange Act Release No. 28580 (Oct. 25, 1990), 55 FR 45895 (Amex, MSE, NYSE and Phlx) 47 SEC Docket 1078 and Securities Exchange Act Release No. 28694 Dec. 12, 1990), 55 FR 52119 (NASD) 47 SEC Docket 1688. The CBOE, CSE, and PSE circuit breaker procedures previously had been approved on a

permanent basis while the BSE procedures had been approved through October 1991.

[106]Securities Exchange Act Release No. 28767 (Jan. 11, 1991), 56 FR 1831,47 SEC Docket 2198.

[107]Securities Exchange Act Release No. 28722 (Dec. 28, 1990), 47 SEC Docket 2070.

[108]Securities Exchange Act Release Nos. 28544 (Oct. 16, 1990), 47 SEC Docket 0909 (AMEX, NYSE, Phlx and PSE); 28587 (Oct. 30, 1990), 47 SEC Docket 1281; and 28701 Dec. 13, 1990), 47 SEC Docket 1695.

[109]Securities Exchange Act Release No. 28627 (Nov. 19, 1990), 46 SEC Docket 1410 (CBOE) and Securities Exchange Release No. 28634 (Nov. 20, 1990), 46 SEC Docket 1422 (MSE).

[110]Securities Exchange Act Release No. 29578 (Aug. 16, 1991), 49 SEC Docket 0997.

[111]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Aug. 23, 1991.

[112]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Sept. 24, 1991.

[113]Securities Exchange Act Release No. 29929 (Nov. 12, 1991), 56 FR 58194 (Nov. 18, 1991), 50 SEC Docket 0315.

[114]Securities Exchange Act Release No. 29643 (Sept. 6, 1991), 49 SEC Docket 1237.

[115]Pub. L. No. 101-550,104 Stat. 2713 (1990).

[116]Letter regarding NASDAQ International Service (Oct. 11, 1991).

[117]The Commission approved the service as a two-year pilot program in Securities Exchange Act Release No. 29812 (Oct. 11, 1991), 49 SEC Docket 1937.

[118]Letter regarding the Application of Rules 10b-6,10b-7, and 10b-8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (Apr. 25, 1991).

[119]Letter regarding TransCanada Pipelines Limited (June 4, 1991).

[120]Letter regarding Telefonos de Mexico, S.A. de C.V. (May 10, 1991).

[121]Letter regarding Societe Nationale Elf Aquitaine (June 7, 1991).

[122]Letter regarding Novo Nordisk A/S (June 12, 1991).

[123]Securities Exchange Act Release No. 29354 (June 21, 1991), 49 SEC Docket 267.

[124]Order of Exemption from Provisions of Rules 10b-6 and 10b-13 under the Securities Exchange Act of 1934 for Canadian Multijurisdictional Disclosure System, Securities Exchange Act Release No. 29355 (June 21, 1991), 49 SEC Docket 351.

[125]Letter regarding Distributions of Certain Canadian Securities (Aug. 22, 1991).

[126]Securities Exchange Act Release No. 29274 (June 4, 1991), 48 SEC Docket 1829.

[127]Securities Exchange Act Release No. 29275 (June 5, 1991), 48 SEC Docket 1847.

[128]Id.

[129]Securities Exchange Act Release No. 29278 (June 7, 1991), 49

SEC Docket 3.

[130]Letters dated Oct. 11, 1990 to David L. Lloyd, Jr., Esq., of Dewey, Ballantine, Bushby, Palmer & Wood on behalf of IBCA Limited and IBCA Inc. and Nov. 27, 1990, to Robin Monro-Davies, President IBCA Limited, from Michael A. Macchiaroli, Assistant Director of the Division of Market Regulation. Letter dated Aug. 6, 1991 to Gregory A. Root, President of Bankwatch, from Michael A. Macchiaroli, Assistant Director of the Division of Market Regulation.

[131]The SSE withdrew its registration as a national securities exchange and ceased operations on May 24, 1991.

[132]Securities Exchange Act Release No. 29237 (May 24, 1991), 48 SEC Docket 1718.

[133]Securities Exchange Act Release No. 29515 (Aug. 2, 1991), 49 SEC Docket 779.

[134]Securities Exchange Act Release Nos. 29301 (June 13, 1991), 49 SEC Docket 45; 29297 (June 13, 1991), 49 SEC Docket 26; 29300 (June 13, 1991), 49 SEC Docket 42; 29749 (Sept. 27, 1991), 49 SEC Docket 1644; 29305 (June 13, 1991), 49 SEC Docket 50; 29543 (Aug. 9, 1991), 49 SEC Docket 856.

[135]Securities Exchange Act Release No. 29631 (Aug. 30, 1991), 49 SEC Docket 1202.

[136]Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 47 SEC Docket 1049.

[137]Securities Exchange Act Release No. 29638 (Aug. 30, 1991), 49 SEC Docket 1222.

[138]Securities Exchange Act Release Nos. 29809 and 29810 (Oct. 10, 1991), 49 SEC Docket 1835,1841.

[139]Securities Exchange Act Release No. 28635 (Nov. 21, 1990), 46

SEC Docket 1424.

[140]Securities Exchange Act Release No. 28517 (Oct. 5, 1990), 47 SEC Docket 0802. Rule 19c-4 was adopted by the Commission on July 7, 1988 and was subsequently vacated by the U.S. Court of Appeals for the District of Columbia Circuit on August 3, 1990. *See Business Roundtable v. S.E.C.,* 905 F.2d 406, Fed. Sec. L. Rep. (CCH) H 95,291 (D.C. Cir. June 12, 1990).

[141]Securities Exchange Act Release No. 29582 (Aug. 19, 1991), 49 SEC Docket 1002.

[142]Securities Exchange Act Release Nos. 29166 (May 7, 1991), 48 SEC Docket 1468; 29087 (Apr. 15, 1991), 48 SEC Docket 1162; 29151 (May 1, 1991), 48 SEC Docket 1397; and 28783 (Jan. 15, 1991), 47 SEC Docket 2219.

[143]Securities Exchange Act Release Nos. 29166 (May 7, 1991), 48 SEC Docket 1468, and 29151 (May 1, 1991), 48 SEC Docket 1397.

[144]Securities Exchange Act Release Nos. 29132 (Apr. 26, 1991), 48 SEC Docket 1374, and 29087 (Apr. 15, 1991), 48 SEC Docket 1162.

[145]Securities Exchange Act Release Nos. 29087 (Apr. 15, 1991), 48 SEC Docket 1162; 29151 (May 1, 1991), 48 SEC Docket 1397; and 28783 (Jan. 15, 1991), 47 SEC Docket 2219.

[146]Securities Exchange Act Release No. 28765 (Jan. 10, 1991), 47 SEC Docket 2161.

[147]Securities Exchange Act Release No. 29732 (Sept. 24, 1991), 49 SEC Docket 1549.

[148]Securities Exchange Act Release No. 28842 (Jan. 31, 1991), 48 SEC Docket 0113.

[149]Securities Exchange Act Release No. 28928 (Mar. 1, 1991), 48 SEC Docket 0542.

[150]Securities Exchange Act Release No. 29576 (Aug. 16, 1991), 49 SEC Docket 0994.

[151]Securities Exchange Act Release No. 29311 (June 14, 1991), 49 SEC Docket 0135.

[152]Securities Exchange Act Release No. 29639 (Aug. 30, 1991), 49 SEC Docket 1230.

[153]Securities Exchange Act Release Nos. 28845 (Feb. 1, 1991); 28855 (Feb. 5, 1991); and 29206 (May 17, 1991), 48 SEC Docket 0175,0183, and 1647.

[154]Investment Company Act Release No. 18005 (Feb. 20, 1991), 48 SEC Docket 433.

[155]Investment Company Act Release No. 18381 (Oct. 29, 1991), 50 SEC Docket 3.

[156]Investment Company Act Release No. 17534 (June 15, 1990), 46 SEC Docket 875.

[157]The total does not include the seven power supply company subsidiaries of registered holding companies.

[158]Resolution Trust Corporation (pub. avail. Sept. 24, 1991).

[159]NAB Asset Corporation (pub. avail. June 20, 1991).

[160]S.D. Indeval, S.A. de C.V. (pub. avail. Oct. 19, 1990).

[161]Clinton C. Hotaling (pub. avail. Nov. 16, 1990).

[162]Investment Company Institute (pub. avail. June 11, 1991).

[163]Investment Company Institute (pub. avail. July 31, 1991).

[164]The Provident Bank (pub. avail. Sept. 24, 1991).

[165]Investment Company Act Release Nos. 18294 (Sept. 3, 1991), 49 SEC Docket 1275 (Notice) and 18338 (Oct. 1, 1991), 49 SEC Docket 1713 (Order).

[166]Investment Company Act Release Nos. 17942 (Jan. 10, 1991), 47 SEC Docket 2179 (Notice) and 17981 (Feb. 5, 1991), 48 SEC Docket 212 (Order).

[167]Investment Company Act Release Nos. 18424 (Nov. 27, 1991), 50 SEC Docket 588 (Notice) and 18457 (Dec. 24, 1991), 50 SEC Docket 981 (Order).

[168]Investment Company Act Release Nos. 18323 (Sept. 18, 1991), 49 SEC Docket 1481 (Notice) and 18492 (Oct. 16, 1991), 50 SEC Docket 432 (Order); International Series Release Nos. 316 (Sept. 18, 1991), 49 SEC Docket 1495 (Notice) and 330 (Oct. 16, 1991), 50 SEC Docket 1432 (Order).

[169]Investment Company Act Release Nos. 18047 (Mar. 8, 1991), 48 SEC Docket 813 (Notice) and 18069 (Mar. 28, 1991), 48 SEC Docket 943 (Order); International Series Release Nos. 242 (Mar. 8, 1991), 48 SEC Docket 846 (Notice) and 248 (Mar. 28, 1991), 48 SEC Docket 951 (Order).

[170]*Western Life Insurance Company, et al.,* Investment Company Act Release Nos. 18103 (Apr. 17, 1991), 48 SEC Docket 1252 (Notice) and 18150 (May 15, 1991), 48 SEC Docket 1603 (Order).

[171]*Charter National Life Insurance Company, et al.,* Investment Company Act Release Nos. 18083 (Apr. 8, 1991), 48 SEC Docket 1082 (Notice) and 18130 (May 1, 1991), 48 SEC Docket 1520 (Order).

[172]Mutual Benefit Fund, et al. (pub. avail. Aug. 23, 1991).

[173]Variable Investors Series Trust (pub. avail. Oct. 24, 1991).

[174]*Northeast Utilities,* Holding Company Act Release No. 25221 Dec. 21, 1990), 47 SEC Docket 1887.

[175]*Northeast Utilities,* Holding Company Act Release No. 25273 (Mar. 15, 1991), 48 SEC Docket 776.

[176]*City of Holyoke Gas & Elec. Dept. v. Securities and Exchange Commission,* Case No. 91-1001.

[177]*Eastern Utilities. Assoc.,* Holding Company Act Release No. 25330 (June 13, 1991), 49 SEC Docket 67.

[178]*The Southern Company,* Holding Company Act Release No. 25371 (Sept. 6, 1991), 49 SEC Docket 1341.

[179]*In re Columbia Gas Systems, Inc.,* Case No. 91-803,804 (B.R. Del. July 31, 1991).

[180]*Columbia Gas System, Inc.,* Holding Company Act Release No. 25380 (Sept. 20, 1991), 49 SEC Docket 1570.

[181]WPL *Holdings, Inc.,* Holding Company Act Release No. 25377 (Sept. 20, 1991), 49 SEC Docket 1440, *on remand from Wisconsin's Envtl. Decade, Inc. v. SEC,* 882 F.2d 523 (D.C. Cir. 1989), *aff'd in part and rev'd in part* WPL *Holdings, Inc.,* Holding Company Act Release No. 24590 (Feb. 26, 1988), 40 SEC Docket 634.

[182]Nevada Sun-Peak Limited Partnership (pub. avail. May 14, 1991).

[183]Securities Act Release No. 6902 (July 9, 1991), 49 SEC Docket 0267.

[184]Securities Act Release No. 6896 (June 18, 1991), 48 SEC Docket 1829.

[185]Securities Exchange Act Release No. 29275 (June 18, 1991), 48 SEC Docket 1847.

[186]Securities Act Release No. 6900 July 2, 1991), 49 SEC Docket 0120.

[187]Securities Act Release No. 6922 (Nov. 12, 1991), 50 SEC Docket 12.

[188]Securities Act Release No. 6894 (June 4, 1991), 48 SEC Docket 1632.

[189]Securities Exchange Act Release No. 28869 (Feb. 26, 1991), 48 SEC Docket 0234.

[190]Securities Exchange Act Release No. 29131 (May 14, 1991), 48 SEC Docket 1370.

[191]Securities Exchange Act Release No. 30147 (Jan. 6, 1992), 49 SEC Docket.

[192]Securities Act Release No. 6891 (Apr. 30, 1991), 48 SEC Docket 1131.

[193]Securities Exchange Act Release No. 29315 (July 2, 1991), 49 SEC Docket 0139.

[194]Securities Act Release No. 6895 (June 18, 1991), 48 SEC Docket 1827.

[195]Securities Act Release No. 6892 (May 21, 1991), 48 SEC Docket 1442.

[196]1990 *Annual Report, United States Securities and Exchange Commission,* at 64.

[197]Statement of Financial Accounting Standards No. 107, Disclosures About Fair Value of Financial Instruments (Dec. 1991).

[198]Testimony of Richard C. Breeden, Chairman, SEC, Concerning

issues Involving Financial Institutions and Accounting Principles, before the Senate Committee on Banking, Housing and Urban Affairs, Sept. 10, 1990 at 32.

[199]Staff Accounting Bulletin No. 89 Jan. 7, 1991), 47 SEC Docket 2189 (Financial Statement Requirements of Troubled Financial Institutions Acquired or to be Acquired).

[200]Staff Accounting Bulletin No. 90 (Jan. 31, 1991), 48 SEC Docket 158 (Specific Matters Relating to the Bankruptcy of an Accounting Firm which had Public Company Clients).

[201]Staff Accounting Bulletin No. 91 (July 19, 1991),49 SEC Docket 621 (Accounting for Income Tax Benefits Associated with Bad Debts of Thrifts).

[202]Securities Act Release No. 33-6789 July 19, 1988), 41 SEC Docket 681.

[203]Financial Reporting Release No. 37 (July 29, 1991), 49 SEC Docket 710.

[204]The IASC was founded in 1973 by private professional accountancy bodies of nine countries. Today, the accountancy bodies of 79 countries are members. These accountancy organizations typically are not the standard-setting bodies of the countries they represent.

[205]*1990 Annual Report, United States Securities and Exchange Commission,* at 66.

[206]Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-Retirement Benefits Other than Pensions (Dec. 1990).

[207]Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (Feb. 1992).

[208]Statement on Auditing Standards No. 66, Communication of Matters about Interim Financial Information Filed or to be Filed with Specified Regulatory Agencies—An Amendment of SAS No. 36, Review of Interim Financial Information (June 1991).

[209]Statement on Auditing Standards No. 69, The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report (Feb. 1992).

[210]Annual Report/1990-1991, Public Oversight Board, SEC Practice Section, American Institute of Certified Public Accountants.

[211]Statement of Position 90-7, Financial Reporting by Entities in Reorganization Under the Bankruptcy Code (Nov. 19, 1990).

[212]Statement of Position 90-8, Financial Accounting and Reporting by Continuing Care Retirement Communities (Nov. 28, 1990).

[213]Statement of Position 91-1, Software Revenue Recognition (Dec. 12, 1991).

[214]IASC E 36, Cash Flow Statements (July 1991);E 37, Research and Development Activities (Aug. 1991); *E* 38, Inventories (Aug. 1991); E 39, Capitalization of Borrowing Costs (Aug. 1991); and E 40, Financial Instruments (Sept. 1991).

[215]Figures submitted for earlier years were compiled using a different methodology. Each case was included in inventory until the Commission issued a decision. For 1991, a case was included in inventory until a draft opinion was provided to the Commission by the General Counsel.

[216]947 F.2d 551 (2d Cir. 1991)(en bane), *petition for cert, filed,* 60U.S.L.W. 3500 (U.S. Jan. 21, 1992) (No. 91-1085).

[217]933 F.2d 403 (7th Cir. 1991*),cert. denied,* 60 U.S.L.W. 3520 (U.S. Jan. 28, 1992) (No. 91-605).

[218][Current] Fed. Sec. L. Rep. (CCH) If 96,464 (9th Cir. 1991).

[219]794 F.2d 1388 (9th Cir. 1986).

[220]328 U.S. 293 (1946).

[221] 111 S.Ct. 945 (1990).

[222]111 S.Ct. 2773 (1991).

[223]947 F.2d 897 (10th Or. 1991).

[224]111 S.Ct. 2173 (1991).

[225]111 S.Ct. 2749 (1991).

[226]111 S.Ct. 1711 (1991).

[227]441 U.S. 471 (1979).

[228]*Combellick, Reynolds & Russell Inc., Richard P. Angell, and Raymond R. Russell, Jr.,* Initial Decision Release No. 21 June 19, 1990), 49 SEC Docket 244.

[229]Crim. No. WN-90-0404 (D. Md.).

[230]No. 91-70272 (9th Cir.).

[231]*Safecard Services, Inc. v. SEC,* 926 F.2d 1197 (D.C. Cir. 1991).

[232]*Bolen v. SEC,* Case No. 91-0108 HLH (GHKx) (C.D. Cal. Feb. 5, 1991); *Swink v. SEC,* Misc. No. 4-91-402A (Mar. 25, 1991); *Sepe v. SEC,* Misc. No. 91-0128 (Apr. 5, 1991); *Gotshalk v. SEC,* Case No. C91-0064TEM Misc. (N.D. Cal. Apr. 22, 1991); *Greene v. SEC,* Case No. 91N1413 (D. Colo. Sept. 9, 1991); *Jackson v. SEC,* C. A. No. 91N1414 (D. Colo. Sept. 9, 1991); *Kuhlman v. SEC,* 8: CV91-0652 (D. Neb. Dec. 19, 1991); *Kupchynsky v. SEC,* Misc. No. M18-304 (S.D.N.Y. Nov. 25, 1991); and *Lavine v. SEC,* C.A. No. 91-8728 (S.D.

Fla.).

[233]CV91-0652 (D. Neb. Dec. 19, 1991).

[234]Securities Exchange Act Release No. 29017 (Mar. 28, 1991), 48 SEC Docket 878.

[235]Securities Exchange Act Release No. 29446 *(July* 17, 1991), 49 SEC Docket 573.

[236]Securities Exchange Act Release No. 29468 July 23, 1991), 49 SEC Docket 635.

[237]Securities Exchange Act Release No. 28925 (Feb. 28, 1991), 48 SEC Docket 486.

[238]Pub. L. No. 102-242,105 Stat. 2236 (1991).

[239]111 S.Ct. 2773 (1991).

[240]*In re Columbia Gas Systems, Inc.,* Case No. 91-803 (Bankr. D. Del.).

[241]*In re Federated Department Stores, Inc. and Allied Stores Corp.,* No. 1-90-00130 (Bankr. S.D. Ohio, Mar. 7, 1991).

[242]*Kaiser Sted Resources, Inc. v. Action Traders, Inc.,* No. 90-1243 (10 Or.) and Kaiser *Steel Resources, Inc. v. Pearl Brewing Co.,* No. 90-1245 (10th Or.).

[243]*In re Amdura Corp.,* Case No. 90-3811-E *et. seq.* (Bankr. D. Colo.).

[244]*In re Amdura Corp.,* No. 91 N1521 (D. Colo.).

[245]*In re American Reserve Corp.,* 840 F.2d 487 (7th Cir. 1988); *In re The Charter Co.,* 876 F.2d 866 (11th Or. 1989), *petition for cert, dismissed,* 110 S.Ct. 3232 (1990); *and Reid v. White Motor Corp.,* 886 F.2d 1462 (6th Or. 1989), *cert, denied,* 110 S.Ct. 1809 (1990).

See also In re Chateaugay Corp., 104 Bankr. 626 (S.D.N.Y. 1989); *and In re Zsmith Laboratories, Inc.,* 104 Bankr. 659 (D.N.J. 1989). *Cf. In re Mortgage & Realty Trust,* 125 Bankr. 575 (Bankr. C.D. Cal. 1991).

[246]*In re LTV Corp.,* Case No. 86 B 11270 through 86 B 11334 Inclusive, 86 B 11402 and 86 B 11464 (BRL) (Bankr. S.D.N.Y.).

[247]*In re LTV Corp.,* 930 F.2d 245 (2d Cir. 1991).

[248]*In re LTV Corp.,* 104 B.R. 626 (S.D.N.Y 1989).

[249]*SIPC v. Blinder, Robinson & Co., Inc.,* No. 90-1223 (10th Cir.).

[250]*In re Revco D.S., Inc.,* Nos. 588-1308 through 588-1321, 588-1305, 588-1761 through 588-1812, and 588-1820 Bankr. (N.D. Ohio).

[251]*In re Banyan Corp.,* Case No. 9112486(CB) (Bankr. S.D.N.Y.).

[252]*In re Amdura Corp., Case No 90-3811-E et. seq. (Bankr. D. Colo.).*

[253]*In re Banyan Corp.*, Case No. 9112486(CB) (Bankr. S.D.N.Y.). Inc., 53rd Annual Report at 74 (objection to disclosure statement); In re Energy Exchange Corp. and Vulcan Energy Corp. and In re Storage Technology Corp., 53rd Annual Report at 74-75 (objection to confirmation of reorganization plan).

[254]*See, e.g., In re* Southmark Corp. and In re SIS Corp., 56th Annual Report at 91 (objection to confirmation of reorganization plan); In re Custom Laboratories,

[255]*In re Southland Corp.,* Case No. 390-37119-HCA-11 (Bankr. N.D. Tex.).