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**Annual Report**

United States  
Securities and Exchange Commission





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

The Honorable Albert Gore, Jr.  
President of the Senate  
Washington, D.C. 20510

The Honorable Newt Gingrich  
Speaker of the House  
of Representatives  
Washington, D.C. 20515

Gentlemen:

I am pleased to transmit the annual report of the Securities and Exchange Commission (SEC or Commission) for fiscal year 1996. The activities and accomplishments set forth in the annual report continue the Commission's long tradition of hard work and high achievement. I would like to take this opportunity to offer my views of the Commission's progress in addressing several of the major issues facing the Commission.

*Enhancing Investor Protections*

Under the Commission's regulatory scheme, securities firms and self-regulatory organizations serve as the first line of defense against violations of the securities laws. The Commission's enforcement, examination, and investor education activities back up that defense.

In the past year, the Commission continued its traditionally vigorous enforcement program. For example, administrative proceedings were instituted against the National Association of Securities Dealers (NASD) to address its alleged failure to comply with certain of its own rules and its failure to enforce compliance by market makers on the Nasdaq system with NASD rules and the federal securities laws. In settling the proceedings, the NASD agreed to spend an additional \$100 million over the next five years

on regulatory enhancements, in lieu of a financial penalty. Changes have already been made in surveillance and enforcement. These and other changes made in the context of our settlement will ensure that the NASD moves into the next century as a vibrant marketplace and staunch defender of investor interests.

Individual investors have become important players in the municipal securities market. To protect them, the Commission continued to focus increased attention on potentially illegal activities in this market. The Commission brought two enforcement actions and issued a report arising out of its investigation into the financial collapse of Orange County, California and the Orange County Investment Pools. The enforcement actions concern the fraudulent offer and sale of over \$2.1 billion in municipal securities issued in 1993 and 1994 by Orange County, the Flood Control District, and a school district that was not named in the actions. These actions have also led to a renewed interest in the securities law obligations of state and local governments.

Working with the industry self-regulatory organizations and state regulators, the Commission conducted a sales practice examination sweep of small and medium-sized brokerage firms. The objective of the sweep was to identify problem brokers and to ensure that appropriate supervisory mechanisms are in place and, where necessary, to take appropriate enforcement action. The joint sweep found deficiencies in sales practices and in the hiring, retention, and supervisory mechanisms of more than 100 firms.

The Commission continued its strong emphasis on investor education, through brochures, the internet, seminars, and town meetings. By working with the securities industry, we have started initiatives that will serve investors for decades to come.

### *Securities Deregulation*

This past year, we worked with the Congress to revise the securities laws. Thanks to flexible and bipartisan congressional leadership, and the cooperation of the industry and state regulators, we ended up with a bill that can fairly be described as a milestone. The National Securities Markets Improvement Act will make the SEC's rules work better for all participants in the securities markets. The law eliminates redundant regulation of mutual funds by the states and redundant regulation of certain listed securities; the rules that used to constrain broker-dealer borrowing have been liberalized; the SEC will be responsible for supervising large investment advisers, while the states keep an eye on the smaller ones; the SEC budget has been put on a more solid footing; and books and records and capital requirements will become uniform throughout the securities industry.

### *Promoting Capital Formation*

Throughout its existence, the Commission has balanced the need for full disclosure and investor protection against the burden that its rules, regulations, and requirements may impose on capital formation. During the year, we continued to remove impediments to capital formation, starting with our rules. An SEC Task Force on Disclosure Simplification recommended that we eliminate or modify fully a quarter of our rules and half of our forms related to corporate finance. We have already eliminated 44 rules and 4 forms; more will go in 1997.

In a far-reaching effort this past July, the Commission sought public comment on some of the fundamental concepts governing offerings. Several possible reforms were described, including the idea of "company registration" put forth by the Advisory Committee on Capital Formation, led by SEC Commissioner Wallman.

## *Disclosure Developments*

The Commission continued its efforts to simplify and streamline disclosure. Working with the investment companies and state securities regulators, the Commission continued to develop a new disclosure document called the profile. The profile contains a brief summary of a mutual fund's key features in a standardized format designed to facilitate comparison among funds.

## *International Listings*

The Commission continued to make progress in widening the range of choices available to U.S. investors by promoting the internationalization of our markets. In 1990, 434 foreign companies were registered in the U.S. At the end of 1996, a record 843 foreign companies from 47 countries were registered and filing reports with the Commission. We will continue to do all we can to encourage more companies to list here and to work with our regulatory counterparts to develop high-quality international accounting standards, which will open the door to more companies from abroad.

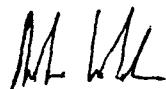
## *Technological Challenges*

Among the greatest challenges in the years ahead are those that have to do with technology. In just one year, the SEC's home page has become one of the most popular government sites on the World Wide Web. Our EDGAR database of corporate information, which was on the cutting edge of technology 10 years ago, is due for a major overhaul by 1997. Every advance in communications brings new challenges in applying the securities laws. We are racing to keep up. The internet has already changed the face of brokerage and investment management, through on-line trading and other innovations.

\* \* \*

Many challenges lie ahead for the Commission. The pace of change in the securities markets has become even more pronounced in recent years, and the SEC has succeeded by recognizing that fact and responding to it. I have every confidence that the Commission will continue to perform its responsibilities with the professionalism and dedication that all of us have come to expect.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Levitt".

Arthur Levitt  
Chairman

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## **Commission Members and Principal Staff Officers**

(As of November 4, 1996)

<b>Commissioners</b>	<b>Term Expires</b>
<b>Arthur Levitt, Chairman</b>	1998
<b>Steven M.H. Wallman, Commissioner</b>	1997
<b>Norman S. Johnson, Commissioner</b>	1999
<b>Isaac C. Hunt, Jr., Commissioner</b>	2000

### **Principal Staff Officers**

**Michael E. Schlein, Chief of Staff**

**Brian J. Lane, Director, Division of Corporation Finance**

**Meredith B. Cross, Deputy Director**

**William E. Morley, Senior Associate Director**

**Abigail Arms, Senior Associate Director**

**Robert A. Bayless, Associate Director**

**Wayne Carnall, Associate Director**

**Albert S. Dandridge, III, Associate Director**

**Howard F. Morin, Associate Director**

**Mauri Osheroff, Associate Director**

**David A. Sirignano, Senior Legal Advisor**

**William R. McLucas, Director, Division of Enforcement**

**Colleen P. Mahoney, Deputy Director**

**Paul V. Gerlach, Associate Director**

**Thomas C. Newkirk, Associate Director**

**Gary N. Sundick, Associate Director**

**Joan E. McKown, Chief Counsel**

**Vacant, Chief Litigation Counsel**

**Stephen J. Crimmins**, *Deputy Chief Litigation Counsel*  
**George H. Diacont**, *Chief Accountant*  
**James A. Clarkson, III**, *Director of Regional Office Operations*

**Barry Barbash**, *Director, Division of Investment Management*  
**Heidi Stam**, *Associate Director*  
**Robert Plaze**, *Associate Director*  
**Douglas Scheidt**, *Associate Director*  
**Jack Murphy**, *Associate Director*

**Richard Lindsey**, *Director, Division of Market Regulation*  
**Robert L.D. Colby**, *Deputy Director*  
**Larry E. Bergmann**, *Associate Director*  
**Howard Kramer**, *Associate Director*  
**Michael A. Macchiaroli**, *Associate Director*  
**Catherine McGuire**, *Associate Director/Chief Counsel*  
**Holly Smith**, *Associate Director*

**Richard Walker**, *General Counsel, Office of the General Counsel*  
**Paul Gonson**, *Solicitor and Deputy General Counsel*  
**Karen Burgess**, *Associate General Counsel*  
**Anne E. Chafer**, *Associate General Counsel*  
**Richard M. Humes**, *Associate General Counsel*  
**Diane Sanger**, *Associate General Counsel*  
**Jacob H. Stillman**, *Associate General Counsel*

**Lori A. Richards**, *Director, Office of Compliance Inspections and Examinations*  
**Mary Ann Gadziala**, *Associate Director*  
**Gene Gohlke**, *Associate Director*  
**C. Gladwyn Goins**, *Associate Director*

**Michael H. Sutton**, *Chief Accountant, Office of the Chief Accountant*

**Brenda Murray**, *Chief Administrative Law Judge, Office of the  
Administrative Law Judges*

**Erik R. Sirri**, *Chief Economist, Office of Economic Analysis*

**Victor H. Tynes, Jr.**, *Director, Office of Equal Employment Opportunity*

**James M. McConnell**, *Executive Director, Office of the Executive Director*

**Fernando L. Alegria, Jr.**, *Associate Executive Director*

**Michael Bartell**, *Associate Executive Director*

**Wilson A. Butler, Jr.**, *Associate Executive Director*

**James Donahue**, *Associate Executive Director*

**Vacant**, *Director, Office of International Affairs\**

**Nancy M. Smith**, *Director, Office of Investor Education and Assistance*

**Kaye F. Williams**, *Director, Office of Legislative Affairs*

**Paul S. Maco**, *Director, Office of Municipal Securities*

**Jennifer Scardino**, *Director, Office of Public Affairs, Policy Evaluation and  
Research*

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

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\*Michael D. Mann left the Commission on November 1, 1996.

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## BIOGRAPHIES OF COMMISSION MEMBERS

### Chairman

Following his nomination by President Bill Clinton and his confirmation by the Senate, Arthur Levitt, Jr. was sworn in as the 25th Chairman of the Securities and Exchange Commission in July 1993.

Before joining the Commission, Mr. Levitt owned *Roll Call*, the newspaper of Congress. Mr. Levitt served as the Chairman of the New York City Economic Development Corporation from 1989 to 1993 and the Chairman of the American Stock Exchange from 1978 to 1989. Prior to accepting the AMEX Chairmanship, Mr. Levitt worked for 16 years on Wall Street. He graduated Phi Beta Kappa from Williams College in 1952 before serving for two years in the Air Force.

Upon his arrival at the SEC, Chairman Levitt quickly established four priorities: improving investor protections; reforming the municipal debt markets; raising the standards of practice for brokers and strengthening the international preeminence of the U.S. capital markets.

During Chairman Levitt's tenure, the SEC has established the Office of Investor Education and Assistance and created the SEC's World Wide Web site, one of the most popular on the Internet, which allows the SEC to make all corporate filings available to the public free of charge.

The SEC has worked to sever ties between political campaign contributions and municipal underwriting business, a practice known as "pay-to-play," as well as improving the disclosure and transparency of the municipal bond market.



Chairman Levitt has also sought to raise the industry's sales practice standards and eliminate the conflicts of interest in how brokers are compensated.

The Commission, together with the industry, has developed the "Profile Prospectus" and other plain English guidelines for investment products in an effort to make disclosure documents easier to understand without compromising the value of the information provided to investors.



### **Commissioner**

Steven M.H. Wallman was nominated to the Securities and Exchange Commission by President Bill Clinton and confirmed by the Senate on June 29, 1994. He was sworn in as a Commissioner on July 5, 1994. His term expires in June 1997.

Since arriving at the Commission, Commissioner Wallman has concentrated on a number of issues including capital formation; technology and its implications for capital markets and structure, capital formation and securities regulation; accounting models and financial disclosure, including derivatives and risk disclosure; and international securities regulation.

Prior to being nominated to the Commission, Mr. Wallman was in private practice with the Washington law office of Covington & Burling. He joined the firm in 1978 as an Associate, becoming a Partner in 1986. While at Covington & Burling, Mr. Wallman specialized in general corporate, securities, contract and business law. He is a member of the American Law Institute and the American Bar Association.

Mr. Wallman also worked for the Boston Consulting Group in 1978.

Mr. Wallman received his J.D. from the Columbia University School of Law in 1978. In 1976, he earned his Master's degree from the Sloan School of Management at the Massachusetts Institute of Technology and his undergraduate degree from M.I.T. in 1975.

He and his wife live in Great Falls, Virginia.

Mr. Wallman was born on November 14, 1953.



### **Commissioner**

Following his appointment by President Clinton, and his confirmation by the Senate, Norman S. Johnson was sworn in as a United States Commissioner on February 13, 1996 in a ceremony presided over by the Chief Federal District Judge in Salt Lake City, Utah.

Prior to his nomination, Commissioner Johnson was a senior Partner in the firm Van Cott, Bagley, Cornwall & McCarthy and had a long and illustrious legal career focusing on Federal and State securities law. Commissioner Johnson commenced his career in the private practice after serving as a staff member of the SEC from 1965 through 1967. In addition, Commissioner Johnson served as an Assistant Attorney General in the Office of the Utah Attorney General from 1959 to 1965 and also served as a law clerk to the Chief Justice of the Utah Supreme Court.

During his career, Commissioner Johnson served as President of the Utah State Bar Association, was chosen as a State Delegate, House of Delegates, American Bar Association, and was named Chairman of The Governor's Advisory Board on Securities Matters, State of Utah. In addition, Commissioner Johnson served on the Governor's Task Force on Officer and

Director Liability, State of Utah and numerous other committees and groups concerned with the application of Federal and State securities laws.

Commissioner Johnson has received numerous honors and awards in recognition of the outstanding contributions he has made to the Securities Practice in the Rocky Mountain area. He has authored several articles published in legal periodicals, one of which is much cited, "The Dynamics of SEC Rule 2(e): A Crisis for the Bar."

Commissioner Johnson has involved himself in many community groups including the Utah Supreme Court Committee on Gender and Justice. Married since 1956 to the former Carol Groshell, Commissioner Johnson has three grown daughters, Kelly, Catherine and Lisa, all whom reside in the State of Utah.



### **Commissioner**

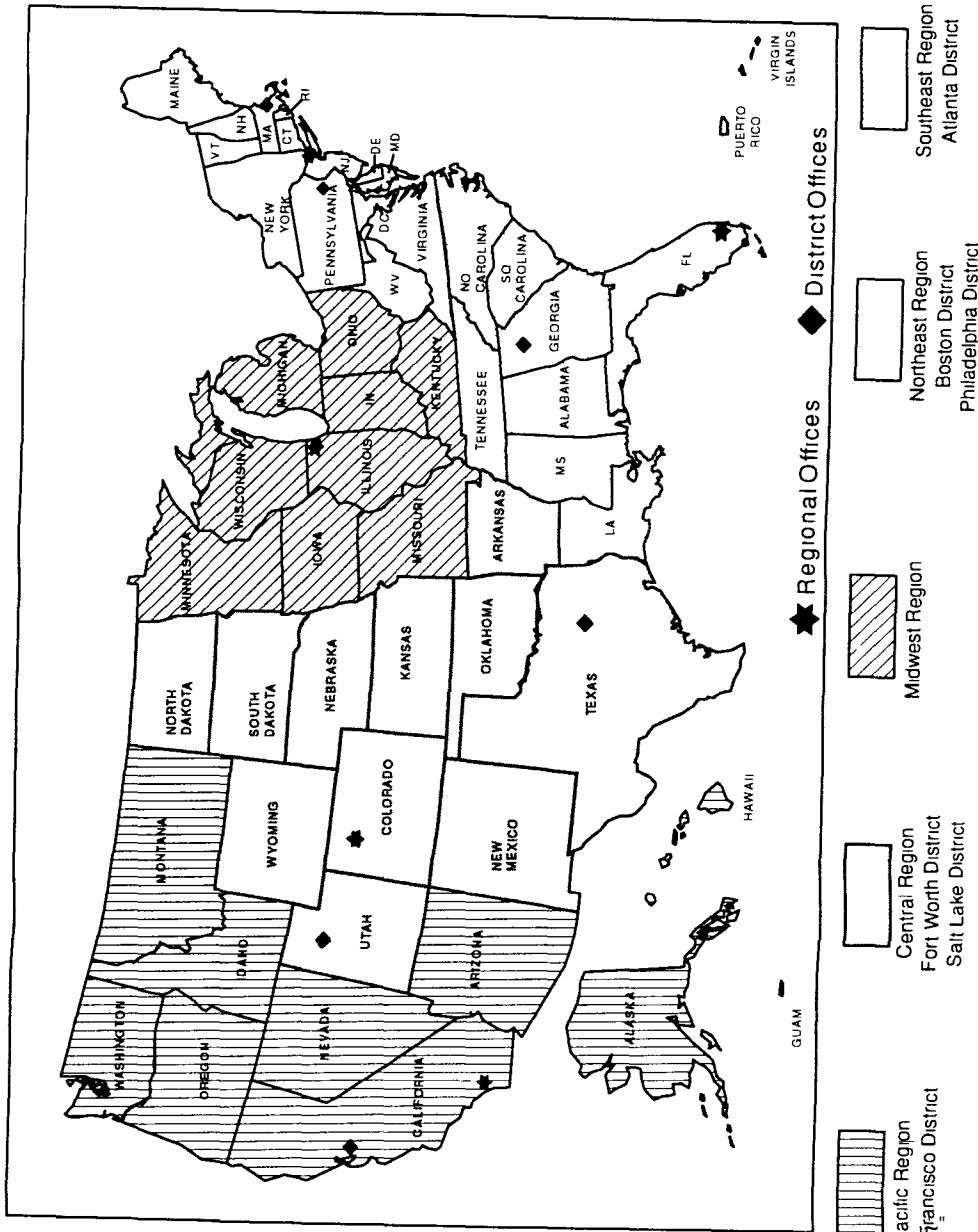
Isaac C. Hunt, Jr. was nominated to the Securities and Exchange Commission by President Bill Clinton in August 1995 and confirmed by the Senate on January 26, 1996. He was sworn in as a Commissioner on February 29, 1996.

Prior to being nominated to the Commission, Mr. Hunt was Dean and Professor of Law at the University of Akron School of Law, a position he held from 1987 to 1995. He taught securities law for seven of the eight years he served as Dean. Previously, he was Dean of the Antioch School of Law in Washington, D.C. where he also taught securities law. In addition, Mr. Hunt served during the Carter and Reagan Administrations at the Department of the Army in the Office of the General Counsel as Principal Deputy General Counsel and as Acting General Counsel. As an associate at the law firm of Jones, Day, Reavis and Pogue, Mr. Hunt practiced in the fields of corporate and securities law, government procurement litigation,

administrative law, and international trade. In addition, Mr. Hunt commenced his career at the SEC as a staff attorney from 1962 to 1967.

Mr. Hunt was born on August 1, 1937 in Danville, Virginia. He earned his B.A. from Fisk University in Nashville, Tennessee in 1957, and his LL.B. from the University of Virginia School of Law in 1962.

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**Salt Lake District Office**

Kenneth D. Israel, Jr., District Administrator  
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## Enforcement

*The Commission's enforcement program is designed to protect investors and foster confidence by preserving the integrity and efficiency of the securities markets. During the year, the agency prosecuted a wide range of cases.*

### Key 1996 Results

In 1996, the Commission brought a significant number of enforcement actions, and sought and obtained relief drawn from remedies designed to protect investors and the public interest. The Commission obtained court orders requiring defendants to disgorge illegal profits of approximately \$325 million. Civil penalties authorized by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Remedies Act), the Insider Trading Sanctions Act of 1984 (ITSA), and the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) totaled over \$67 million. (In some instances, the payment of disgorgement pursuant to a court order was waived based upon the defendant's demonstrated inability to pay. Courts also have, in some cases, noted the appropriateness of civil penalties that were not imposed because of a defendant's demonstrated inability to pay.)

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### ENFORCEMENT ACTIONS INITIATED

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
Civil Injunctive Actions	156	172	196	171	180
Administrative Proceedings	226	229	268	291	239
Civil and Criminal Contempt					
Proceedings	11	15	33	23	32
Reports of Investigation	1	0	0	1	2
Total	394	416	497	486	453

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In Commission-related cases, criminal authorities obtained 78 criminal indictments or informations and 57 convictions during 1996. The Commission granted access to its files to domestic and foreign prosecutorial authorities in 229 cases.

## **Enforcement Authority**

The Commission has broad authority to investigate possible violations of the federal securities laws. In its informal investigations, information is requested on a voluntary basis. The Commission also may conduct formal investigations and issue subpoenas to compel the production of books and records and the appearance of witnesses to testify.

The federal court injunction, an order that prohibits future violations of the law, always has been one of the Commission's principal enforcement tools. In civil actions for injunctive relief, the Commission may seek temporary restraining orders and preliminary injunctions, as well as permanent injunctions, against violators. Conduct that violates the injunction may result in fines or imprisonment. In addition to injunctive relief, the Commission often seeks other equitable relief such as an accounting and disgorgement of illegal profits. When seeking temporary restraining orders, the Commission often requests a freeze order to protect investor funds and assets. Civil penalties may be imposed for any violation of the federal securities laws (except insider trading violations for which penalties are available under ITSA and ITSFEA). The Remedies Act also affirmed the authority of the federal courts to bar or suspend individuals from serving as corporate officers or directors.

The Commission may institute several types of administrative proceedings. These include proceedings against regulated entities (such as broker-dealer firms or investment advisers) in which they may be censured or limited in their activities, or in which their registrations may be suspended or revoked. The Commission also may impose similar sanctions on persons employed by regulated firms. In addition, individuals who take

part in an offering of penny stock may be barred from such participation. In administrative proceedings against regulated firms and their employees, the Remedies Act also authorized the Commission to impose penalties and order disgorgement.

The Remedies Act further authorized 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 may require disgorgement of illegal profits. In emergency situations, the Commission may issue temporary cease and desist orders against regulated firms or their employees.

Section 8(d) of the Securities Act of 1933 (Securities Act) permits the Commission to institute proceedings to suspend the effectiveness of a registration statement that contains false and misleading statements. Respondents can be ordered to comply, or to take steps to effect compliance, with the relevant provisions. Pursuant to Rule 102(e) of the Commission's Rules of Practice, administrative proceedings can be instituted against professionals who appear or practice before the Commission, including accountants and attorneys. The sanctions that can be imposed in these proceedings include suspensions and bars from appearing or practicing before the Commission.

The Commission is authorized to refer matters to other federal, state, or local authorities or self-regulatory organizations (SROs). The agency often provides substantial assistance to the Department of Justice for the criminal prosecution of securities violations.

## **Enforcement Activities**

Set forth below are summaries of significant enforcement actions initiated in various areas during 1996. Defendants or respondents who consented to settlements of actions did so without admitting or denying the factual

allegations contained in the complaint or the order instituting proceedings. See Table 2 for a listing of all enforcement actions instituted in 1996.

## Municipal Securities Cases

Individual investors have become important players in the municipal securities markets, through direct purchases of municipal bonds and investments in mutual funds that hold these securities. To protect investors in municipal securities, the Commission has focused increased attention on potentially illegal activities in this market.

The Commission brought two enforcement actions and issued a report arising out of its investigation into the financial collapse of Orange County, California, and the Orange County Investment Pools:

- A civil action was filed against Robert L. Citron, Orange County's former treasurer-tax collector, and Matthew R. Raabe, the former assistant treasurer.<sup>1</sup>
- Cease and desist proceedings were instituted against Orange County, the Orange County Flood Control District, and the Orange County Board of Supervisors.<sup>2</sup>
- A report of investigation was issued concerning the activity of individual members of Orange County's board of supervisors.<sup>3</sup>

The enforcement actions concern the fraudulent offer and sale of over \$2.1 billion in municipal securities issued in 1993 and 1994 by Orange County, the Flood Control District, and a school district that was not named in the actions. Among other things, disclosure documents used in the offerings were false or misleading with respect to (1) Orange County's Investment Pools, including the Pools' investment strategy and investment results, manipulation of the Pools' yield, and investment in the Pools of funds pledged to repay the securities; (2) Orange County's financial condition; and (3) the tax-exempt status of the offerings. The defendants in

the civil action consented to the entry of an injunction, and the respondents in the administrative proceedings consented to the entry of a cease and desist order. The members of the board of supervisors named in the report of investigation (which does not constitute an adjudication of any fact or issue that it addresses) consented to the issuance of the report.

The Commission also instituted cease and desist proceedings against Maricopa County, Arizona, the sixth largest county in the United States, alleging antifraud violations in the July 1993 offer and sale of two series of general obligation bonds (*In the Matter of Maricopa County*<sup>4</sup>). The county's disclosure documents for the offerings contained financial statements for the year ended June 30, 1992, but did not disclose that the county's financial condition had worsened significantly by the time of the offerings. In the period leading up to the offerings, the county had developed a deficit in its General Fund and had doubled the deficit in its Medical Center Enterprise Fund, in which current liabilities exceeded assets on June 30, 1993, by 40 percent more than on June 30, 1992. In addition, the county failed to disclose that its cash flow had worsened since the close of the prior fiscal year. The county also represented that bond proceeds would be used to finance specific projects, when in fact it planned to use the bond proceeds to finance its deficit. The County consented to the entry of a cease and desist order. The Commission also instituted cease and desist proceedings against the county's financial advisor, Peacock, Hislop, Staley & Givens, and Larry S. Givens, an officer of the firm, for causing the county's violations (*In the Matter of Peacock, Hislop, Staley & Given, Inc.*<sup>5</sup>). The firm and Givens consented to the entry of a cease and desist order by which they were required to pay civil penalties of \$50,000 and \$25,000.

In the Commission's administrative proceedings against an underwriter, First Fidelity Securities Group consented to the entry of the Commission's order which found that, as a result of undisclosed kickback schemes engaged in by the firm to secure underwriting business, First Fidelity defrauded certain municipal issuers, as well as investors (*In the Matter of First Fidelity Securities Group*<sup>6</sup>). The Commission found that First Fidelity delivered official statements on the municipal bond offerings to investors that

misrepresented the underwriters' discounts or costs of issuance and did not disclose the kickback scheme. The Commission also found that First Fidelity violated rules of the Municipal Securities Rulemaking Board (MSRB) regarding fair dealing, books and records, and gifts and gratuities. First Fidelity consented to pay disgorgement plus prejudgment interest in the amount of \$1,793,309 and a civil penalty of \$500,000.

In the first "pay to play" case, the Commission alleged violations of MSRB Rule G-37 and related recordkeeping rules in cease and desist proceedings against FAIC Securities, Inc. (*In the Matter of FAIC Securities, Inc.*<sup>7</sup>). MSRB Rule G-37 provides that brokers, dealers, and municipal securities dealers may not engage in municipal securities business with an issuer within two years after making contributions to any official of that issuer who has responsibility for the hiring of brokers, dealers, or municipal securities dealers. During 1994, the chairman of FAIC's executive committee and the chairman of FAIC's board of directors made contributions through companies under their control to candidates for office who could influence the awarding of municipal securities business for Dade County, Florida, and the State of Florida. In this same period, FAIC was selected to participate in three negotiated underwritings of certain municipal securities by both Dade County and the Florida Housing Finance Authority. The underwritings represented sales of approximately \$379 million and generated fees of \$224,205 for FAIC. FAIC consented to the entry of a cease and desist order by which its registration was revoked, and it was required to disgorge its fees, plus prejudgment interest, and to pay a civil penalty of \$200,000.

The Commission alleged violations of MSRB Rule G-17, which requires fair dealing by brokers in the municipal securities market, in cease and desist proceedings against Lazard Freres and Merrill Lynch (*In the Matter of Lazard Freres & Co. LLC*<sup>8</sup>). Lazard Freres was the financial adviser to the Massachusetts Water Resources Authority (MWRA) and the District of Columbia. An individual who was at the relevant times a partner of Lazard entered into a fee-splitting agreement with Merrill Lynch to market interest rate swaps. Under the contract, Lazard was to receive an annual consulting

fee of between \$800,000 and \$1 million and a share of Merrill Lynch's income from successful joint swap proposals. In recommending that the MWRA and the District of Columbia select Merrill Lynch to provide financial services, the partner failed to disclose the existence of the contract or the resulting conflict of interest. Neither Lazard Freres nor Merrill Lynch took adequate steps to ensure disclosure. The respondents consented to the entry of a cease and desist order by which Lazard Freres was required to pay a civil penalty of \$2.5 million and to make restitution to the MWRA and the District of Columbia of \$2.12 million and \$1.8 million. Merrill Lynch was required to pay a civil penalty of \$2.5 million and to make restitution to the MWRA and the District of Columbia of \$2 million and \$1.8 million.

### **Offering Cases**

Securities offering cases involve the offer and sale of securities in violation of the registration provisions of the Securities Act.

### ***Internet Cases***

Communications over the internet have at times been used to solicit the purchase of unregistered securities or to further securities frauds. In *SEC v. Octagon Technology Group, Inc.*,<sup>9</sup> the Commission alleged that a computer software company and two of its former officers created an elaborate sham offering of offshore debt securities on the World Wide Web. The complaint charged that the defendants created a website for a Panamanian shell subsidiary of Octagon, on which they advertised "Interamerican hard currency bonds." Although the bonds never existed and the subsidiary had no business operations or assets, the defendants promised a risk-free investment with guaranteed annual returns of 11.75 percent, and portrayed the subsidiary as a successful provider of investment capital to Latin American businesses. One of the defendants posted messages touting the bonds on three investment-related internet newsgroups, without disclosing his relationship to the offering. In addition, the website contained a purported reproduction of an article in *World Financial Report* regarding the

bonds and the issuer. In fact, the *World Financial Report* was a fabrication of the defendants. The defendants consented to the entry of injunctions, and one of the individual defendants was ordered to pay a civil penalty of \$5,000.

The Commission charged Scott Frye with posting numerous messages on the internet, in which he solicited investors with promises of riskless profits and above average returns from investments in two Costa Rican enterprises, ICP and the Jupiter Agro Development Project (*SEC v. Scott A. Frye*<sup>10</sup>). Frye falsely represented that one of his companies had a major distribution contract for its product with A&P Supermarkets, when no distribution contracts existed, and falsely stated that a bank had guaranteed investors' principal and 15 percent interest for a one-year investment. The Commission has obtained a preliminary injunction and an asset freeze in this matter, which was pending at the end of the year.

The Commission's action against IVT Systems, Inc. and Donald Spencer, the founder, president, and majority shareholder of IVT, involved allegations that the defendants used the internet, among other means of communication, to engage in fraudulent securities offerings (*SEC v. Donald B. Spencer*<sup>11</sup>). The defendants solicited investments on the internet that they represented would be used to finance the construction by IVT of a proposed ethanol plant in the Dominican Republic. Potential returns of 50 percent and greater were promised when there was no basis for this prediction. Spencer and IVT consented to the entry of injunctions and an order requiring the disgorgement of \$113,500, representing the amount raised from 12 investors, plus interest.

In *SEC v. Wye Resources, Inc.*,<sup>12</sup> the Commission charged that Wye Resources and its former president, Rehan Malik, placed messages over the internet through a New Orleans-based computer bulletin board service called the Emerging Growth Stock BBS in connection with the offering of approximately 5.3 million shares of unregistered Wye stock; advertisements also were placed in U.S. publications. Wye Resources is a Canadian corporation that claims to own interests in various gold and diamond mining

properties; certain of the messages and advertisements misrepresented the status of the purportedly ongoing exploitation of certain mining properties in Zaire. Malik consented to the entry of an injunction and an order requiring him to pay a civil penalty of \$25,000. This matter was pending as to Wye Resources at the end of the year.

### *Other Offering Violations*

In *SEC v. Comparator Systems Corporation*,<sup>13</sup> the Commission alleged that Comparator and three of its officers and directors sold tens of millions of shares of Comparator stock to investors while making material misrepresentations concerning the financial status of the company, its purported proprietary interest in certain fingerprint identification technology, and its other business activities. Among other things, the defendants claimed that Comparator had developed a new generation of fingerprint identification technology with substantial market potential and demonstrated a device to investors that purportedly used the new technology. The complaint alleged, however, that two of the individual defendants had stolen a prototype of a device developed by persons who were not associated with Comparator. The Commission also alleged that Comparator filed false and misleading financial statements for its fiscal years 1994 and 1995 and for the first three quarters of 1996, that grossly inflated the company's assets. Comparator and two of the individual defendants, Robert Reed Rogers and Gregory Armijo, consented to the entry of injunctions; Rogers and Armijo also were barred from serving as officers or directors of public companies. A preliminary injunction was entered by default against the final individual defendant, Scott Hitt, who was formerly the executive vice-president of Comparator. The Commission settled related administrative proceedings against Comparator's former auditor and his accounting firm (*In the Matter of Eli Buchalter, CPA*<sup>14</sup>). The cease and desist order also denied the respondents the privilege of appearing or practicing before the Commission.

The Commission alleged that over \$570 million was raised through the fraudulent offer and sale of securities by Bennett Funding Group, Inc. (BFG); Patrick Bennett, BFG's former chief financial officer; and three

related entities between 1991 and 1995 (*SEC v. The Bennett Funding Group, Inc.*<sup>15</sup>). The defendants sold assignments of purported equipment leases when no underlying lease existed, including the sale of over \$55 million in fictitious and supposedly tax-exempt New York City Transit Authority leases. In cases where the defendants did have an underlying lease, they sometimes sold leases that already had been sold to other investors. The Commission further alleged that materially false BFG financial statements for 1992 and 1993 were used to sell promissory notes issued by two of its subsidiaries. The proceeds from the sale of lease assignments and promissory notes were diverted to various people and entities connected with Patrick Bennett or the other defendants; the diversion of funds included the payment of over \$10 million to Bennett. Patrick Bennett consented to the entry of a preliminary injunction and an asset freeze in these proceedings, which were pending at the end of the year.

The Commission focused on several offering frauds purportedly involving high-tech telecommunications securities. In *SEC v. Douglas Frankel*,<sup>16</sup> the Commission alleged that the defendant created and caused the broadcasting of fraudulent infomercials to tout investments in wireless cable television and specialized mobile radio ventures. Frankel repeatedly broadcast four half-hour infomercials during 1993 and 1994. Leads to potential investors developed through the broadcasts were then sold to some 30 promoters of high-tech securities. At least 13 of Frankel's clients are the subject of various Commission enforcement actions charging them with registration or antifraud violations. The infomercials falsely stated that the risks of the investments were minimal and falsely projected exorbitant rates of return. Frankel consented to the entry of an injunction and an order requiring him to pay a civil penalty of \$50,000.

The Commission filed an action against Paul L. Parshall, alleging that he set up a new Utah corporation, Republic International Corporation, to assume the identity of a defunct, but publicly-traded, corporation having the same name (*SEC v. Axiom Security Solutions, Inc.*<sup>17</sup>). Through his own transfer agent, TransGlobal Securities, Inc., Parshall issued common stock of the new company in the names of the shareholders of the old company.

He then sold the newly created shell corporation to Axiom Security Solutions, Inc., as a vehicle for taking Axiom public without going through the required registration process. In addition, Parshall had the new Republic International assume the identity of the old company for purposes of delivering information to market makers and making filings with the Commission. The defendants consented to the entry of injunctions and orders by which Parshall was ordered to disgorge \$150,000 plus \$7,594 in prejudgment interest and to pay a civil penalty of \$100,000. Parshall also was barred from serving as an officer or director of any public company. The Commission instituted related administrative proceedings in which the registration of Republic International's stock was revoked by default for failure to make required periodic filings since 1990 (*In the Matter of Republic International Corporation*<sup>18</sup>). The Commission also settled cease and desist proceedings in which it barred an individual from participation in penny stock offerings, based on the respondent's preparation of a fraudulent filing on Form 8-K with respect to Axiom's acquisition of the new Republic International and a fraudulent Form S-8 registration statement in connection with Axiom's distribution of certain shares (*In the Matter of Norman L. Sirak*<sup>19</sup>).

The Commission alleged in cease and desist proceedings that stocks were purportedly issued in reliance upon Regulation S to evade registration requirements (*In the Matter of Candie's, Inc.*<sup>20</sup>). In three offerings of securities issued by Candie's, Inc., and one offering of securities issued by Response USA, Inc., large blocks of stock were sold to foreign purchasers at a substantial discount to the prevailing market price, in return for short-term, unsecured promissory notes. The securities were transferred to accounts with a U.S. brokerage firm and then resold to U.S. customers shortly after the expiration of the 40-day restricted period of Regulation S. The foreign purchasers bore little economic risk, since the proceeds of the U.S. sales could be used to pay off the promissory notes. The issuers, the law firm that arranged the sales, and Salvatore Mazzeo, the president and owner of the U.S. brokerage firm, consented to the entry of the cease and desist order. In addition, Mazzeo was suspended from association with regulated entities for a period of five months.

## Financial Disclosure Cases

Actions involving false and misleading disclosures concerning matters that affect the financial condition of an issuer, or involving the issuance of false financial statements, often are complex and, in general, demand more resources than other types of cases. Effective prosecution in this area is essential to preserving the integrity of the full disclosure system. The Commission brought 59 cases containing significant allegations of financial disclosure violations against issuers, regulated entities, or their employees. Many of these cases included alleged violations of the books and records and internal accounting control provisions of the Foreign Corrupt Practices Act. The Commission also brought 20 cases alleging misconduct by accounting firms or their partners or employees.

The Commission filed an injunctive action against Giancarlo Parretti, a former director and chief executive officer of Pathe Communications Corporation (*SEC v. Giancarlo Parretti*<sup>21</sup>), and related administrative proceedings against Florio Fiorini, Pathe's former chairman;<sup>22</sup> and Fernando Cappuccio, a former director and chief financial officer of the company.<sup>23</sup> The complaint in the injunctive action alleged that Pathe entered into a purported \$200 million sale and leaseback transaction in which ownership of certain theater properties was transferred to Cinema 5 Europe N.V. In fact, Cinema 5 was not independent of Pathe, and the transaction was a sham. Pathe provided the funds to establish Cinema 5, the managing directors of Cinema 5 were friends and business associates of Parretti, and Cappuccio was Cinema 5's sole representative in arranging the transaction. As a result of the transaction, Pathe improperly recognized gains of more than \$100 million in financial statements for 1989 and the first quarter of 1990. The complaint also alleged that Parretti and Fiorini failed to record material liabilities in Pathe's books and records when it acquired MGM/UA. When they failed to raise equity financing required to complete the merger, Parretti and Fiorini borrowed more than \$300 million on a short-term basis and committed Pathe to repay the loans after the merger. Pathe also sold certain licensing rights to raise more than \$100 million that could be used to finance the merger; however, Pathe was obligated to repurchase the rights at

the buyer's option. The short-term loans and the repurchase contingency were not recorded on Pathe's books and records. Parretti consented to the entry of an injunction, and Fiorini and Cappuccio consented to the entry of cease and desist orders.

The Commission charged a biotechnology firm, Cypress Bioscience Inc., with filing a Form 10-Q for the quarter ended September 30, 1993 that contained financial statements which materially overstated revenue, and materially understated losses, by improperly recognizing revenue from purported bill and hold transactions (*In the Matter of Cypress Bioscience Inc.*).<sup>24</sup> Cypress also failed adequately to disclose a change in its accounting policies by which it recognized revenue on goods that had not been shipped, failed to disclose that an increase in third quarter revenues between 1992 and 1993 was primarily attributable to the bill and hold transactions, and failed to discuss the effect of the bill and hold transactions on future revenue. Among other things, Cypress, the manufacturer of a product used in the treatment of human immune system disorders, recognized revenue generated by a volume discount program. Under the program, customers could order an amount equivalent to a full year's usage, but could take delivery at any time within 11 months and were not obligated to pay until 30 days after delivery. In addition, expired products could be returned for replacement. Forty-nine percent of Cypress' 1993 third quarter revenue was attributable to this program. Cypress and Alex P. de Soto, its chief financial officer, consented to the entry of the cease and desist order, by which de Soto was denied the privilege of appearing or practicing before the Commission.

In litigated proceedings instituted in 1994, the Chief Administrative Law Judge (ALJ) found that the Bank of Boston Corporation violated the reporting provisions of the Exchange Act by misstating or failing to disclose in its Form 10-Q for the second quarter of 1989 certain material facts, and known trends and uncertainties, concerning the deterioration of its loan portfolio that could reasonably have been expected to have a material, unfavorable effect on its financial condition and results of operations (*In the Matter of Bank of Boston Corp.*<sup>25</sup>). In the second quarter of 1989 the bank

showed a Provision Expense (*i.e.*, an amount to be added to its loan loss reserve) of \$36 million and net income of \$97.8 million. This Provision Expense was in the same amount as in the previous five quarters. In the third quarter of 1989, the bank had a Provision Expense of \$370 million, and an after-tax net loss of \$125 million for the quarter. Although the value of Bank of Boston's loan portfolio was adversely affected by declines in the New England real estate market, the bank failed adequately to reflect this decline in its periodic filings with the Commission. The ALJ found that Bank of Boston's top management knew or should have known when it filed its Form 10-Q on August 10, 1989 that its financials without explanation were misleading, and that known trends and uncertainties in its real estate portfolio would reasonably be expected to have a material unfavorable impact on its financial condition. Disclosure in the Form 10-Q is required in situations such as this because the bank knew, or should have known, that (1) without explanation its financials were misleading, and (2) the bank's financial statements and accompanying footnotes were insufficient, without a narrative explanation, for an investor to judge the quality of earnings and the likelihood that reported financial information is not indicative of material changes in future operating results. The ALJ entered a cease and desist order against Bank of Boston.

The Commission alleged that Christopher Kent Bagdasarian, the chief executive officer and chairman of Normandy America Inc., and Sam Lance White, a tax partner with Deloitte & Touche LLP, engaged in a fraudulent scheme to fabricate Bagdasarian's investment track record, which was included in the registration statement for Normandy's initial public offering.<sup>26</sup> Normandy was a reinsurance company with no financial or operating history and its business plan depended on the ability, through Bagdasarian, to invest reinsurance premiums in equity securities. The defendants told Normandy's underwriters that Bagdasarian had achieved a ten-year annual return of 29.1 percent by managing assets ranging from \$250.6 million in 1990 to \$731.3 million during 1994; in fact, the defendants fabricated the assets and the investment results. This matter was pending at the end of the year.

The Commission alleged that the former senior management of Platinum Software Corporation devised and implemented a fraudulent accounting scheme between March 1993 and January 1994 (*In the Matter of Platinum Software Corporation*<sup>27</sup>). Platinum improperly recorded the revenue from a number of license agreements that were accompanied by side letters giving the customer the right to cancel the agreement within a specified period of time, backdated certain license agreements and shipping documents to record revenue in a prior quarter, and improperly recognized revenue on sales that were subject to significant uncertainty. Platinum and two of its vice presidents, John F. Keane and William B. Falk, consented to the entry of the cease and desist order. In a related civil action, *SEC v. Gerald R. Blackie*,<sup>28</sup> the Commission charged Blackie, Platinum's former chief executive officer, president, and chairman; Jon R. Erickson, its former chief financial officer; and Mark S. Tague, its former executive vice president/corporate controller, with participation in the financial fraud at Platinum. In addition, the defendants were alleged to have engaged in insider trading by selling Platinum common stock while in possession of material non-public information about the company's true financial condition. The defendants consented to the entry of an injunction and orders requiring them to disgorge \$2,476,000 representing their losses avoided, bonuses of \$184,125 received from Platinum during the fraud, and prejudgment interest. Blackie and Tague also were required to pay civil penalties totaling \$150,000. In related proceedings under Rule 102(e), Erickson and Tague were denied the privilege of appearing or practicing before the Commission (*In the Matter of Jon R. Erickson, CPA*;<sup>29</sup> *In the Matter of Mark S. Tague, CPA*<sup>30</sup>).

In *SEC v. McDonnell Douglas Corporation*,<sup>31</sup> the Commission alleged that the aircraft manufacturer failed to recognize a material loss on its \$6.6 billion, fixed-price contract with the U.S. Air Force for the C-17 cargo jet. As a result, McDonnell Douglas overstated its pre-tax income in financial statements filed with the Commission for 1990. By June 1990, preliminary estimates developed by the company's operating division, Douglas Aircraft Company, projected costs substantially higher than the contract price. In August 1990, the Department of Defense informed the company that a \$6.5

billion cost estimate was not supportable and that progress payments would be withheld until an acceptable cost estimate was submitted. During the last half of 1990, cost overruns continued to rise and production efficiency worsened or remained flat; nonetheless, McDonnell Douglas reported for year-end 1990 that it would break even on the contract. McDonnell Douglas consented to the entry of an injunction and an order requiring it to pay a civil penalty of \$500,000.

The Commission took action against Kendall Square Research Corporation, which allegedly issued financial statements for 1992 and the first two quarters of 1993 that were materially false and misleading in that revenue and earnings were overstated (*SEC v. Kendall Square Research Corporation*<sup>32</sup>). The complaint alleged that the company recognized revenue from purported sales of its computers that were subject to material contingencies, which in certain instances were contained in side letters to the purported sales contracts. In a number of instances, payment was contingent on the buyers' receipt of outside funding from third parties. The Commission also alleged that the three individual defendants, Henry Burkhardt III, Kendall's former president and chief executive officer; Peter Appleton Jones, its former highest ranking sales executive; and Karl G. Wassmann III, its former chief financial and accounting officer, sold Kendall common stock while in possession of material non-public information about the company's true financial condition and results of operations. Burkhardt, Jones and Wassmann consented to the entry of injunctions. Burkhardt was ordered to pay a total of \$1.1 million, representing his losses avoided and civil penalties, and was barred from acting as an officer or director of any public company. Jones was ordered to pay a total of \$321,526, representing his losses avoided and prejudgment interest. Wassmann was ordered to disgorge a total of \$241,548, representing his losses avoided and prejudgment interest. Wassmann also was denied the privilege of appearing or practicing before the Commission in related administrative proceedings pursuant to Rule 102(e). The Commission also settled cease and desist proceedings against Thomas J. MacCormack, Kendall's former director of contract administration, in which the respondent was required to pay

\$31,672.75 representing his losses avoided from sales of Kendall stock, plus prejudgment interest (*In the Matter of Thomas J. MacCormack*<sup>33</sup>).

The Commission alleged that Akhilesh Chandoke, the former president, chief executive officer, and director of Automated Telephone Management Systems, Inc. (ATM); Frank Mzyk, ATM's former controller and principal accounting officer; and David Jacobs, its former secretary and vice president of sales, engaged in a fraudulent scheme to inflate the company's revenue for the fiscal year ended September 30, 1993 (*SEC v. Automated Telephone Management Systems, Inc.*<sup>34</sup>). ATM allegedly recognized \$1.3 million in revenue from a fictitious sales contract that represented 25 percent of the company's revenue for 1993. The defendants concealed inventory, created fictitious invoices, and backdated internal documents to conceal the fraud from auditors. Chandoke and Mzyk consented to the entry of injunctions and orders barring them from acting as officers or directors of public companies. Default injunctions were entered against ATM and Jacobs, who also was barred from serving as an officer or director of a public company. In a related action, Earl V. Young, a former ATM director, consented to the entry of an injunction and an order requiring him to pay a civil penalty of \$15,000 (*SEC v. Earl V. Young*<sup>35</sup>).

## Insider Trading

Insider trading occurs when a person in possession of material non-public information engages in securities transactions or communicates such information to others who trade. The Commission often seeks ancillary relief, including disgorgement of any profits gained or losses avoided, in addition to permanent injunctions. The ITSA penalty provisions authorize the Commission to seek a civil penalty, payable to the United States Treasury, of up to three times the profit gained or loss avoided against persons who unlawfully trade in securities while in possession of material non-public information or who unlawfully communicate material non-public information to others who trade. Civil penalties also can be imposed upon persons who control insider traders. During 1996, the Commission brought 42 cases alleging insider trading violations.

In emergency situations, the Commission will take action to protect the markets when the identity of potential violators has been concealed or is otherwise unknown. In *SEC v. Certain Purchasers of the Common Stock of CBI Industries, Inc.*,<sup>36</sup> the Commission filed a complaint alleging that unknown persons, acting through the offices of foreign financial institutions (three Swiss and one German), made highly profitable purchases of common stock issued by CBI Industries just days before the public announcement of a proposed takeover of CBI by Praxair, Inc. Because the price of CBI stock rose by over 50 percent following the public announcement, the defendants stood to realize substantial profits. The court entered a temporary restraining order that froze the shares of stock in the accounts at issue, along with any proceeds from sales of such stock. Subsequently, the court entered an injunction by default against the two individuals and seven companies that had been identified as responsible for the trading. The order requires total disgorgement of \$1.4 million, plus \$1.2 million in ITSA penalties from seven of the defendants.

The Commission also filed an action, *SEC v. Certain Purchasers of Call Options of Duracell International, Inc.*,<sup>37</sup> alleging that unknown persons purchased call options prior to the public announcement of a merger agreement between Duracell International and The Gillette Company. The defendants' purchases resulted in profits of approximately \$950,000. The Commission obtained a preliminary injunction and an asset freeze in this case, which was pending at the end of the year.

The Commission filed an action against six individuals, alleging that they engaged in insider trading in the securities of Intuit, Inc., or tipped to others who traded, prior to the announcement of a proposed merger between Microsoft Corporation and Intuit on October 13, 1994 (*SEC v. Kathleen Lane*<sup>38</sup>). Kathleen Lane learned of the proposed merger from her spouse, Intuit's chief financial officer, and tipped her son and daughter who in turn tipped the three other defendants. Seven months later, Lane learned that the merger plans were to be abandoned and communicated this information to her son and one of his tippees. The defendants consented to the entry of

injunctions and orders requiring the payment of a total of \$472,342 in disgorgement and penalties.

The Commission charged a psychiatrist with insider trading in the securities of Lockheed Corporation (*SEC v. Mervyn Cooper*<sup>39</sup>). In 1994, Mervyn Cooper provided marriage counseling to a Lockheed executive who was involved in the due diligence process related to a planned merger between Lockheed and Martin Marietta Corporation. The executive confided confidential information concerning a major transaction involving Lockheed, which Cooper tipped to Kenneth E. Rottenberg, who opened a brokerage account in which he and Cooper jointly purchased call option contracts for Lockheed stock. They also purchased shares of Lockheed stock. As a result of their illegal trading, the defendants had combined profits of \$177,235.60. The defendants consented to the entry of injunctions and orders requiring Cooper to disgorge profits of \$53,458.02 plus prejudgment interest and to pay a civil penalty of \$53,458.02, and requiring Rottenberg to disgorge \$53,909.85.

A complaint filed by the Commission charged Donald Tyson and Frederick Cameron with insider trading in 1992 in the common stock of Arctic Alaska Fisheries Corporation (*SEC v. Donald John Tyson*<sup>40</sup>). Tyson, who was then the chairman of the board of directors of Tyson Foods, Inc. and a majority shareholder of the company, communicated material non-public information to Cameron, a friend, concerning Tyson Foods' proposed acquisition of Arctic Alaska. While in possession of that information, Cameron purchased 9,000 shares of Arctic Alaska stock for \$59,625; following the public announcement of the proposed acquisition, he realized a profit of \$46,125 on the sale of the stock. The defendants consented to the entry of an injunction and orders by which Cameron was required to disgorge \$46,125, plus prejudgment interest of \$18,153.43, and by which Cameron and Tyson each were required to pay civil penalties of \$46,125.

Three individuals were charged with insider trading in the common stock of Skybox International, Inc. (*SEC v. Hugo Aldo Sallustro*<sup>41</sup>). Sallustro,

the managing director of Panini S.r.L., a European subsidiary of Marvel Entertainment Group Inc., misappropriated information concerning a possible acquisition of Skybox, and purchased Skybox stock while in possession of this information; he also tipped Anna Baroni and Ferrucio Camponovo, who both traded Skybox stock. Following the public announcement of Marvel's tender offer for Skybox, the defendants realized total profits of \$152,718. The defendants consented to the entry of injunctions and orders requiring total payments of \$165,980 representing disgorgement plus prejudgment interest and \$102,608 in civil penalties.

## Regulated Entities

### *The NASD Proceedings*

Under the Exchange Act, the Commission exercises oversight of SROs in the securities business. Administrative proceedings were instituted during the year against the NASD to address its alleged failure to comply with certain of its own rules and its failure to enforce compliance by market makers on the Nasdaq system with NASD rules and the federal securities laws (*In the Matter of National Association of Securities Dealers, Inc.*<sup>42</sup>). In settling the proceedings, the NASD agreed to provide for more diversity on its Board of Governors and certain policy making committees, improve the process by which it disciplines member firms and admits new members, and strengthen its enforcement efforts and enhance its surveillance regarding market making activities. The NASD also represented that \$25 million had been authorized to enhance its market surveillance systems and that an additional \$75 million would be committed for this purpose over the next five years. The Commission released a report of investigation regarding the NASD and the Nasdaq market<sup>43</sup> detailing a number of problem areas including the anticompetitive pricing convention used by market makers, by which most stocks were quoted only in even eighths (*i.e.*, \$.25, \$.50, \$.75), so that spreads were never less than \$.25. The report also discussed regulatory deficiencies at the NASD.

## *Broker-Dealers*

A significant number of Commission enforcement actions are filed each year against broker-dealer firms and persons associated with them. These actions focus on fraudulent sales practices as well as on violations of the books and records, customer protection, and net capital provisions of the federal securities laws. The Commission also can impose sanctions upon firms and their senior management for failure reasonably to supervise employees to prevent violative conduct.

In cease and desist proceedings, *In the Matter of PaineWebber Incorporated*,<sup>44</sup> the Commission alleged violations by PaineWebber in two areas. The first area involved the offer and sale of certain public limited partnership interests and other public investments (referred to by the firm as direct investments) between 1986 and 1992. Sales and marketing materials for four families of direct investments overstated benefits and understated risks of the investments, and characterized certain direct investments as suitable for conservative investors without sufficiently disclosing the risk of loss of principal. PaineWebber sold direct investments to numerous investors for whom they were unsuitable and in concentrations that were too high given the investors' age, financial condition, sophistication, and investment objectives. In connection with these sales, PaineWebber failed to make and keep certain required records and failed reasonably to supervise employees who made the sales. In the second area, PaineWebber failed reasonably to supervise ten registered representatives, in eight branch offices, who engaged in fraudulent sales practices in connection with certain retail customer accounts. PaineWebber consented to the entry of a cease and desist order that required the firm: (1) to comply with its representation that it had paid, or was obliged to pay, a total of \$292.5 million for the benefit of investors; (2) to pay a civil penalty of \$5 million; and (3) to comply with certain other undertakings regarding implementation of policies and procedures designed to prevent future violations. In a related civil action, *SEC v. PaineWebber Incorporated*,<sup>45</sup> the firm consented to the entry of an order requiring the establishment of a \$40 million claims fund (an obligation included in the total required to be paid in the administrative proceedings).

The Commission took action against Gruntal & Co. Incorporated (Gruntal), a broker-dealer, and its parent, Gruntal Financial Corp. (*In the Matter of Gruntal & Co., Incorporated*<sup>46</sup>). The Commission's order alleged that, between 1984 and 1994, certain members of Gruntal's senior management diverted securities and funds totaling over \$11 million from customer accounts, customer and vendor checks, dividend overages, and other sources. Approximately \$5 million was ultimately transferred to Gruntal's profit and loss accounts or used to pay Gruntal expenses; the remaining \$6 million was embezzled by participants in the scheme. Gruntal and Gruntal Financial consented to the entry of the cease and desist order that required them to pay \$5.5 million in disgorgement and prejudgment interest, and required Gruntal to pay a civil penalty of \$4 million. The Commission also filed a related civil action, *SEC v. Gruntal & Co., Incorporated*<sup>47</sup> in which the defendants consented to an order establishing a process for disgorgement and distribution of the diverted funds. In a related action, the Commission charged that Edward E. Bao, a former executive vice president and director of both Gruntal and Gruntal Financial, conceived of and directed the scheme and engaged in insider trading by selling Gruntal stock while aware of the scheme; this matter was pending at the end of the year.

The Remedies Act authorizes the Commission to bring emergency proceedings against regulated entities in which a temporary cease and desist order can be entered to protect investors from imminent harm. The Commission invoked this authority for the first time in a case against a broker-dealer through which fraudulent sales practice abuses were being committed (*In the Matter of A.R. Baron & Co.*<sup>48</sup>). The Commission alleged that Jeffrey Weissman and Andrew Bressman, the top officers of Baron, and others acting through Baron, carried out a manipulation of the market for the common stock of Health Professionals, Inc., in May and June of 1993. In 1995, Bressman and another Baron principal, Roman Okin, acting through Baron, allegedly manipulated the market for the common stock of Cypros Pharmaceutical, Inc. The manipulations involved serious sales practice abuses, including rampant unauthorized trading in customer accounts and imposition of a no net sale rule. The Commission instituted

and settled a separate proceeding against the firm in October 1996,<sup>49</sup> in which the Commission found that Baron had been involved in the manipulation of Health Professionals and Cypros Pharmaceutical stock. Baron consented to the entry of an order by which its registration was revoked. In light of the revocation proceedings, Baron was dismissed as a respondent from the emergency cease and desist proceedings, which were pending at the end of the year as to Bressman and Okin. In related cease and desist proceedings charging manipulations of Health Professionals from 1991 to 1993, the Commission barred Jeffrey Weissman from association with regulated entities and ordered him to disgorge \$350,000 and to pay a civil penalty of \$100,000. Weissman's father (who was the chairman of Health Professionals until 1992) was ordered to disgorge \$161,250, plus prejudgment interest of \$61,946 (*In the Matter of Jeffrey Weissman*<sup>50</sup>).

In *In the Matter of Fahnestock and Co., Inc.*,<sup>51</sup> the Commission instituted proceedings against a broker-dealer and one of its branch managers for failure to supervise Wendell Jeffrey Lee, a registered representative who misappropriated customer funds. The Commission's order alleged that the branch manager, William E. Bierlin, Jr., failed to follow existing supervisory procedures, and that Fahnestock's policies and procedures regarding checks drawn on customer accounts and wire transfers of cash from customer accounts either were not followed or were inadequate to detect and prevent Lee's violative conduct. The order also alleges that Bierlin altered certain brokerage documents to conceal deficient supervisory procedures, and produced the altered documents in response to a Commission subpoena. These proceedings were pending at the end of the year. The Commission instituted related proceedings against Lee, alleging his misappropriation of \$276,000 from two customer accounts (*In the Matter of Wendell Jeffrey Lee*<sup>52</sup>). Lee was barred by default from association with broker-dealer firms and from participation in any offering of penny stocks.

In administrative proceedings, *In the Matter of Kimberly D. Goodman*,<sup>53</sup> the Commission alleged that the respondent, while a registered representative associated with Refco Securities, Inc., assisted Steven D. Wymer, the former owner of two investment advisory firms, in concealing Wymer's

misappropriation of more than \$80 million from his clients' accounts at Refco. Goodman signed audit confirmation letters that falsely verified the portfolio balances of Wymer's clients. In addition, she misrepresented account balances to Wymer's Refco clients and provided Wymer with the blank Refco forms that he used to forge documents used to report fictitious trades and portfolio balances to his clients. She received approximately \$313,000 in undisclosed cash and gifts from Wymer in return for her assistance in his scheme. Goodman consented to the entry of an order by which she was barred from association with any regulated entity.

### *Investment Advisers and Investment Companies*

The Commission brought a number of significant cases in 1996 involving investment advisers and investment companies. In addition to the proceedings arising from its brokerage business (described above), Gruntal & Co., Incorporated, also was the subject of proceedings based on violative conduct in its investment advisory business (*In the Matter of Gruntal & Co., Incorporated*<sup>54</sup>). Between 1993 and 1995, Gruntal executed certain transactions on a principal basis or by crossing advisory client orders with orders from other Gruntal clients, contrary to its disclosures in filings with the Commission and its obligation to obtain customer consent to such transactions. Gruntal also charged commissions, commission equivalents, and mark-ups or mark-downs on transactions for customers who had elected to pay an all-inclusive, asset-based fee. In settling these proceedings, Gruntal consented to pay a civil penalty of \$1 million.

An investment adviser was charged in administrative proceedings with inadequate disclosure of soft dollar arrangements (*In the Matter of S Squared Technology Corporation*<sup>55</sup>). Soft dollars are that portion of the commissions generated by securities trades for an adviser's customers that are used to pay for research, brokerage, or other products, services, or expenses of benefit to the customer. Between June 1989 and August 1993, S Squared used certain soft dollar credits to pay expenses such as its own rent, salaries of its own employees, legal fees, and accounting fees, but failed to make any meaningful disclosure of this use of soft dollars in

amendments to its Form ADV. S Squared consented to the entry of a cease and desist order in which it was ordered to disgorge \$878,250.31 plus \$275,175 in prejudgment interest to certain advisory clients, and to pay a civil penalty of \$50,000.

In administrative proceedings against Portfolio Management Consultants (PMC) and Kenneth S. Phillips, PMC's president and one of its directors, the Commission alleged a failure to obtain the best execution price for trades on behalf of customers (*In the Matter of Portfolio Management Consultants*<sup>56</sup>). PMC provided "individualized managed accounts" for some 800 customers, with over \$200 million under management. PMC represented that a single, all-inclusive wrap fee, equal to a percentage of assets invested by the client, covered all brokerage, advisory, and custodial services performed by PMC. Between October 1992 and April 1994, PMC, acting as principal, routinely executed customer transactions at one price while seeking and obtaining better prices for itself in contemporaneous offsetting trades. PMC failed to disclose that prices obtained for customers were not the most favorable under the circumstances, and failed to disclose that, in addition to the wrap fee, it was receiving compensation in the form of profits generated from principal trading. The Commission also instituted related proceedings, which were pending at the end of the year, against PMC's chairman and chief executive officer (*In the Matter of Marc N. Geman*<sup>57</sup>).

The Commission instituted proceedings against McKenzie Walker Investment Management, Inc., an investment adviser, and Richard C. McKenzie, Jr., its sole director, officer, shareholder, and primary portfolio manager (*In the Matter of McKenzie Walker Investment Management, Inc.*<sup>58</sup>). McKenzie Walker charged clients either a performance-based fee of 20 percent of the gain in their accounts (selected by some 26 clients) or an asset-based fee of from 1 percent to 3 percent of assets under management (selected by seven clients). From August 1992 through September 1993, Richard McKenzie failed to allocate purchases and sales of securities in an equitable way between its performance-based and asset-based clients, but instead placed approximately twice as many profitable trades

with performance-based clients. As a result, McKenzie Walker's fees were increased by at least \$224,683. In addition, McKenzie Walker allocated a disproportionate share of securities purchased in hot initial public offerings to its performance based-clients. During the relevant period, \$892,095 in profits, and no losses, were allocated to performance-based clients, while only \$18,240 in profits and \$24,375 in losses (for a net loss of \$6,135) were allocated to asset-based clients. The respondents consented to the entry of a cease and desist order that required the disgorgement of \$224,683 plus \$35,974 in prejudgment interest, and the payment of a civil penalty of \$100,000.

The Commission's cease and desist proceedings, *In the Matter of Leeb Investment Advisors*,<sup>59</sup> involved the dissemination of false and misleading statements in connection with the marketing of investments in the Leeb Personal Finance Fund. The publisher of newsletters edited by Stephen L. Leeb distributed advertisements for one of the publications in which it falsely claimed that an investor using Leeb's Master Key (a market-timing model) could have turned a \$10,000 investment made in 1980 into \$39,160,394 by 1992. Advertisements for the Fund that were sent to subscribers to the publication falsely indicated that investing in the Fund was the equivalent of following the publication's investment strategies, including use of the Master Key. The six respondents consented to the entry of a cease and desist order by which five of them (including Leeb, Leeb Investment Advisers, and Leeb's publisher) were required to pay civil penalties totaling \$300,000.

In *SEC v. Seaboard Investment Advisers, Inc.*,<sup>60</sup> the Commission alleged that Seaboard and Eugene W. Hansen, its chief executive officer and controlling shareholder, engaged in a scheme to defraud investment advisory clients by sending false and misleading advertisements. The advertisements, in the form of letters reviewing each client's portfolio, falsely represented that Seaboard's accounts had outperformed various well-known market indices. The Commission further alleged that dissemination of the false advertisements violated the terms of an order that had been entered less than six months earlier in separate proceedings against the same respondents. The earlier order required that all advertising materials be reviewed and

approved by Seaboard's vice president of compliance. This matter was pending at the end of the year.

Michael C. Robertson, the former investment adviser to the Employees' Retirement Fund for Fort Worth, Texas and the investment adviser to the Oklahoma Police Pension Retirement System, and his advisory firm, M.C. Robertson & Associates, Inc., were charged in administrative proceedings with making materially false and misleading statements regarding the receipt of compensation from broker-dealers and mutual funds in connection with their advisory business (*In the Matter of Michael C. Robertson*<sup>61</sup>). Robertson and his firm received approximately \$721,461 in undisclosed service fees paid by three mutual funds in the Fort Worth fund's portfolio and undisclosed commission payments totaling \$13,863.72 in a commission recapture program. The respondents also received undisclosed commission payments totaling \$48,205.12 in connection with the Oklahoma Police Pension fund commission recapture program. This matter was pending at the end of the year.

### **Sources for Further Inquiry**

The agency publishes the SEC Docket, which includes announcements regarding enforcement actions. SEC litigation releases describe civil injunctive actions and report certain criminal proceedings involving securities-related violations. These releases typically report the identity of the defendants, the nature of the alleged violative conduct, and the disposition or status of the case. The SEC Docket also contains Commission orders instituting administrative proceedings, making findings, and imposing sanctions in those proceedings, and initial decisions and significant procedural rulings issued by Administrative Law Judges. In addition, recent litigation releases, orders in administrative proceedings, and other information of interest to investors are posted on the internet at the SEC's World Wide Web site (<http://www.sec.gov>). The Commission's Enforcement Complaint Center may be reached through the Enforcement Division page of the website and e-mail messages may be sent directly to the division at [enforcement@sec.gov](mailto:enforcement@sec.gov).

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## **International Affairs**

*The Office of International Affairs develops and implements the SEC's international enforcement and regulatory initiatives. The SEC works bilaterally and multilaterally in the international arena to promote cooperation and assistance and to encourage the development and adoption of high regulatory standards. To further these goals, the office negotiates and oversees the implementation of information-sharing arrangements for enforcement and regulatory matters, and conducts a technical assistance program for countries with emerging securities markets.*

### **Key 1996 Results**

In 1996, the office made 230 requests to foreign governments for enforcement assistance on behalf of the SEC and responded to 342 requests for enforcement assistance from foreign governments. The international affairs staff responded to a record 136 foreign requests for technical assistance.

The SEC signed understandings to assist in law enforcement and regulatory matters with securities authorities in Hong Kong, Russia, Egypt, and Israel. The understanding with Hong Kong also covers the oversight of investment management activity.

The SEC's leadership role in the Council of Securities Regulators of the Americas (COSRA) and the International Organization of Securities Commissions (IOSCO) continued to advance international regulatory and market oversight issues. During the past year, COSRA approved a report and resolution combatting illicit payments. COSRA also approved a report on mechanisms for facilitating capital formation in the Americas and issued guidelines on market structure.

## **Arrangements for Mutual Information and Assistance Exchange**

The SEC needs to obtain foreign-based information to protect the U.S. markets and investors from cross-border fraud and other violations of the U.S. federal securities laws. The SEC has entered into over 29 arrangements with foreign counterparts for information sharing and cooperation in investigating and prosecuting securities law violations. The SEC uses these arrangements to expand cooperation to include oversight of investment management activity.

On October 5, 1995, the SEC signed a Memoranda of Understanding (MOU) and a Declaration on Cooperation and Supervision of Cross-Border Investment Management Activity with the Hong Kong Securities and Futures Commission. The MOU and Declaration provide for consultation and cooperation in administering and enforcing securities laws and establish procedures for assisting in the oversight of investment advisers and investment companies in the U.S. and Hong Kong. The MOU and Declaration were signed after Hong Kong changed its law to permit its Commission to conduct investigations on behalf of foreign securities authorities, to provide access to its files, and to take statements and obtain documents.

In December 1995, the SEC signed an MOU and Protocol with the Russian Federal Commission on Securities and the Capital Market. The agreements provide for mutual enforcement assistance relating to activities in the U.S. and Russian securities markets and a framework for the SEC's technical assistance.

In February 1996, the SEC signed its first understandings with securities authorities in the Middle East: the Israel Securities Authority (ISA) and the Egyptian Capital Market Authority. The MOU with the ISA includes commitments to consult and cooperate in the administration and enforcement of U.S. and Israeli securities laws, and to coordinate cross-border offerings of securities by U.S. and Israeli issuers. The MOU will become effective when implementing legislation is passed in Israel. The MOU with the

Capital Market Authority furthers the U.S.-Egypt Joint Economic Partnership and creates a framework for technical assistance and enforcement cooperation.

## **Enforcement Cooperation**

Assistance from foreign authorities helped the SEC to institute enforcement proceedings. In 1996, the office made 230 requests to foreign governments for enforcement assistance on behalf of the SEC and responded to 342 requests for enforcement assistance from foreign governments. The SEC received substantial assistance from foreign regulators in each of the cases discussed below.

*SEC v. Wye Resources, Inc. and Rehan Malik.*<sup>62</sup> The SEC filed a complaint against Wye Resources, Inc., a Canadian corporation headquartered in Toronto, Ontario, and Rehan Malik, a resident of Newfoundland, who was Wye's president. The complaint alleged that during 1993 and 1994 Wye and Malik used the internet to target U.S. investors as part of a fraudulent promotional campaign and illegally distributed Wye stock to those investors. The SEC received assistance from the Ontario Securities Commission under an MOU signed in 1988.

*SEC v. Scorpion Technologies, Inc.*<sup>63</sup> The SEC alleged that Scorpion Technologies falsified disclosures of its business operations and financial health through sham transactions. Approximately 20 million shares of the company's stock were issued in purported reliance upon Regulation S, which addresses offshore offers and sales of stock. This stock was issued to offshore purchasers at a discount from the market price. It then was sold to public investors in the U.S. without "coming to rest" in the hands of bona-fide offshore purchasers. The SEC received assistance from authorities in the United Kingdom, Hong Kong, and Guernsey in this case. In addition, the U.S. Department of Justice obtained an indictment for money laundering against the participants in this fraud.

*In the Matter of A.R. Baron & Co. Inc., Andrew Bressman, and Roman Okin.*<sup>64</sup> This case represents the first time the SEC obtained an administrative temporary cease and desist order against a regulated entity, A.R. Baron & Co. Inc., a broker-dealer registered with the SEC. The SEC alleged that Baron conducted unauthorized trades in customer accounts; refused to carry out customer sell orders; and refused to remit, or delayed in remitting, proceeds of securities sales to customers. Baron also directed its customer solicitation toward U.K. citizens. The U.K. Securities and Investments Board assisted the SEC under the MOU signed in 1991.

## **International Technical Assistance**

The SEC's technical assistance program helps regulators of foreign markets to develop regulatory structures that promote investor confidence. The international affairs staff responded to a record 136 foreign requests for technical assistance. The cornerstone of the program is the International Institute for Securities Market Development, a two-week, management-level training program covering the development and oversight of securities markets. Over 100 delegates from 65 countries attended the Market Development Institute in 1996.

Also in 1996, 98 delegates representing 51 countries attended the one-week International Institute for Securities Enforcement. The program included practical training sessions for foreign securities regulators on enforcement investigations, investment company and adviser inspections, broker-dealer examinations, and market surveillance. The SEC also provided technical assistance to the Newly Independent States of the former Soviet Union (NIS), holding U.S. training programs for more than 60 key securities officials from six NIS countries and overseas programs for larger audiences in Russia, Moldova, and the Ukraine.

In July 1996, the SEC, Treasury and the Russian Federal Commission for the Securities Market (FCSM) created a U.S.-Russia Capital Markets Forum under the auspices of the Gore-Chernomyrdin Commission. The Forum will

provide recommendations to the Russian government on the development and regulation of Russian capital markets. The Forum is chaired by U.S. Treasury Secretary Rubin, SEC Chairman Levitt, and senior Russian administration officials, including FCSM Chairman Vasiliev. Among other issues, the Forum will address collective investment vehicles, market infrastructure and enforcement.

## **International Organizations and Multilateral Initiatives**

Through its involvement in international organizations, the SEC promotes its views on the U.S. securities markets and develops consensus on issues in international organizations. The SEC's participation in multilateral organizations provides the agency with a better understanding of foreign regulations, markets, and practices.

### **The International Organization of Securities Commissions**

With over 130 members, IOSCO promotes cooperation and consultation among the world's securities regulators. In response to a call by the G-7 Ministers for enhanced cooperation to strengthen supervision of internationally active financial institutions, in 1996 IOSCO produced a Joint Statement with the Basle Committee on Banking Supervision. The Joint Statement promotes arrangements to augment each regulatory authority's ability to supervise internationally active firms operating from its jurisdiction.

IOSCO and the International Accounting Standards Committee continued to make progress in developing international accounting standards for use in cross-border offerings. IOSCO also adopted a "Resolution on Providing Certainty of the Enforceability of Netting Arrangements for Over-the-Counter Derivative Transactions."

## Council of Securities Regulators of the Americas

COSRA enhances the efforts of countries in the Americas and the Caribbean to develop sound securities markets that are fair to all investors. COSRA's membership represents both developed and emerging markets. At its annual meeting, COSRA approved a report and resolution on combatting illicit payments, a report on facilitating capital formation in the Americas, and a report and guidelines on market structure. COSRA also agreed on a future work agenda concerning investor education and auditing oversight.

### Combatting Illicit Payments by Public Companies

During 1996, the SEC contributed to international and U.S. government initiatives to battle corruption and promote practical ways to combat bribery by publicly held companies. For example, the SEC worked with the Department of State in the negotiation of the Organization of American States' (OAS) Convention Against Corruption, which was signed in 1996 by 23 countries in this Hemisphere. The OAS Convention and COSRA's report on illicit payments call on nations to develop laws that prohibit illicit payments to foreign officials, emphasize the importance of having companies' books and records accurately reflect the disposition of assets, and note the importance of sufficient internal accounting controls. The SEC, with the Departments of State and Justice, also worked with the Organisation for Economic Co-operation and Development Working Group on Bribery to address foreign bribery through accounting and auditing requirements.

### Initiatives With United Kingdom Regulators

During 1996, the SEC worked on a joint initiative with the U.K. Securities and Investments Board (SIB) to conduct studies of the financial, operational, and management controls used by U.S. and U.K. securities firms that have significant cross-border derivatives and securities activities. Through this exchange of information, securities regulators developed understandings of each other's regulatory approaches. The SEC and the SIB are reviewing internal controls used by firms with significant international

securities activities, including controls relating to market, credit, liquidity, and funding risks. Since selected firms have significant operations in third countries, the SEC and SIB are working with other regulators. The SEC also is working with its U.S. and U.K. regulators on initiatives for cooperation between securities and banking regulators in the supervision of the global activities of financial institutions, including work on procedures for cooperation and information-sharing during market emergencies.

## **Investor Education and Assistance**

*The Office of Investor Education and Assistance acts as a clearinghouse for investors by answering questions and examining complaints. The office educates investors on how to identify, avoid, and report securities fraud and abuse through the creation and distribution of educational materials.*

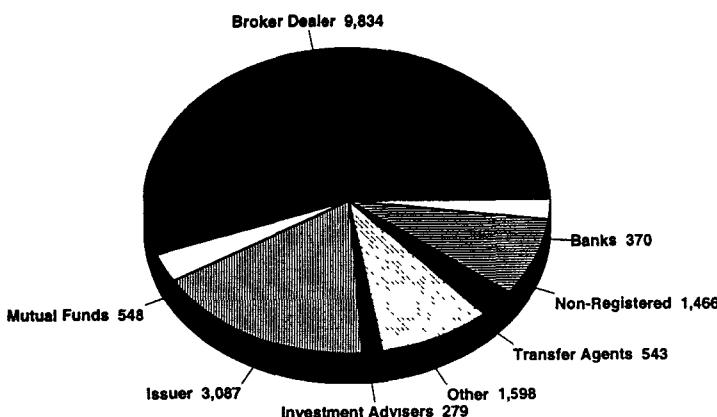
### **Key 1996 Results**

During the year, the investor education staff analyzed and answered 44,974 complaints and inquiries. The total number of complaints and inquiries has grown 30 percent since 1993. The majority of the complaints (55 percent) involved broker-dealers. The remainder involved issuers, investment companies, investment advisers, banks, transfer and clearing agents, and various financial and non-financial entities.

### **Investor Complaints**

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**Complaints by Major Entity Type  
for Fiscal 1996**

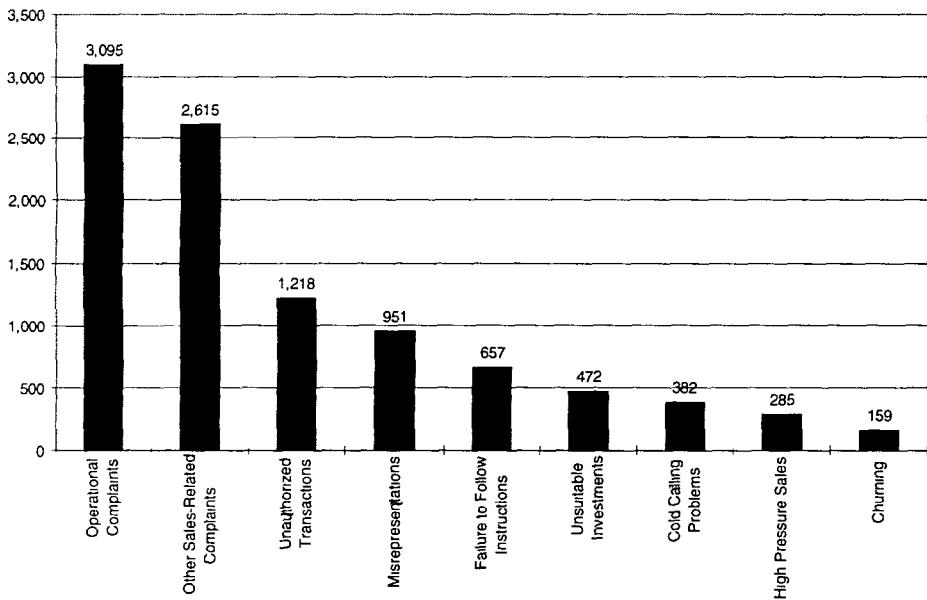


The investor education staff alerts the Division of Enforcement if a complaint contains egregious conduct, otherwise the firm or individual that is the subject of the complaint is contacted to gain more information and to determine if a resolution with the investor can be reached. Over 2,000 complaints and inquiries were referred to other SEC divisions and offices or other regulatory offices for review or action.

Common stocks were cited in 4,778 of the 9,834 broker-dealer complaints. Of the 9,834 broker-dealer complaints, 58 percent were related to operational or other sales-related issues (as depicted below).

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**Broker Dealer Complaints by Major Complaint Type  
for Fiscal 1996**



## **Plain English Initiative**

The office started a plain English pilot program with the Divisions of Corporation Finance and Investment Management to encourage companies to write disclosure documents that investors can understand. In September 1996, the Bell Atlantic Corporation and NYNEX, the first volunteers in the Division of Corporation Finance's pilot, filed the cover page and the summary of their merger proxy and prospectus in plain English. The two companies found that the switch to plain English did not cause delays or greater costs, and reduced the number of investor inquiries normally received. Other companies have since joined the pilot program.

## **Investor Outreach**

In 1996, the office organized six investors' town meetings where investors could meet and talk with Chairman Levitt. These meetings took place in Columbus, Ohio; Boston, Massachusetts; Washington, D.C.; New York, New York; Philadelphia, Pennsylvania; and Fairfax, Virginia. Over 6,000 investors attended the town meetings and millions more have viewed them through television broadcasts and videotapes. The SEC held its first seminar at the Columbus, Ohio town meeting and expanded the program at the town meetings that followed. These seminars provide information on how markets work and are regulated, and how individuals can invest wisely. The office has recruited state securities regulators, self-regulatory organizations, and representatives from broad-based industry groups to give seminars.

In June 1996, the office released a brochure entitled, *Investment Fraud and Abuse Travel to Cyberspace*. This brochure warns investors about investment frauds on the internet. In September 1996, the office released *Ask Questions, Questions You Should Ask About Your Investments*. Within one month of its release, over 6,000 copies were requested and distributed.

In June 1996, the Commission opened an investor complaint program on the internet. Approximately 10 percent of the 600 electronic mail messages received in 1996 were complaints. The remainder were inquiries. Investors also may access educational publications, investor alerts, speeches, and information about enforcement proceedings of particular interest to investors on the SEC's website (<http://www.sec.gov>). In 1996, the "What Every Investor Should Know" section of the site received over 186,600 hits from users across the country.

### **Toll-Free Phone Line**

The Commission's toll-free investor information service (800-SEC-0330) provides investors with educational materials, investor protection messages, and information on how the Commission can assist them with their complaints and inquiries. During the year, the office received over 113,900 calls seeking assistance.

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## **Regulation of the Securities Markets**

*The Division of Market Regulation oversees the operations of the nation's securities markets and market participants. In calendar year 1996, the SEC supervised approximately 8,500 registered broker-dealers with over 62,000 branch offices and over 530,600 registered representatives. In addition, the SEC oversaw 8 active registered securities exchanges, the National Association of Securities Dealers (NASD) and the over-the-counter (OTC) securities markets, 15 registered clearing agencies, 748 transfer agents, the Municipal Securities Rulemaking Board (MSRB), and the Securities Investor Protection Corporation.*

*Broker-dealers filing FOCUS reports with the Commission had approximately \$1.6 trillion in total assets for fiscal year 1996 and \$95.6 billion in total capital, respectively. At the end of fiscal 1996, equity market capitalization equalled approximately \$9.2 trillion in the United States and \$22.4 trillion worldwide. Average daily trading volume reached 402.6 million shares on the New York Stock Exchange (NYSE) and 540.9 million shares on the Nasdaq Stock Market. The fastest growing market segment continues to be in the area of derivatives activities.*

### **Key 1996 Results**

The division's achievements this year reflect its commitment to streamlining regulation while reinforcing competition and investor protections in light of recent technological developments in the markets. Newly adopted order execution obligations will provide enhanced market transparency, improved access to the best available prices, better interaction of customer orders, and increased competition. Guidance was provided by the division to facilitate trading in securities on the internet, subject to certain conditions designed to protect investors. The Commission proposed Regulation M to streamline and simplify anti-manipulation rules for offerings

and to facilitate the capital raising process. This initiative represents the most significant change in the Commission's anti-manipulation regulation since the trading practices rules were adopted over 40 years ago. The division also played a leading role in international efforts to enhance investor protection, including conducting joint reviews of select global financial institutions with significant cross-border securities and derivatives activities. These reviews provided in-depth analyses of the financial, operational, and management controls used by these firms.

## **Securities Markets, Trading, and Significant Regulatory Issues**

### **Derivatives**

In 1994, the Derivatives Policy Group (DPG), consisting of the six firms most active in the OTC derivatives market, was formed to address a broad range of regulatory issues. Since 1995, five DPG firms have been reporting to the Commission pursuant to a framework for voluntary oversight. In 1996, the five reporting members of the DPG provided the SEC with quarterly credit and market risk information. In addition, the staff reviewed reports prepared by DPG firms' external auditors concerning the firms' implementation of management controls for OTC derivatives, and mathematical models used to calculate risk associated with the firms' portfolios.

The division participated in the preparation of a paper issued jointly by the International Organization of Securities Commissions and the Basle Committee on Banking Supervision that surveyed disclosures about trading and derivatives activities of internationally active banks and securities firms for the period 1993-1995. The survey provided supervisors with additional information on derivatives activities disclosed in these firms' annual reports.

The Commission approved several self-regulatory organization (SRO) proposals that strengthened market stability and integrity while facilitating

use of exchange-traded derivatives for risk management purposes, including the following:

- proposals designed to readjust the position and exercise limits for equity and index options,<sup>65</sup>
- accelerated listing standards for options on securities issued in a restructuring transaction pursuant to a public offering or a rights distribution,<sup>66</sup> and
- extension of the 2-1/2 point strike price pilot program for one year.<sup>67</sup>

In addition, the Commission approved several proposals to trade derivative products on exchanges, including a proposal by four exchanges to list and trade warrants based on narrow-based indexes,<sup>68</sup> and another involving the listing and trading of options and/or warrants on several new indexes.<sup>69</sup> The Commission also approved the listing and trading of Buy-Write Option Unitary Derivatives,<sup>70</sup> Flexibly-Structured Exchange Traded Equity Options,<sup>71</sup> and Country Baskets<sup>72</sup> and WEBS,<sup>73</sup> which are units structured as open-end management investment companies that invest directly in a portfolio of securities.

As a result of increased interest in international futures products, the Commission acted on several futures-related matters, including amendments to Rule 3a12-8 under the Exchange Act to designate the sovereign debt of Mexico,<sup>74</sup> Brazil, Argentina, and Venezuela<sup>75</sup> as exempted securities for the purpose of futures trading. The Commission also issued letters to the Commodity Futures Trading Commission not objecting to the designation of contract markets for the following stock (or debt) index futures and futures options: S&P 500/BARRA Growth Index and S&P 500/BARRA Value Index,<sup>76</sup> Mexico 30 Index,<sup>77</sup> Nasdaq 100 Index,<sup>78</sup> Mexican Indice de Precios y Cotizaciones,<sup>79</sup> PSE Technology Index,<sup>80</sup> and Emerging Market Debt Index<sup>81</sup>.

## International Activities

The SEC has a leading role in international efforts to improve regulatory oversight of the global securities industry. The SEC undertook joint reviews with SIB in furtherance of an August 1995 joint initiative to conduct an in-depth analysis of the financial, operational, and management controls used by select global financial institutions involved in significant cross-border securities and derivatives activities. United States and United Kingdom banking supervisors--the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve, and the Bank of England--also participated in the reviews, which were expanded to include the banking activities of global financial conglomerates.

The joint reviews have improved communication channels between U.S. and U.K. securities and banking supervisors, and have resulted in additional discussions on the sharing of information in emergency situations.

## Adoption of Order Execution Obligation Rules

On August 28, 1996, the Commission adopted new rules to improve the handling and execution of customer orders in exchange-traded securities and securities traded over-the-counter.<sup>82</sup> The rules are the most significant national market system initiatives in 20 years. First, to the extent that they deliver better prices to an electronic communications network (ECN), OTC market makers and exchange specialists must include those prices in their public quotes or deliver these better priced orders to an ECN that itself delivers these prices to the public market. Second, OTC market makers and exchange specialists must immediately display better priced customer limit orders in their quotes. And third, OTC market makers and exchange specialists responsible for a substantial trading volume in any security listed on an exchange must publish firm two-sided quotations. The rules become effective in January 1997.

## Securities Trading Systems on the Internet

In June 1996, the staff granted no-action relief to Real Goods Trading Corporation, a Pacific Stock Exchange listed company, permitting it to operate an internet bulletin board on which investors can post indications of interest to buy and sell the company's shares. The staff noted in particular that buyers and sellers would have to execute and settle their transactions independently of the trading system. Real Goods also represented that its securities were currently registered with the SEC, but if its stock ever ceased to be registered it would make available on its website the financial information required of issuers of registered securities.<sup>83</sup>

## Government Securities Market

The Government Securities Act Amendments of 1993 reauthorized the Department of the Treasury's rulemaking authority for the government securities market and included provisions for transaction recordkeeping, large position reporting, and the NASD's sales practice rulemaking authority. The amendments also required the Commission to monitor private sector efforts to improve the timely public dissemination and availability of information concerning government securities transactions and quotations. The Commission is required to report these developments to Congress annually.

In this regard, the Commission notes that GovPx, an entity formed by primary and inter-dealer brokers in the U.S. Treasury market, provides 24-hour, worldwide distribution of securities information as transacted by the primary dealers through five of the six inter-dealer brokers for all active and off-the-run Treasury bills, notes, bonds, basis trader, government agency securities, zero coupon securities, money market instruments and repurchase transactions. In the absence of a real-time bid or offer, GovPx publishes a proprietary indicative price.

GovPx extended its market coverage to provide worldwide distribution of information regarding the interest rate swaps market. This service, known

as SwapPx, provides real-time, benchmark rates, data and analytics for U.S. medium term swaps, basic swaps, and spot/forward swaps ranging in term from 90 days to 30 years. SwapPx is available to all market participants. With coverage over 23,000 screens, GovPx is distributed worldwide through all the major vendors of securities information including Bloomberg, Reuters, and Bridge.

In another development the MSRB began collecting price and volume information for inter-dealer transactions in municipal securities and made this available over Bloomberg and other electronic media. Beginning in January 1998, the MSRB expects to also collect and disseminate transaction information for retail and institutional trades.

A number of private, on-line data vendors (including Bloomberg, EJV Partners, Interactive Data, Asset Backed Security Group, Muller Data Corporation, among others) are offering a wide range of analytical products and services that provided users with pricing-related information for both mortgage pass-through securities and collateralized mortgage obligations (CMOs). Increasingly, vendors are providing access to analytical pricing models via the internet. These services typically provide basic pricing information at little or no cost and offer access to systems that formerly were available only through more costly leased vendor terminals. Most vendors offer a combination of (1) end-of-day evaluated prices, derived from a combination of actual transaction data and estimated prices, calculated using various proprietary pricing techniques; (2) analytical modelling software that allow users to generate mortgage securities pricing and yield data, based upon various prepayment, interest rate and other assumptions input by those users; and (3) historical pricing databases on outstanding mortgage securities.

In the government mortgage securities market, a variety of pricing and related information is available from major financial publications and from on-line data vendors. Financial publications including *The Wall Street Journal*, *The New York Times*, *Barrons*, and various industry newsletters published on a daily or weekly basis representative prices for a range of

current-coupon agency pass-through securities. In addition, such publications also are providing pricing information for most CMOs, typically displayed in terms of the current spread of various CMO categories to U.S. Treasury securities having equivalent maturities.

## Automation Initiatives

Rule 17a-23 under the Exchange Act requires brokers and dealers that operate automated trading systems to maintain participant, volume, and transaction records, and to report system activity periodically to the Commission.<sup>84</sup> Ninety-three filings for automated trading systems were received by the division.

Automation reviews of the exchanges, Nasdaq, and clearing agencies continued, including 5 on-site reviews which resulted in 10 reports and 50 recommendations for technology improvements.<sup>85</sup> The Automation Review Policy program monitored and assessed the SRO's national market system electronic data processing facilities. In addition, the staff completed 11 technology updates and performed 8 major special projects such as assessing systems capacity at broker-dealers and information vendors, year 2000 readiness, and computer security at a major depository.

Two no-action letters were issued for relief from exchange registration to the Chicago Board Brokerage, Inc., and the Institutional Real Estate Clearinghouse.<sup>86</sup> Both systems file reports pursuant to Rule 17a-23. The Commission issued a release permitting the Arizona Stock Exchange to conduct an additional trading session during normal trading hours.<sup>87</sup> In addition, a letter was issued exempting inter-dealer systems run by various Nasdaq dealers from Rule 17a-23.<sup>88</sup>

## Trading Practices Developments

In its most comprehensive reform of trading practices since their adoption, the Commission proposed replacing the current trading practice rules, Rules 10b-6, 10b-bA, 10b-7, 10b-8, and 10b-21 under the Exchange

Act (the trading practices rules), with new Regulation M.<sup>89</sup> Reflecting developments in the securities industry and market globalization, the new regulation will provide greater flexibility for market participants, enhance competition in the marketplace, and streamline the regulation of manipulative conduct during securities offerings, without sacrificing investor protection. Regulation M will consist of six rules, including a definitional rule, covering:

- the activities of underwriters and other persons participating in a distribution,
- the activities of issuers and selling securityholders conducting a distribution,
- Nasdaq passive market making,
- stabilization transactions and certain post-offering activities by underwriters, and
- short selling in anticipation of a public offering.

### **Odd-Lot Tender Offers by Issuers**

On April 19, 1996, the SEC proposed an amendment to Rule 13e-4 that would eliminate the record date requirement for issuer odd-lot tender offers and proposed related class exemptions from Exchange Act Rules 10b-6 and 10b-13.<sup>90</sup> These proposals should provide issuers with greater flexibility in reducing the number of small shareholdings where the costs to issuers of servicing small shareholders, and the costs to the shareholders of selling small holdings, are disproportionate to the value of the security holdings.

### **Municipal Securities**

In August 1996, the MSRB proposed to amend its transaction reporting system to significantly increase price transparency in the municipal securities

market. The MSRB's proposal would amend Board Rule 6-14 concerning reports of sales and purchases and Rule 6-14 transaction reporting procedures. Specifically, the proposal would add retail and institutional customer transaction information to the inter-dealer transactions currently included in the MSRB's Transaction Reporting Program, effective January 1, 1998. In the interim period, the MSRB will prepare for this additional price transparency by testing the ability of firms to provide the required information in a timely manner.

#### *Rule 15c2-12*

A number of interpretive and no-action letters were issued by the division regarding the application of the November 1994 amendments to Rule 15c2-12 under the Exchange Act. For example, the division issued no-action letters regarding parity bond financing by municipal entities that permitted them to undertake to provide continuing disclosure on behalf of certain obligated persons, but only to the extent the municipal entities could obtain the information about those obligated persons.<sup>91</sup> Exemptive relief under Rule 15c2-12 also was granted that permitted underwriters to purchase and sell certain offerings of municipal securities made by certain school districts pursuant to the Rule's small issuer exemption.<sup>92</sup> Due to the existence of a state guarantee program, without exemptive relief, the school districts would not have been able to satisfy all the conditions of the small issuer exemption.

Finally, a letter was issued to the American Bar Association addressing the following issues under Rule 15c2-12:<sup>93</sup>

- disclosure in pooled financing;
- application of the amendments to successors or assignees of obligated persons;
- conditioning the obligation to give material event notices on whether an obligated person has knowledge of an event;

- what outstanding obligations (or portions thereof) should be counted when considering the application of the \$10 million threshold of the small issuer exemption; and
- cross-referencing in an official statement or annual financial statement to information that is other than "financial information or operating data," such as demographic information regarding an obligated person.

## Broker-Dealer Regulation

### *Application for Broker-Dealer Registration*

Amendments to Form BD, the uniform broker-dealer registration form under the Exchange Act,<sup>94</sup> were adopted by the Commission to respond to design updates to the Central Registration Depository (CRD) system operated by the NASD. These amendments will ultimately allow for electronic filing of Form BD, as well as Forms U-4 and U-5 (the uniform forms used to notify the SEC, the states, and the SROs of the employment and termination, respectively, of broker-dealers' registered representatives). Amendments to the disclosure section of Form BD will provide regulators with better information about an applicant's disciplinary history.

The Commission also proposed amendments to Form BDW, the uniform request for withdrawal from broker-dealer registration under the Exchange Act, together with amendments to rules governing withdrawal from registration under the Exchange Act.<sup>95</sup> These amendments would permit broker-dealers that are withdrawing from registration to consent to an extension of the effective date of their withdrawal, and would permit the Commission to extend the effective date for such period as the Commission by order may determine. The Commission also proposed revisions to Exchange Act rules governing the filing of Forms BD and BDW to provide for electronic filing of these forms and to accommodate the conversion of existing registration information to the redesigned CRD system.

### *Foreign Broker-Dealers*

On January 30, 1996, the staff issued a no-action letter<sup>96</sup> designed to address concerns that foreign broker-dealers that effect transactions in foreign securities in foreign markets for their offshore clients may become subject to U.S. broker-dealer registration if the clients' orders are placed by U.S. resident fiduciaries. This no-action position conditionally permits these transactions to be effected without the foreign broker-dealers registering in the United States.

### *Telemarketing Rules*

The Telemarketing and Consumer Fraud Prevention Act (Telemarketing Act)<sup>97</sup> requires the Commission to adopt a rule, or direct the SROs to adopt a rule, that prohibits certain deceptive and abusive telemarketing practices in connection with the sale of securities. After working with division staff, on June 28, 1996, the NASD filed a proposed rule change addressing telemarketing activities. Other SROs are expected to file comparable rule changes.

### *Money Laundering*

Work continued with the Financial Crimes Enforcement Network of the Department of the Treasury on practical approaches to combat money laundering. The division also participated in the Bank Secrecy Act Advisory Group and in the United States delegation to the Financial Action Task Force on Money Laundering.

### *Arbitration and Mediation*

Attempting to strengthen the securities arbitration process, the division worked closely with the NASD and other members of the Securities Industry Conference on Arbitration to assess changes to the arbitration process recommended in a January 1996 report by the NASD Arbitration Policy Task Force. Recommendations arising out of that report included the

following: seeking earlier active involvement of arbitrators; using a list selection method for appointing arbitrators; implementing a less discretionary system for discovery; and using simplified discovery procedures for cases involving larger claims.

### *Extension of Credit*

In 1996, the Commission worked with Congress, the industry, and other regulators to develop a margin proposal that addresses concerns raised about the current margin scheme while maintaining the safeguards arising from margin standards. As part of the NSMIA of 1996, Congress enacted a margin reform bill that should improve the federal margin scheme by reducing broker-dealers' costs in obtaining financing.

### *Financial Responsibility Rules*

A no-action letter to the Securities Industry Association regarding the net capital treatment of securities that cannot be publicly offered or sold without registration under the Securities Act was issued by the staff. The no-action letter provided that debt securities that cannot be publicly offered or sold without registration under the Securities Act of 1933 (Securities Act) and that are not rated investment grade by at least two nationally recognized statistical rating organizations would be deemed liquid for purposes of calculating net capital if they meet certain specified factors.<sup>98</sup>

### **Unlisted Trading Privileges**

The Joint Industry Plan for Unlisted Trading Privileges in OTC Securities (OTC/UTP Plan), operating under temporary Commission approval, permits exchanges to trade Nasdaq/National Market Securities subject to the terms of the OTC/UTP Plan. Currently, any exchange participant to the plan may trade up to 500 Nasdaq/National Market Securities. On October 1, 1996, the Commission extended its temporary approval of the OTC/UTP Plan through March 30, 1997, and temporarily approved the plan participants' recently proposed revenue sharing agreement under the Plan.<sup>99</sup>

## Transfer Agent Regulation

In an effort to reduce the number of lost securityholders and to address the associated problems of undeliverable principal, dividend, and interest distributions, the SEC published a release requesting comment on rules requiring that transfer agents conduct periodic searches in an effort to locate such lost securityholders, and requiring transfer agents and broker-dealers to file with the Commission lists of lost securityholders for which they hold assets. The release also requests comment on the extent to which further regulatory or remedial steps are necessary to reduce lost shareholders, such as whether there should be a national database identifying lost securityholders.<sup>100</sup>

In December 1994, the SEC published a concept release requesting comment on a transfer agent-operated direct registration system (DRS) that would expand investor choice regarding forms of security ownership.<sup>101</sup> Since publication of that release, the SEC has worked with industry representatives to establish a DRS, which began pilot operation in November 1996. Under the DRS, investors are able to have their securities registered in book-entry form directly on the books of the issuer, to receive a statement of ownership in lieu of a securities certificate, and to transfer their securities between issuers' transfer agents and the broker-dealers of their choice. Investors also have the option to receive a certificate upon request.

## Lost and Stolen Securities

Rule 17f-1 under the Exchange Act sets forth participation, reporting, and inquiry requirements for the SEC's Lost and Stolen Securities Program. Statistics for calendar year 1995 (the most recent data available) reflect the program's continuing effectiveness. As of December 31, 1995, 24,925 financial institutions were registered in the program, a 2 percent increase over 1994. The number of securities certificates reported as lost, stolen, missing, or counterfeit decreased from 2,954,692 in 1994 to 2,171,867 in 1995, a 26 percent decrease, but the dollar value of these reported certificates increased from \$3.8 billion in 1994 to \$6.2 billion in 1995, a 63

percent increase. The aggregate dollar value of the securities contained in the program's database increased from \$96.4 billion in 1994 to \$102.5 billion in 1995, a 6.4 percent increase. The total number of certificates inquired about by institutions participating in the program decreased slightly from 6,245,375 billion in 1994 to 6,221,425 billion, a decrease of 0.4 percent. In 1995, the dollar value of certificate inquiries that matched previous reports of lost, stolen, missing, or counterfeit securities certificates increased from \$159 million in 1994 to \$526 million in 1995, a 231 percent increase.

## **Oversight of Self-Regulatory Organizations**

### **National Securities Exchanges**

As of September 30, 1996, there were eight active securities exchanges registered with the SEC as national securities exchanges: American Stock Exchange, Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Cincinnati Stock Exchange (CSE), Chicago Stock Exchange (CHX), NYSE, Philadelphia Stock Exchange, and Pacific Stock Exchange. The agency granted exchange applications to delist 127 debt and equity issues, and granted applications by issuers requesting withdrawal from listing and registration for 191 issues.

The exchanges submitted 328 proposed rule changes during 1996. A total of 299 pending and new filings were approved by the Commission, and 22 were withdrawn. Rule filings approved by the Commission included:

- an amendment of exchange circuit breaker rules to reduce the time periods for halting trading on the exchanges from one hour to 30 minutes for a 250-point decline in the Dow Jones Industrial Average, and from two hours to one hour for a 400-point decline;<sup>102</sup>

- permanent approval of the CSE's pilot program relating to the preferencing of public agency market and marketable limit orders by approved dealers and proprietary members, and approval of order handling policies for preferencing dealers;<sup>103</sup>
- permanent approval of the BSE's pilot program that permits competing specialists on the floor of the BSE;<sup>104</sup>
- establishment of continued listing criteria for certain specialized securities on the NYSE; and
- revisions to NYSE customer margin provisions for OTC options transactions.

National Association of Securities Dealers, Inc.

The NASD is the only national securities association registered with the SEC and includes more than 5,500 member firms. Through a wholly-owned subsidiary, the NASD owns and operates the Nasdaq Stock Market, which trades more than 6,200 securities and is the world's second largest stock market.

On August 8, 1996, the Commission announced the settlement of an enforcement action against the NASD, citing various anti-competitive practices on Nasdaq and various oversight failures by the NASD. As part of the NASD's settlement with the Commission, the NASD agreed to undertake a number of initiatives including changes in the NASD's governance structure, improvements to the NASD's surveillance, enforcement, and examination functions, and the creation of a comprehensive audit trail. In cooperation with the Division of Enforcement, the market regulation staff has worked extensively with the NASD to implement these undertakings.

The NASD submitted 54 proposed rule changes to the Commission during the year. The Commission approved 49 proposed rule changes,

including some pending from the previous year. Among the significant changes approved by the Commission were:

- a rule providing for a comprehensive reorganization of the NASD,<sup>105</sup>
- a rule governing the use of rights of first refusal in connection with underwriting,<sup>106</sup>
- a NASD rule clarifying a broker-dealer's suitability obligation toward institutional customers and specifying which NASD Rules of Fair Practice apply to transactions in government securities, and
- a rule defining when unlisted trading can commence consistent with revised Section 12 of the Exchange Act.<sup>107</sup>

### Municipal Securities Rulemaking Board

The MSRB is charged with the primary rulemaking authority for municipal securities dealers. The Commission received 15 new proposed rule changes from the MSRB. A total of 12 new and pending proposed rule changes were approved by the Commission. In particular, the Commission published several interpretations dealing with MSRB Rule G-37, the rule governing political contributions.<sup>108</sup>

### Clearing Agencies

Fifteen clearing agencies were registered with the Commission at the end of 1996. The Commission extended the temporary registration as a clearing agency of the Participants Trust Company,<sup>109</sup> MBS Clearing Corporation,<sup>110</sup> and the Government Securities Clearing Corporation.<sup>111</sup> The Commission also granted an exemption from registration as a clearing agency to the Clearing Corporation for Options and Securities,<sup>112</sup> and proposed an exemption from clearing agency registration for Cedel Bank.<sup>113</sup>

Registered clearing agencies submitted 163 proposed rule changes to the Commission. The Commission approved 132 new and pending proposed rule changes including the following:

- Options Clearing Corporation (OCC) and National Securities Clearing Corporation (NSCC) Amended and Restated Options Exercise Settlement Agreement, which establishes a two-way guarantee between OCC and NSCC with regard to losses incurred upon the suspension of a common member;<sup>114</sup>
- Government Securities Clearing Corporation's (GSCC) amendment of its rules to permit foreign entities to become members of GSCC;<sup>115</sup> and
- Depository Trust Company (DTC) implementation of its Initial Public Offering Tracking System, which permits initial issuances of stock to be conducted through book entry settlement with tracking of subsequent sales during the initial period after the offer.<sup>116</sup>

#### Applications for Re-entry

Rule 19h-1 under the Exchange Act prescribes the form and content of, and is the mechanism by which the Commission reviews, proposals submitted by SROs to allow persons subject to statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, to become or remain associated with member firms. In 1996, the Commission received 35 filings from the SROs pursuant to Rule 19h-1: 29 from the NASD, 5 from the NYSE and 1 from the CBOE. One application was denied in 1996;<sup>117</sup> one filing was withdrawn.

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## **Investment Management Regulation**

*The Division of Investment Management regulates investment companies (which include mutual funds) and investment advisers under two companion statutes, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The division also administers the Public Utility Holding Company Act of 1935.*

### **Key 1996 Results**

During the year, the Division of Investment Management provided extensive assistance to Congress in drafting the National Securities Markets Improvement Act of 1996. The Improvement Act modernizes investment company and investment adviser regulation. Working with the investment company industry and state securities regulators, the staff continued to develop a new disclosure document called the profile, a short document that provides investors with a summary of key information about a mutual fund. Also, the Commission proposed and adopted several rule amendments that are intended to reduce regulatory burdens on investment companies without impeding investor protection. Finally, numerous interpretive and no-action letters were issued by the staff to provide investment companies and registered investment advisers with added flexibility in conducting their businesses without adversely affecting shareholders and clients.

### **Significant Investment Company Act and Investment Advisers Act Initiatives**

#### **Legislation**

In 1996, Congress passed H.R. 3005, the National Securities Markets Improvement Act, which incorporates some provisions from earlier

legislative proposals to revise the securities laws. The President signed the legislation into law on October 11, 1996.

The Improvement Act amends the federal securities laws to preempt state regulation of investment companies and larger investment advisers, and contains significant amendments to the Investment Company Act. Among other things, the Improvement Act:

- gives the Commission enhanced rulemaking and enforcement authority to guard against the use of deceptive or misleading fund names,
- excepts from regulation under the Investment Company Act investment pools whose participants are all highly sophisticated persons,
- gives the Commission broader authority to require funds to maintain records for Commission inspection and to add additional information in shareholder reports,
- allows the Commission to give funds greater advertising flexibility,
- relaxes restrictions on mutual funds that make investments in other mutual funds in the same fund complex,
- simplifies the calculation of registration fees and replaces the severe penalties imposed on funds for late payment of registration fees with interest payment provisions,
- replaces the specific limits on the amount, type, and timing of charges that apply to variable insurance contracts with a requirement that aggregate charges under variable insurance contracts be "reasonable", and
- decreases the regulatory burdens on certain specialized investment companies that invest in small businesses.

The Improvement Act fundamentally changes the regulation of investment advisers by dividing regulatory responsibility for advisers between the Commission and state securities regulators. When the provisions become effective, the states will assume a primary role in the regulation of smaller investment advisers, who will no longer register with the SEC. Only investment advisers who manage \$25 million or more in client assets, who advise a mutual fund, or whose state does not register investment advisers, may register with the SEC. These advisers will not be subject to state registration. However, the Commission and state regulators may bring an anti-fraud action against any investment adviser regardless of whether the adviser is registered with the SEC or a particular state.

The Improvement Act gives the Commission new authority to deny or withdraw the registration of an investment adviser convicted of any felony within the previous ten years. The Improvement Act requires the Commission to establish and maintain a toll-free telephone number to enable investors to learn of an investment adviser's disciplinary history. Finally, the Improvement Act requires an investment adviser to file with the SEC any fee, application, report, or notice through any entity designated by the Commission for that purpose.

## Disclosure

### *Fund Profiles*

The investment management staff continued its joint undertaking with the investment company industry and state securities regulators to develop a new disclosure document called the profile. The profile contains a brief summary of a mutual fund's key features in a standardized format designed to facilitate comparison among funds. The division anticipates that the Commission will propose for public comment a rule relating to the use of fund profiles in the first quarter of 1997.

## *Amendments to Mutual Fund Registration Form*

The Commission continued to pursue initiatives to provide mutual fund investors with clear and understandable information about their investments and to improve risk disclosure. Along those lines, the staff began a top to bottom review of the current disclosure form used by mutual funds. The anticipated outcome of this review is a revised form that will result in clearer and more investor friendly mutual fund prospectuses. The division anticipates submitting a recommendation to the Commission in 1997.

## *Disclosure Simplification*

The division continued to encourage investment companies to improve their prospectuses by using plain English and eliminating unnecessary legal terms, jargon, and long and complicated disclosure. The staff has met with several funds to review new prospectus formats and provide guidance in meeting disclosure requirements. Interpretive relief provided to the John Hancock Funds allowed a novel format for prospectuses offering multiple funds.<sup>118</sup>

## *Unit Investment Trust Performance*

The Commission proposed amendments to Form S-6 and Rule 482 under the Securities Act of 1933, and to Rule 34b-1 under the Investment Company Act of 1940.<sup>119</sup> The proposed amendments would require certain unit investment trusts (UITs) to use a uniform formula to calculate yields quoted in their prospectuses, advertisements, and sales literature. Use of the uniform formula by UITs will let investors assess more accurately the anticipated yield from a UIT and compare yields among UITs. Comments received on the proposal are being evaluated.

## **Rulemaking**

### *Money Market Funds*

To reduce the likelihood that tax-exempt money market funds would be unable to maintain a stable net asset value, the Commission adopted amendments to Rule 2a-7.<sup>120</sup> The Commission also adopted new Rule 17a-9 to make it easier and less costly for money market funds to sell portfolio securities that the fund can no longer hold under Rule 2a-7.

### *Deferred Sales Loads*

In order to allow funds to offer their shareholders more choices in how to pay sales loads, the Commission adopted amendments to Rule 6c-10.<sup>121</sup> The Commission also amended the registration form for mutual funds to tailor prospectus disclosure requirements to the deferred sales load arrangements made possible by the rule amendments.

### *Asset-Based Sales Loads*

The Commission adopted an amendment to Rule 12b-1, the rule which permits funds to use fund assets to pay for the distribution of their shares.<sup>122</sup> The amendment eliminates shareholder approval of a distribution plan if the shareholders are all affiliated with the fund. In that circumstance, which is common for a fund that has not yet made a public offering, shareholder approval is a mere formality. The Commission also proposed amendments to Rule 12b-1 to clarify the application of the rule to a series fund, which offers a variety of investment portfolios, often with different investment objectives.<sup>123</sup>

### *Multiple Class Funds*

The Commission proposed amendments to Rule 18f-3, the rule which permits funds to issue multiple classes of shares.<sup>124</sup> Funds generally establish multiple classes to offer shareholders choices in paying distribution

costs or to more efficiently distribute shares to different groups of shareholders. The proposed amendments would clarify and expand the methods a fund may use to allocate among classes income, gains and losses, and expenses that are not attributable to a particular class, and also would clarify the shareholder voting provisions of the rule.

### *Affiliated Underwriters*

The Commission proposed amendments to Rule 10f-3, the rule which permits a fund affiliated with a member of an underwriting syndicate to purchase securities underwritten by the syndicate when certain safeguards are met.<sup>125</sup> The proposed amendments would increase the percentage of an underwriting that a fund may purchase and expand the scope of the rule to include foreign securities. The proposed amendments, and a proposed new companion rule, also would permit funds to acquire municipal securities in group sales, which are sales that are allocated to members of the underwriting syndicate in proportion to their respective underwriting commitments.

### Exemptive Orders

The Commission issued 419 exemptive orders to investment companies (other than insurance company separate accounts). Most of these companies requested, and ultimately received, exemptions from various provisions of the Investment Company Act. A description of one of the more significant types of orders the division reviewed during 1996 follows.

### *Hybrid Investment Companies*

The Commission exempted certain index funds from the requirement that they issue securities that can be redeemed at net asset value. Each fund's series invests in a portfolio of equity securities intended to mirror the performance of a single-country index. The funds issue securities in blocks of shares that are redeemable, but individual shares are not redeemable. The individual shares, however, are traded on a national securities exchange at

prices that approximate net asset value. The funds, which could not operate without the requested exemptions, will provide a cost-effective way for shareholders to match the performance of the indexes tracked by the funds and the ability to buy and sell fund shares throughout the day.<sup>126</sup>

### **Significant Interpretive and No-Action Letters**

The division issued 602 interpretive and no-action letters and other types of correspondence during 1996. Some of the more significant letters are discussed below.

#### *Closed-End Investment Companies*

A letter was issued by the staff expressing concern that some closed-end funds may not clearly describe the circumstances under which they will take action to minimize the discount at which their shares trade.<sup>127</sup> The letter noted that the division is closely examining prospectus disclosure about discounts and has asked the Commission's Office of Compliance Inspections and Examinations to verify that closed-end funds are complying with representations made to investors about minimizing a discount.

#### *Foreign Investment Companies*

The staff stated that it would not recommend enforcement action under Section 7(d) of the Investment Company Act if a foreign fund that had offered or sold its securities privately to fewer than 100 U.S. residents has more than 100 U.S. resident shareholders because of (1) the relocation of foreign securityholders to the U.S. or (2) certain offshore secondary market purchases of securities by U.S. residents.<sup>128</sup>

#### *Fund Use of Adviser Performance Information*

No-action letters were issued by the staff concluding that neither Section 34(b) of the Investment Company Act nor Section 206 of the Investment Advisers Act prohibits a fund from including in its prospectus performance

information for its adviser's other accounts or for another registered fund that was previously managed by the fund's portfolio manager.<sup>129</sup> The letters emphasized that a fund including such performance information in its prospectus is responsible for ensuring that the information is not misleading and does not obscure or impede an investor's understanding of the fund's own performance information.

#### *Discounts Offered With Fund Purchases*

The staff stated that it would not recommend enforcement action under Section 22(d) of the Investment Company Act<sup>130</sup> if a bank holding company and its subsidiary banks offered free checking and other privileges to persons who maintained specified minimum balances in any combination of bank deposit accounts, brokerage accounts, and the bank's proprietary mutual funds.

#### *Segregation Requirements*

The staff took the position that any liquid asset, whether debt or equity, could be placed in a segregated account and used to cover a fund's obligations that result from certain trading practices, including options and futures trading.<sup>131</sup>

#### *Custodial Arrangements*

No enforcement action would be recommended by the staff under section 17(f) of the Investment Company Act or rule 17f-5 if U.S. investment companies hold certain Russian government securities through a centralized trading, clearance, and depository system operated by the Moscow Interbank Currency Exchange for the Russian Central Bank.<sup>132</sup> This letter applied the division's standards for determining if a securities clearing agency or depository operates a central system for purposes of rule 17f-5 to the Russian government securities market.

### *Commodity Pool "Funds of Funds"*

Enforcement action would not be recommended by the staff if a commodity pool, in determining whether it is an investment company, treats the business activities of certain pools in which it has invested as if they had been engaged in directly by the commodity pool.<sup>133</sup>

### *Model Fees in Performance Results*

To make it easier for investment advisers to compute past performance, the staff permitted an investment adviser to advertise past performance from which it had deducted a model fee equal to the highest fee actually charged to an account, rather than actual fees charged.<sup>134</sup>

### *Mutual Fund Internet Sites*

Information about advisory services provided to a mutual fund that is made available through the internet generally should not be considered an advertisement for the fund's investment adviser for purposes of the Investment Advisers Act.<sup>135</sup>

### *Employers Providing Investment Advice*

An employer that provides investment-related information to employees about their defined contribution plan generally would not be "in the business" of providing investment advice, and thus would not be required to register as an investment adviser.<sup>136</sup> This position should encourage employers to provide information to their employees about the investment options in their defined contribution plans.

### *Insurance Products*

The division reviews registration statements, processes exemptive orders, and issues no-action and interpretive letters relating to insurance company separate accounts that are registered as investment companies. The

following describes some of the more significant issues in this area that the division addressed this past year.

### *Disclosure*

Several no-action letters intended to improve prospectuses of insurance products were issued by the staff. For example, the staff extended to variable annuity issuers the ability to use a profile, similar to the profiles that have been used by mutual funds in the last year, in conjunction with their full prospectuses.<sup>137</sup> Also, to allow variable annuity registrants to remove information from their prospectuses that unnecessarily duplicates the information investors receive in the prospectus for the underlying investment funds,<sup>138</sup> the staff indicated that it would not object if variable annuity registrants move certain financial information to a location other than that specified in the registration form or if variable annuity prospectuses contain only limited information about underlying investment funds. In addition, a real estate separate account was permitted to include, in its prospectus, summary financial information for the sponsoring insurance company when the complete insurance company financial statements were available to an investor promptly upon request.<sup>139</sup>

### *Protection from Claims*

A no-action letter issued by the staff allowed insurance companies to provide the assets of certain separate accounts protection from third party claims without registering those separate accounts under the Investment Company Act. The letter applies to separate accounts that support contracts that pay a fixed rate of return for a specified period, but are subject to an adjustment in the event of early withdrawal. Insurance companies had avoided providing such protection for those assets so that they would not be required to register the separate accounts under the Investment Company Act.<sup>140</sup>

## **Significant Public Utility Holding Company Act Developments**

### **Developments in Holding Company Regulation**

The Commission approved a June 1995 staff report recommending conditional repeal of the Holding Company Act and, pending repeal or other legislative action, recommending significant administrative reforms. The Commission subsequently implemented a number of administrative reforms, on a case-by-case basis. In order to compete on an equal footing with non-regulated entities, public utility companies are entering into business combinations and engaging in non-traditional businesses. As a result, the number and complexity of applications and requests for interpretive advice and no-action relief has increased dramatically. The Commission expects these trends to continue in 1997.

### *Registered Holding Companies*

As of September 30, 1996, there were 15 public utility holding companies registered under the Holding Company Act. The registered systems were comprised of 98 public utility subsidiaries, 26 exempt wholesale generators, 51 foreign utility companies, 243 non-utility subsidiaries, and 48 inactive subsidiaries, for a total of 481 companies and systems with utility operations in 26 states. These holding company systems had aggregate assets of approximately \$139 billion, and operating revenues of approximately \$52 billion for the period ended September 30, 1996.

### *Financing Authorizations*

The Commission authorized registered holding company systems to issue approximately \$19.4 billion of securities, a decrease of 15 percent from last year. The decrease reflects adoption of amendments to Rules 52 and 45 under the Holding Company Act exempting more financing transactions from Commission approval. The total financing authorizations included, for example, \$1.4 billion for investments in enterprises engaged in energy

management, an increase of 714 percent over 1995, and \$550 million for investments in exempt wholesale generators and foreign utility companies.

## Examinations

Examinations of ten subsidiary service companies, three parent holding companies, and three special purpose corporations were conducted. The examinations focused on the methods of allocation of costs of services and goods shared by affiliate companies, internal controls, cost determination procedures, accounting and billing policies, and quarterly and annual reports of the registered holding company systems. By uncovering misallocated expenses and inefficiencies through the examination process, the Commission's activities resulted in savings to consumers of approximately \$11.3 million.

## Applications and Interpretations

The Commission issued various orders under the Holding Company Act. Some of the more significant orders included:

### *GPU, Inc.*

The Commission authorized GPU, Inc., a registered holding company, to organize a new subsidiary that will include all of the fossil fuel and hydroelectric generation functions of GPU's operating companies.<sup>141</sup> The Commission determined that the restructuring could benefit GPU's operating companies and customers by increasing efficiencies and productivity and reducing costs of construction, operation, and maintenance of GPU's non-nuclear generating facilities.

### *Fidelity Management & Research Company*

The Commission granted a three-year exemption from the Holding Company Act, except Section 9(a)(2), to Fidelity Management & Research Company, a registered investment adviser, and Fidelity Management Trust

Company, the trustee or investment manager for various private investment accounts, in connection with their holdings in El Paso Electric Company, a public utility company.<sup>142</sup> The Commission noted that Fidelity would be subject to extensive reporting requirements at the state and federal level.

#### *Southern Company*

The Commission authorized The Southern Company, a registered holding company, to use financing proceeds to invest in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs), and to guarantee the obligations of EWGs and FUCOs provided that the total proceeds used for the purposes plus Southern's investment in EWGs and FUCOs does not exceed 100 percent of Southern's consolidated retained earnings.<sup>143</sup> The order requires Southern to provide quarterly information to facilitate the Commission's monitoring of Southern's investments in EWGs and FUCOs and their effects on the Southern system.

#### *SEI Holdings, Inc.*

The Commission authorized SEI Holdings, Inc., a non-utility subsidiary of Southern Company, to engage in retail marketing of natural gas and electric power to customers throughout the United States, subject to compliance with applicable state law.<sup>144</sup> The Commission noted that industry trends and competitive pressures make it important for registered system companies to be poised to compete in new markets without the delays that result from seeking a release of a reservation of jurisdiction on a state-by-state basis.

#### *Consolidated Natural Gas Company*

The Commission authorized Consolidated Natural Gas Company, a registered gas holding company, to engage in the wholesale marketing and brokering of energy commodities, including electric power, natural gas, and other fuels, and to provide related services.<sup>145</sup> The Commission determined that the transaction satisfied the standards of Section 11(b)(1) of

the Holding Company Act, noting that the energy industry has evolved toward an integrated market in which different forms of energy, particularly gas and electricity, are interchangeable.

*MCN Corporation*

The Commission authorized MCN Corporation, an exempt holding company with two gas utility subsidiaries operating almost exclusively in Michigan, to acquire interests in Southern Missouri Gas Company, L.P., a limited partnership that will construct, own, and operate a gas pipeline and distribution system in Missouri.<sup>146</sup> The Commission specifically determined that the combination of the Michigan and Missouri gas properties would result in an "integrated gas public utility system," as defined in the Holding Company Act.

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## **Compliance Inspections and Examinations**

*The Office of Compliance Inspections and Examinations, together with examination staff from the regional offices, conducts the SEC's nationwide program of compliance inspections and examinations. Inspections and examinations are authorized by the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Entities subject to this oversight include brokers, dealers, municipal securities dealers, self-regulatory organizations, transfer agents, investment companies, and investment advisers.*

### **Key 1996 Results**

During 1996, the inspection staff continued initiatives to enhance cooperation with foreign, federal, and state regulators, as well as with self-regulatory organizations (SROs). For example, in November 1995, the office entered into a Memorandum of Understanding with other regulators of broker-dealers to better coordinate examinations. Regional office examiners and SRO and state regulators are working to implement the objectives of the Memorandum and to assure maximum coordination of regulatory programs.

Increased cooperation among SEC examiners responsible for different types of regulated entities was one of the office's key accomplishments. For example, when appropriate, SEC examinations of firms with broker-dealer and investment advisory activities were conducted by multi-disciplinary examination teams. The objective of these joint and cooperative efforts was to increase effectiveness and productivity and enhance investor protection.

## **Investment Company and Investment Adviser Inspections**

### **Investment Companies**

During the year, examiners inspected 308 investment company complexes with \$708 billion under management, indicating an average frequency of inspection for the 969 investment company complexes of once every 3.1 years. The complexes inspected managed 2,294 portfolios, which represented approximately 23 percent of the mutual fund and closed-end fund portfolios in existence at the beginning of 1996. This indicated an average inspection frequency for mutual and closed-end funds of once every 4.3 years. The complexes inspected represented a mix of large and smaller complexes. Twenty-seven of the inspections were done on a "for cause" basis, which means the staff had some reason to believe that a problem existed at the firm.

Serious violations found in 14 examinations warranted referrals for further investigation by the Division of Enforcement. In 50 percent of the examinations resulting in a referral, the examination staff found misconduct involving fraud. In addition, of all referrals, 29 percent related to net asset value calculations, 21 percent related to prohibited transactions, and 14 percent related to internal controls.

### **Investment Advisers**

Advisers that appear to pose a higher risk to clients, such as those that have actual custody of client funds and securities and those that have discretionary management authority over clients' cash and securities, were targeted for examination. Examiners in the regional offices were primarily responsible for conducting inspections of all discretionary managers and those non-discretionary managers with \$100 million or more under management.

The inspection staff completed 1,446 inspections of investment advisers, including examinations of 1,204 advisers with discretionary management authority. The non-investment company assets managed by the advisers inspected totalled \$1.3 trillion. The 1,204 inspections of discretionary advisers covered 14 percent of all such advisers, indicating an average inspection cycle for discretionary advisers of once every 7.1 years, which increased from once every 9.3 years in 1995. The overall inspection cycle for advisers has increased from once every 20 years in 1995 to once every 15.2 years. Regional office staff inspected 115 investment advisers for cause.

Serious violations warranting enforcement referrals were uncovered in 78 of the examinations. In 95 percent of the examinations resulting in a referral, the examination staff found misconduct involving fraud. In addition, of all referrals, 42 percent involved conflicts of interest, 22 percent related to custody of client funds or securities, and 18 percent related to marketing or performance advertising.

#### Mutual Fund Administrators

Approximately 51 percent of all mutual fund complexes use third party administrators to perform their accounting and administrative functions. During 1996, examiners inspected 14 administrators. None of the examinations resulted in enforcement referrals. As a result of administrator inspections, two cause examinations of investment company fund complexes were conducted.

#### Variable Insurance Products

In response to the rapid growth in variable insurance product assets and the emergence of new channels of distribution, specialized insurance product examination teams, consisting of headquarters and regional office staff, conducted examinations in this area. These teams identified and examined variable life and annuity contract separate accounts. The teams worked in conjunction with the Division of Investment Management in planning and

executing these examinations. A total of 25 insurance company complexes were examined. Deficiency letters were issued in 20 examinations.

### **Bank Advised Mutual Funds**

Staff from the Commission and the Office of the Comptroller of the Currency jointly examined mutual funds advised by national banks. During the year, the examiners completed one examination started in the prior year, and began two new examinations. The examiners reviewed key internal control areas and analyzed portfolio transaction data relating to both mutual fund and trust department client trading.

### **Sweep Inspections**

Inspection of investment advisers without custody or discretionary management authority over client funds and securities is the responsibility of headquarter's staff. In 1996, 242 inspections were completed in six sweeps in various regions of the country. State examiners participated in many of these sweeps. A majority of the advisers examined were financial planners. Typically, financial planners prepare financial plans that are implemented through sales of mutual funds by the planners in their capacity as registered representatives of broker-dealers. Many planners also sell insurance products. Deficiency letters were sent in 98 percent of the sweep examinations with most of the deficiencies concentrated in books and records and brochure disclosures.

### **Broker-Dealer Examinations**

During the year, the office continued to improve its broker-dealer examination program. The broker-dealer program conducted oversight examinations that tested the quality of SRO examination programs, cause examinations that focused on activity that may violate the federal securities laws, and surveillance examinations that assessed broker-dealer compliance and industry practices and trends. The office is revising its examination

procedures to reflect current industry trends, rule amendments and new product developments. The office is also developing a unified computerized tracking system that will include a database of examination histories for every broker dealer registered with the Commission.

The office conducted an examination sweep focusing on the sales practices of registered representatives with histories of customer complaints, litigation and disciplinary actions. The sweep also reviewed the hiring, retention, and supervisory practices of the firms which employed them. Many of the broker dealers involved in the sweep were small and medium sized firms. The examination was a collaborative effort by the Commission, the New York Stock Exchange (NYSE), the National Association of Securities Dealers, Inc. (NASD), and the North American Securities Administrators Association, Inc. (state securities regulators). The sweep consisted of 179 examinations of 101 firms and disclosed that one-third of the identified registered representatives were able to obtain new employment during the review period despite their history of disciplinary actions and customer complaints. The sweep also found that many branch managers conducted only minimal background checks of potential hires, and supervisors frequently conducted inadequate or no routine review of customer transactions to detect sales practice abuses. One-fifth of the sweep examinations resulted in referrals to the Division of Enforcement.

A total of 645 oversight and cause examinations of broker-dealers, government securities broker-dealers, and municipal securities dealers were conducted by the staff. Serious violations in 144 examinations warranted referrals for further investigation by Division of Enforcement staff. Findings in an additional 52 examinations were referred to SROs for appropriate action. In 48 percent of the examinations resulting in a referral, the examination staff found potential misconduct involving fraud. In general, examination findings involved the underwriting and trading of stocks of small capitalization companies, municipal securities, sales of mutual funds, supervision over independent contractors, and large firms' internal controls.

## **Self-Regulatory Organization Inspections**

Routine SRO inspections were also conducted by the staff. At least one inspection was completed or begun of each SRO subject to the Commission's oversight: the American Stock Exchange; the Boston Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the Cincinnati Stock Exchange; the NASD; the NYSE; the Pacific Stock Exchange; and the Philadelphia Stock Exchange. The SRO inspections focused on:

- arbitration programs;
- listing and maintenance programs;
- financial and operational examination programs;
- market surveillance, investigations, and disciplinary programs;
- customer complaint review programs;
- programs for detecting and sanctioning sales practice abuses; and
- program and option trading programs.

The inspections resulted in recommendations to improve the programs' effectiveness and efficiency. In addition, a cause inspection involving unlisted trading privileges was also conducted.

Inspections of the regulatory programs administered by the NASD's 14 district offices were also conducted. These inspections included reviews of nine district offices' broker-dealer examination, financial surveillance, and formal disciplinary programs. The office also reviewed the district offices' investigations of customer complaints and terminations of registered representatives for cause.

Finally, the office conducted three inspections of clearing agencies.

## SRO Final Disciplinary Actions

Section 19(d)(1) of the Securities Exchange Act of 1934 and Rule 19d-1 thereunder require all SROs to file reports with the Commission of all final disciplinary actions. In 1996, a total of 1,036 reports were filed with the SEC, as reflected in the following table:

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### Self-Regulatory Organization Reports of Final Disciplinary Action

American Stock Exchange . . . . .	27
Boston Stock Exchange . . . . .	0
Chicago Board Options Exchange . . . . .	44
Chicago Stock Exchange . . . . .	1
Cincinnati Stock Exchange . . . . .	0
National Association of Securities Securities Dealers . . . . .	793
National Securities Clearing Corporation . . . . .	0
New York Stock Exchange . . . . .	150
Options Clearing Corporation . . . . .	0
Philadelphia Stock Exchange . . . . .	7
Pacific Stock Exchange . . . . .	14
Total Reports . . . . .	1,036

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## Full Disclosure System

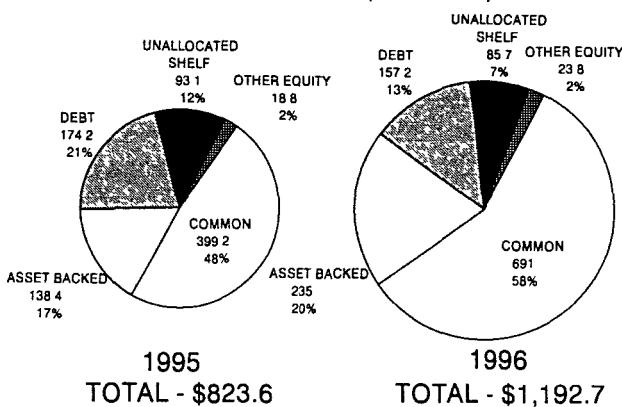
*The full disclosure system is administered by the Division of Corporation Finance. The system is designed to ensure investors receive material information, foster investor confidence, contribute to the maintenance of fair and orderly markets, aid capital formation, and prohibit fraud in the public offering, trading, voting, and tendering of securities.*

### Key 1996 Results

A record \$1.2 trillion in securities were filed for registration during the year, a 45 percent increase over the \$824 billion in 1995. Common stock offerings of \$691 billion filed for registration in 1996 (compared to \$400 billion in 1995), including merger transactions, reflected an increase in overall market activity. Offerings filed by first time registrants (IPOs), totaling approximately \$185.5 billion, were more than twice the level in 1995 (approximately \$82 billion).

### REGISTRATION STATEMENTS FILED

DOLLAR VALUE (\$BILLIONS)



Foreign companies' participation in the United States public markets continued to show strong growth in 1996. One hundred and thirty-six foreign companies from 30 countries, including Ashanti Goldfields (Ghana), Guangshen Railway (China), Axa (France), Toronto-Dominion Bank (Canada), SGL Carbon (Germany), and the Bank of Ireland entered the United States public markets for the first time. At year-end, there were 843 foreign companies from 47 countries filing reports with the Commission. Foreign companies registered public offerings of \$78 billion in 1996.

The Commission is conducting a broad re-examination of the regulatory framework for the offer and sale of securities under the Securities Act of 1933 (Securities Act). Two studies presented to the Commission in 1996 are assisting these efforts. In March, the Task Force on Disclosure Simplification (Task Force) delivered its report identifying ways to streamline the registration and disclosure processes, including the elimination of many outdated or duplicative disclosure requirements and forms.<sup>147</sup> In July, the Commission received the *Report of the Advisory Committee on the Capital Formation and Regulatory Processes*.<sup>148</sup> The Task Force and the Advisory Committee on the Capital Formation and Regulatory Processes (Advisory Committee) recommendations are the subject of a review by the Commission and its staff and were the impetus for several rulemaking initiatives undertaken by the Commission in 1996.

## **Review of Filings**

In 1996, the staff reviewed 26 percent of the reporting issuers and 1,655 Securities Act and Securities Exchange Act of 1934 (Exchange Act) registration statements of first time filers. The following table summarizes the principal filings reviewed during the last five years. The levels of review of new issuer filings, tender offers, contested solicitations, and going private transactions, all of which are subject to review, reflect the increases and decreases in the number of filings received.

## FULL DISCLOSURE REVIEWS

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
Reporting Issuer Reviews <u>a/</u>	3,058	3,531	3,400	3,930	3,210
New Issuer Reviews <u>b/</u>	1,147	1,200	1,599	1,150	1,658
<b>Major Filing Reviews</b>					
<b>Securities Act Registrations</b>					
New Issuers <u>c/</u>	989	1,066	1,384	950	1,412
Repeat Issuers	970	924	863	815	769
P/E Amdts. <u>c/ d/</u>	347	220	204	215	140
Exchange Act Initial Registrations	158	148	215	200	246
<b>Annual Report Reviews</b>					
Full	1,041	1,466	1,085	1,345	790
Full Financial	1,126	1,155	1,405	1,585	933
Special <u>e/</u>	409	360	455	585	656
Tender Offers (14D-1)	27	56	82	140	165
Going Private Schedules	61	61	75	77	100
Contested Proxy Solicitations	58	35	42	59	62
<b>Proxy Statements</b>					
Merger/Going Private	141	149	163	225	261
Others w/Financials	150	149	180	205	199

a/Includes companies subject to Exchange Act reporting whose financial statements were reviewed during the year.

b/Includes non-Exchange Act reporting companies whose Securities Act or Exchange Act registration statements were reviewed during the year.

c/Reviews of regional office small business filings were transferred to headquarters at the end of 1996. Some of the small business filings included in this category were completed in the regional offices during 1996.

d/Includes only post-effective amendments with new financial statements.

e/Forms 10-K, 10-KSB, and 20-F reviewed in connection with the review of other filings. Special reviews in years prior to 1995 may have been underrecorded and therefore are not fully comparable to the 1995 and 1996 numbers.

## **Rulemaking, Interpretive, and Related Matters**

### **Securities Act Concept Release and Advisory Committee Recommendation**

The Commission issued a concept release<sup>149</sup> seeking public comment on reforms that would streamline the current regulation of the capital formation process where consistent with the Commission's investor protection mandate. Various approaches, including a company registration concept recommended by the Advisory Committee, are being considered.

### **Disclosure Simplification**

In 1995, an internal Task Force initiated a top to bottom review of all forms and disclosure requirements relating to public companies' securities offerings and disclosure. The purpose of the review was to streamline and simplify regulations. In March 1996, the Task Force issued its report, which recommended that the Commission eliminate 81 rules and 22 forms, and revise many others in order to simplify the process by which companies raise capital. In total, the recommendations would eliminate or revise approximately one-quarter of the rules and one-half of the forms and schedules reviewed by the Task Force.

The Commission has taken action based on a number of the Task Force's recommendations. For example, the Commission:

- proposed amendments to the rules under Section 13(d) of the Exchange Act to allow all passive investors (*i.e.*, investors who are the beneficial owners of between 5 percent and 20 percent of the outstanding voting shares of one class of securities and do not acquire or hold these securities with the purpose or effect of changing or influencing control of the issuer) to file a short form Schedule 13G instead of a Schedule 13D;<sup>150</sup>
- eliminated 44 rules and 4 forms and adopted a number of minor and technical amendments;<sup>151</sup> and

- published proposals to:
  - eliminate the Form D filing requirement for Regulation D and Section 4(6) exemptions, although Form D itself would be retained;
  - eliminate Forms SR and 8-B;
  - amend the Securities Act registration forms to allow companies to register, at the same time, a public offering under the Securities Act and a class of securities under the Exchange Act by filing one form; and
  - amend Form 8-A to provide automatic effectiveness for all securities that are registered on that form and automatic effectiveness upon filing of post-effective amendments to Securities Act registration statements filed solely to add exhibits.<sup>152</sup>

## Electronic Delivery of Documents to Securityholders

In October 1995, the Commission issued a release acknowledging the benefits that electronic technology gives to the financial markets and urging the use of electronic media to send out information to shareholders and investors. In May 1996, the Commission issued a second release mainly addressing issues associated with the electronic delivery of information by broker-dealers, transfer agents, and investment advisers under certain Exchange Act rules and Investment Advisers Act of 1940 rules.<sup>153</sup> This release included added guidance on Securities Act electronic delivery. At the same time, the Commission adopted some technical amendments to its rules and forms intended to facilitate electronic delivery.<sup>154</sup> Most of the changes relate to rules that require distribution of information by mail, or presentation of information in a specified type size or font, or in red ink or bold-face type.

## Small Offering Exemption for Certain California Limited Issues

The Commission adopted a new Securities Act Section 3(b) exemption intended to aid small business in their capital formation.<sup>155</sup> Under the exemption, offers and sales of securities in amounts of up to \$5 million that meet the conditions of Section 25102(n) of the California Corporations Code also are exempt from federal registration. The federal antifraud prohibitions still apply to all exempt transactions. The exemption provides that purchasers in the exempt transaction receive restricted securities. No filing with the Commission is required.

## Relief from Section 12(g) Registration for Small Issues

To provide further relief for smaller companies, the Commission adopted amendments to Rules 12g-1, 12g-4, and 12h-3 under the Exchange Act to raise the threshold for registration from \$5 million to \$10 million in total assets.<sup>156</sup> Public companies registered under Section 12 must issue periodic reports and are subject to other obligations, such as proxy and tender offer regulation, beneficial ownership reporting, and Section 16 reporting and short-swing profit recovery. Companies with securities traded on an exchange or on Nasdaq continue to be subject to Exchange Act registration and reporting, regardless of size.

## Section 16

The Commission adopted amendments to the Section 16 rules to improve further the regulatory scheme governing the reporting of certain insider holdings and transactions, as well as the recovery of short-swing profit.<sup>157</sup> The principal change is a new approach to Rule 16b-3 to exempt transactions between an issuer and its officers and directors because these transactions generally do not present the same opportunities for insider profit on the basis of nonpublic information as do market transactions. The effective date for the amendments was August 15, 1996, with new Rule 16b-3 becoming available on that date subject to a phase-in period ending November 1, 1996.

## **Expansion of Short-Term Registration to Include Companies with Non-voting Common Equity**

The Commission proposed amendments to Forms S-3 and F-3 under the Securities Act to make short-form registration available to more companies. The amendments propose including non-voting as well as voting common equity in the computation of the required \$75 million aggregate market value of common equity held by non-affiliates of the registrant.<sup>158</sup> The Commission also proposed amendments that would permit issuers to use the aggregate market value of voting and non-voting common equity when calculating the amount of public float (1) required to use Form F-2, (2) used to determine when an issuer is a small business issuer, or (3) stated on Forms 10-K and 10-KSB.

## **Derivatives Disclosure**

The Commission proposed amendments that require issuers to make information related to derivative financial and certain derivative commodity instruments more useful to investors.<sup>159</sup> The amendments would clarify and expand upon the existing requirements for financial statement footnote disclosures for these instruments and require disclosure outside the financial statements of qualitative and quantitative information about market risk inherent to these instruments. A related release was issued by the Commission to propose a safe harbor for the new derivatives disclosure that constitutes forward-looking information.<sup>160</sup>

## **Reporting of Unregistered Equity Sales**

The Commission adopted amendments to several rules and forms applicable to domestic issuers to require reporting of unregistered sales of equity securities.<sup>161</sup> For Regulation S sales, the amendments require current reporting on Form 8-K within 15 days of their occurrence. Other exempt equity sales will be reported quarterly. These amendments were adopted in response to the concern that the absence of a specific requirement to report publicly unregistered equity offerings may have encouraged problematic offering practices under Regulation S, and also may have

prevented shareholders from learning about potentially dilutive private transactions.

## Simplifying Disclosure Requirements Related to Significant Business Acquisitions

The Commission adopted amendments to Rule 3-05 of Regulation S-X to streamline the requirements for financial statements of significant businesses acquired or to be acquired.<sup>162</sup> Changes also were made to Item 310 of Regulation S-B and Form 8-K. The amendments permit companies, other than blank check companies, to proceed with a registered offering without the financial statements of a business that they acquired or are likely to acquire until 75 days after the acquisition is completed. However, the financial statements of a recent or likely acquisition are still required in registration statements if the business that was or will be acquired exceeds the 50 percent level of significance compared to the company acquiring it. The amendments also:

- revise the thresholds for determining the financial statements of acquired businesses that must be provided under both the Exchange Act and Securities Act,
- eliminate the requirement to provide financial statements for businesses falling below the 20 percent significance level, and
- require audited financial statements for acquisitions as follows:

<u>Significance Level</u>	<u>Years of Audited Financial Statements Required</u>
20 percent	one year
40 percent	two years
50 percent	three years

The significance level thresholds were formerly 10 percent, 20 percent, and 40 percent.

## **Offshore Press Conferences**

The Commission proposed safe harbors designed to facilitate U.S. press access to offshore press activities.<sup>163</sup> The safe harbors would clarify when journalists may be given access to offshore press conferences, offshore meetings, and press materials released offshore, where a present or proposed offering of securities or tender offer is discussed, without violating the provisions of Section 5 of the Securities Act, or the procedural requirements of the tender offer rules issued under the Williams Act.

## **Conferences**

### **SEC Government-Business Forum on Small Business Capital Formation**

The fifteenth annual SEC Government-Business Forum on Small Business Capital Formation was held in Washington, D.C. on September 26-27, 1996. Approximately 150 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 will be provided to interested persons, including the Congress and regulatory agencies, setting forth a list of recommendations for legislative and regulatory changes approved by the forum participants.

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

The thirteenth annual federal/state uniformity conference was held in Washington, D.C. on April 29, 1996. Approximately 60 Commission officials met with approximately 60 representatives of the North American Securities Administrators Association to discuss ways of achieving greater uniformity in federal and state securities matters. After the conference, a final report summarizing the discussions was prepared and distributed to interested persons.

## Ombudsman for Small Business

In June 1996, the Commission created an ombudsman position to serve as the liaison and agency spokesperson for the concerns of small business. The ombudsman is available to receive general information from small businesses concerning the impact of any Commission proposal, rule, or regulation and to help small businesses seeking general information about the Commission.

## Small Business Town Hall Meetings

In September 1996, the Commission began holding local town hall meetings for small businesses. These meetings give owners and investors in small businesses an opportunity to meet with Commission and other federal officials to raise concerns and learn about the available governmental programs and opportunities for small companies under existing laws and regulations. Meetings have been held in Los Angeles, California, Minneapolis, Minnesota, Chicago, Illinois, St. Louis, Missouri, Ft. Lauderdale, Florida, and Boston, Massachusetts. Future sessions will be held throughout the country.

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## **Accounting and Auditing Matters**

*The Chief Accountant is the principal adviser 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 requirements of the federal securities laws include:*

- *rulemaking and interpretation that supplements private sector accounting standards, implements financial disclosure requirements, and establishes independence criteria for accountants;*
- *reviewing and commenting on filings with the agency directed toward improving disclosures in filings, identifying emerging accounting issues (which may result in rulemaking or private sector standard-setting), and identifying problems that may warrant enforcement actions;*
- *taking 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 financial accounting and reporting and the quality of audit practice.*

### **Key 1996 Results**

The Commission proposed rules to require additional disclosures concerning derivatives and other financial instruments. The Commission also continued its involvement in initiatives directed toward reducing the disparities that currently exist between different countries' accounting and auditing standards. The International Accounting Standards Committee

(IASB) continued work on an accelerated work plan that would result in a comprehensive core set of international accounting standards by March 1998.

## **Accounting-Related Rules and Interpretations**

The SEC'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. As part of a major Commission initiative to streamline reporting requirements, certain accounting provisions in Regulation S-X were eliminated because they were outdated or no longer necessary since these standards duplicated generally accepted accounting principles.<sup>164</sup>

### **Derivatives**

During the year, the Commission proposed rules for comment that would require additional disclosures concerning derivatives and other financial instruments.<sup>165</sup> The proposed disclosures are designed to help investors better assess the market risks of registrants involved with these instruments and better understand how those risks are managed. The proposals clarify and expand existing requirements for financial statement footnote disclosures about accounting policies for derivatives and require disclosures outside the financial statements of qualitative and quantitative information about the market risks inherent in derivatives and other financial instruments. The Office of the Chief Accountant assumed a key role in developing these rules.

### **Business Combinations**

The Office of the Chief Accountant issued interpretive guidance regarding the effect of treasury stock acquisitions following consummation of a business combination accounted for under the pooling-of-interests

method.<sup>166</sup> This guidance was issued due to SEC concerns that certain registrants had narrowly interpreted the prohibition against planned transactions as relating only to transactions that were explicitly agreed to. The guidance was issued to remind registrants that an intention to reacquire stock issued to effect a business combination represents a planned transaction that would preclude accounting for the combination as a pooling of interests.

Also in this area, the office issued guidance to clarify the limited circumstances in which guidance published in Staff Accounting Bulletin 48 was intended to apply.<sup>167</sup> Although the accounting staff's earlier published guidance was intended to address the transfer of nonmonetary assets in exchange for a company's stock just prior to or at the same time as an initial public offering, the guidance was inappropriately applied by some registrants to the combination of two or more businesses.

## **Oversight of Private Sector Standard-Setting**

### **Financial Accounting Standards Board**

The SEC monitors the structure, activity, and decisions of the private sector standard-setting organizations, which include the FASB. The Commission and its staff worked closely with the FASB 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.

During 1996, the FASB continued its joint undertaking with the Accounting Standards Board of the Canadian Institute of Chartered Accountants to consider the current reporting requirements under *Statement of Financial Accounting Standards No. 14, "Financial Reporting for Segments of a Business Enterprise."* An exposure draft was issued that would establish common standards on disaggregated disclosures.<sup>168</sup>

In coordination with a similar project undertaken by the IASC, the FASB issued an exposure draft that would revise the computation and presentation of earnings per share and require certain disclosures about capital structure.<sup>169</sup> The approach taken in the FASB exposure draft generally is consistent with the approach in the IASC exposure draft on this topic.

The FASB continued its efforts on its long-term project to address financial instruments and off-balance sheet financing issues. For example, the FASB issued an exposure draft on accounting for derivative instruments and hedging that is intended to improve the current accounting for these instruments.<sup>170</sup> The exposure draft would require that an entity recognize all derivatives as either assets or liabilities on its balance sheet and measure those instruments at fair value. Under the FASB's proposed approach, derivatives may be designated as hedges to certain exposures if certain conditions are met. Recognition of gains and losses from changes in the fair value of a derivative would depend on the intended use of the derivative and the resulting designation. In a related action, the FASB issued an exposure draft that would establish standards for reporting and financial display of comprehensive income and its components (revenues, expenses, gains, and losses).<sup>171</sup> Finally, the FASB issued a final standard to provide for more consistent reporting of securitizations and other financial transactions in which financial assets are transferred in exchange for cash and other assets.<sup>172</sup>

Also in 1996, the FASB issued an exposure draft of a proposed standard on accounting for obligations related to the closure and removal of long-lived assets.<sup>173</sup> This project evolved from requests by the SEC and others to address the issue of the appropriate accounting for nuclear decommissioning costs.

During the year, the Financial Accounting Foundation (FAF), which nominates FASB members and provides funding for the FASB, revised its bylaws to change the composition of its Board of Trustees. The change in

the composition of the FAF's Board was made in consultation with the SEC to include a greater representation by those who do not have a special interest in the outcome of accounting standards setting.

The FASB's Emerging Issues Task Force (EITF) continued to identify and resolve accounting issues. In particular, the EITF reached consensus on a number of issues, thereby narrowing divergent reporting practices of public companies. Those issues included questions relating to accounting for financial instruments, business combinations, and costs associated with modifying computer software for the year 2000.

### American Institute of Certified Public Accountants

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

### *ASB*

The accounting staff continued to work closely with the ASB to enhance the effectiveness of the audit process. During 1996, the ASB issued a proposed Statement on Auditing Standards to clarify an auditor's existing responsibility to plan and perform an audit to search for fraud.<sup>174</sup> The ASB also issued a series of annual Audit Risk Alerts to provide auditors with an overview of recent economic, professional, and regulatory developments that may affect 1996 year-end audits.

## *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. The Office of the Chief Accountant coordinates closely with the Public Oversight Board (POB) in performing its oversight of the two programs. The POB, which is independent of the AICPA (except for funding), also engages in other activities directed towards improvements in the financial reporting process.

The SEC oversaw the SECPS through frequent contacts with the POB and members of the executive, peer review and quality control inquiry committees of the SECPS. The Office of the Chief Accountant selected a random sample of peer reviews and evaluated selected working papers of the peer reviewers and the related POB files. As in prior years, this oversight showed 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.

Closed case summaries prepared by the QCIC and related POB oversight files were also reviewed by the SEC. These reviews and discussions with the POB and QCIC staff provided the accounting staff with enough information to conclude that the QCIC process provides added assurances, as a supplement to the peer review process, that major quality control deficiencies, if any, are identified and addressed on a timely basis.

## *AcSEC*

The AcSEC issued a statement of position to provide guidance on issues relating to the recognition, measurement, display, and disclosure of environmental liabilities.<sup>175</sup> During 1996, the AcSEC continued to address accounting issues involving specialized industries, dedicating resources in

such areas as accounting for software revenue recognition, motion picture accounting, and insurance accounting.

## **International Accounting and Auditing Standards**

Significant differences in accounting and auditing standards currently exist between countries. These differences are 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.

The International Accounting Standards Committee IASC and IOSCO's Technical Committee have agreed to the development of a work plan that identifies the projects which, upon successful completion, will comprise a comprehensive core set of international accounting standards. The objective of the work plan is the completion of a core set of international accounting standards that will allow the Technical Committee to recommend endorsement of the standards for cross-border securities offerings in all global markets.

In April 1996, the IASC initiated a plan to accelerate its developmental efforts with a view toward completion of the requisite core set of standards by March 1998. The Commission is committed to working with its securities regulatory colleagues, through IOSCO, and with the IASC to provide necessary input to achieve the goal of establishing a comprehensive set of international accounting standards as expeditiously as possible. From the Commission's perspective, there are three key elements to this program and the ultimate acceptance of its results.

- The standards must include a core set of accounting pronouncements that constitute a comprehensive, generally accepted basis of accounting.

- The standards must be of high quality--they must result in comparability and transparency, and they must provide for full disclosure.
- The standards must be rigorously interpreted and applied.

Significant progress was made on the remaining accounting areas necessary to complete the core set of standards. For example, a final standard was issued on accounting for income taxes,<sup>176</sup> and exposure drafts on segment reporting,<sup>177</sup> earnings per share,<sup>178</sup> presentation of financial statements,<sup>179</sup> and employee benefits<sup>180</sup> were issued for comment. Outstanding proposals concerning recognition and measurement of financial statements and accounting for intangible assets (including research and development and goodwill) are being reconsidered; new proposals are expected early in 1997. Proposals on the remaining five areas comprising the core set of standards are expected during 1997.

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## **Other Litigation and Legal Activities**

*The Office of General Counsel provides legal services to the Commission concerning its law enforcement, regulatory, legislative, and adjudicatory activities. The office represents the Commission in appeals in enforcement cases and provides technical assistance on legislative initiatives.*

### **Key 1996 Results**

The Court of Appeals for the Second Circuit affirmed the Commission's judgment against Robert E. Brennan and First Jersey Securities Inc. In *SEC v. Fehn*,<sup>181</sup> the Court of Appeals for the Ninth Circuit upheld a Commission aiding and abetting action on the ground that a provision of the Private Securities Litigation Reform Act of 1995 authorizing such actions applied retroactively. In two criminal cases litigated by the Department of Justice, *United States v. Bryan*<sup>182</sup> and *United States v. O'Hagan*,<sup>183</sup> two courts of appeals rejected the misappropriation theory of insider trading. The Commission participated in seeking rehearing in both cases. In *SEC v. Life Partners, Inc.*,<sup>184</sup> the Court of Appeals for the District of Columbia Circuit held that investments in viatical settlements are not securities. The Commission's petition for rehearing was denied. The SEC testified and the staff provided technical and other assistance with respect to the National Securities Markets Improvement Act of 1996 (Improvement Act), which was enacted in October 1996.

### **Significant Litigation Developments**

#### **First Jersey Securities**

In *SEC v. First Jersey Securities, Inc.*,<sup>185</sup> the Court of Appeals for the Second Circuit upheld the injunction and an award of \$75,000,000 in

disgorgement and prejudgment interest against Robert E. Brennan and First Jersey Securities for their perpetration of a massive and continuing fraudulent scheme on public investors. Still pending in the Court of Appeals for the Third Circuit is a related appeal, *In re First Jersey Securities Litigation*,<sup>186</sup> in which the Commission seeks to have an injunction vacated that was issued by the United States District Court for the Eastern District of Pennsylvania on the motion of Brennan and First Jersey in a now settled class action suit. The injunction bars the Commission's distribution of the New York court's disgorgement award unless the distribution is approved by the Pennsylvania court. This appeal was stayed when Brennan filed for protection under the Bankruptcy Code.

### Aiding and Abetting Liability

In *SEC v. Fehn*,<sup>187</sup> the Court of Appeals for the Ninth Circuit upheld an injunction obtained by the Commission against an aider and abettor of securities laws violations on the ground that Section 104 of the Private Securities Litigation Reform Act of 1995 applied retroactively to the case. This act was adopted while the appeal was pending and authorizes the Commission to bring aiding and abetting actions.

### "In Connection with" Requirement Under Rule 10b-5

In *McGann v. Ernst & Young*,<sup>188</sup> the Court of Appeals for the Ninth Circuit reaffirmed the principle that persons who make false or misleading statements with the expectation that those statements will reach trading markets engage in fraud "in connection with the purchase or sale of securities," and need not have traded themselves in the securities. The court rejected the argument that this reading of the antifraud provisions is no longer valid after the Supreme Court's *Central Bank* decision.

### Insider Trading

Two courts of appeals rejected the misappropriation theory of insider trading liability, which had previously been accepted by all four circuits that

had considered it. Under this theory, it is a form of securities fraud to trade while in possession of non-public material information that has been deceptively misappropriated from its rightful owner. In *United States v. Bryan*<sup>189</sup> and *United States v. O'Hagan*,<sup>190</sup> the Courts of Appeals for the Fourth and Eighth Circuits struck down the theory on the grounds that such trading did not involve deception and that the misappropriation of information was not in connection with the purchase or sale of a security, both of which are elements of liability under Section 10(b) of the Securities Exchange Act of 1936 (Exchange Act) and Rule 10b-5. The *O'Hagan* court also struck down as beyond the Commission's power to promulgate SEC Rule 14e-3, which bans trading while in possession of certain non-public material information in connection with a tender offer. The Commission filed briefs urging rehearing in both cases. Rehearing was denied in both, and a petition for certiorari has been filed in the Supreme Court in *O'Hagan*.

### Definition of a Security

In *SEC v. Life Partners, Inc.*,<sup>191</sup> the Court of Appeals for the District of Columbia Circuit held that interests in viatical settlements sold as investments are not investment contracts and therefore are not securities, because the predominant entrepreneurial or managerial efforts of the sellers occurred before investors gave the defendants their money. A viatical settlement is the process through which a terminally ill patient sells at a discount their life insurance policy to an investor or a group of investors. The Commission's petition for rehearing was denied.

### Statute of Limitations in Commission Proceedings

In *Johnson v. SEC*,<sup>192</sup> the Court of Appeals for the District of Columbia Circuit reversed a Commission order imposing a censure and six-month suspension from supervisory activities. The court held that the sanction was barred by the five-year statute of limitations in 28 U.S.C. 2462, which applies where a "fine, penalty or forfeiture, pecuniary or otherwise," is sought.

## Arbitration

In *Glennon v. Dean Witter Reynolds, Inc.*,<sup>193</sup> the Sixth Circuit Court of Appeals, as urged by the Commission as *amicus curiae*, rejected a due process challenge to an arbitral award of punitive damages in a case brought against a broker-dealer. In deciding the case, the court assumed for the purpose of deciding the case that the due process clause applies to arbitrations, but held that the judicial review provided for under the Federal Arbitration Act met those requirements.

## Broker-Dealer Regulation

In *Upton v. SEC*,<sup>194</sup> the Court of Appeals for the Second Circuit held that brokerage firms cannot meet their customer protection obligations under Rule 15c3-3 by paying down obligations just before doing their weekly computations under the rule, thus lowering the amount that need be set aside in the customer protection account, and then restoring the obligations just after doing the computation. The court vacated the sanction against petitioner, however, because it found there was inadequate notice of this principle in 1988 and 1989, when the firm engaged in the practice.

## Regulation of Municipal Securities

In *Blount v. SEC*,<sup>195</sup> the Supreme Court declined to review the decision of the Court of Appeals for the District of Columbia Circuit upholding as constitutional the Commission's approval of Municipal Securities Rulemaking Board Rule G-37, the rule prohibiting pay-to-play practices.

## Commission Quorum Rule

In *Falcon Trading Group Ltd. v. SEC*,<sup>196</sup> the Court of Appeals for the District of Columbia Circuit upheld the Commission's quorum rule, which provides that when the number of commissioners in office is only two, then two commissioners constitute a quorum. The case was brought about in

response to a disciplinary ruling against Falcon Trading Group Ltd. and is awaiting decision.

### Forum Selection and Choice of Law Agreements

The Commission filed a brief as *amicus curiae* in the Court of Appeals for the Ninth Circuit in *Richards v. Lloyd's of London*.<sup>197</sup> In the brief, the Commission argues that contractual forum selection and choice of law clauses, that require the Lloyd's Names to bring claims arising from their investments in Lloyd's in British courts and provide that British law governs resolution of the disputes violate the antiwaiver provisions of the federal securities laws because British courts will not entertain claims under those laws. The case is awaiting decision.

### Requests for Access to Commission Records

The Commission received 110 subpoenas for documents and testimony in 1996. 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 in every instance when the party issuing the subpoena challenged the assertion in court.

The Commission received 2,443 requests under the Freedom of Information Act (FOIA) for access to agency records. There were 62 appeals to the General Counsel from initial denials by the FOIA Officer. Three actions were brought in federal court challenging Commission decisions under the FOIA. The first case was withdrawn by the plaintiff and the second is pending.<sup>198</sup> In the third, *Parsons v. SEC*,<sup>199</sup> the court granted the Commission's motion to dismiss, upholding the Commission's decision to withhold staff reports of routine examinations of a broker-dealer and of an self-regulatory organization (SRO) pursuant to FOIA Exemption 8.

## Motions to Vacate Permanent Injunctions

In *SEC v. Worthen*,<sup>200</sup> John Worthen moved to vacate a permanent injunction entered against him by default in 1974. Worthen, a twice-convicted securities law violator, argued that his injunction should be vacated primarily because it was improper to enter a default judgment against him while he was incarcerated for securities fraud. The Commission opposed Worthen’s motion, arguing that Worthen’s injunction was valid and noted that Worthen pled guilty to criminal contempt of the injunction in 1989. Worthen’s motion was denied without opinion. The court of appeals affirmed, rejecting Worthen’s challenge to the validity of the default judgment.

## Actions Against the Commission and Staff

Numerous court actions, seeking millions of dollars in the aggregate, were brought against the Commission and its staff alleging constitutional, statutory, and common law tort violations in connection with the conduct of various enforcement investigations. Decisions in all such actions were favorable to the Commission. Of particular note, in *Colello and Romano v. SEC*, plaintiffs sought equitable and monetary relief from the Commission, present and former Commission employees, and the Department of Justice, among others, based on the government’s freeze of plaintiffs’ Swiss assets pursuant to the Swiss-United States Treaty on Mutual Assistance. In a prior ruling, the court had held that the freeze violated the Fourth and Fifth Amendments to the United States Constitution.<sup>201</sup> The court, however, ruled that the doctrines of sovereign, absolute, and qualified immunity<sup>202</sup> bar plaintiffs from obtaining any relief against the defendants.

Also, in *Hunter v. SEC*,<sup>203</sup> the court dismissed claims against the Commission and granted summary judgment on behalf of a Commission employee. The court held that there was no evidence to support plaintiff’s claim that a Commission investigator improperly disclosed financial records relating to the subject of an ongoing Commission investigation to a witness for personal purposes.

## Actions Under the Right to Financial Privacy Act

In 1996, 14 actions were filed against the Commission in federal district courts pursuant to the Right to Financial Privacy Act (RFPA) seeking to quash Commission subpoenas to financial institutions for bank account records. In each of the cases decided, the court enforced the subpoena, finding that the Commission had established that the subpoenaed records were relevant to a law enforcement inquiry and that the staff had complied with the procedural requirements of the RFPA.

## Stays Pending Appeal In Subpoena Enforcement Actions

In three separate actions,<sup>204</sup> persons ordered by a district court to produce documents or testify in Commission investigations filed motions in appeals courts to stay the orders pending appeal. In each case, the Commission successfully opposed the motions by demonstrating that:

- arguments as to why the subpoenas should not be enforced were not likely to succeed on appeal,
- producing documents or testimony in a Commission investigation does not constitute irreparable harm because a person may still challenge the Commission's use of such evidence in any subsequent enforcement action, and
- the public interest is served by requiring those who may possess evidence of securities law violations to produce that information in a timely manner.

## Asset Freezes

In *Law Practice of J.B. Grossman, P.A. v. SEC*,<sup>205</sup> petitioner Grossman, counsel for the defendants in a Commission enforcement case, sought a writ of certiorari urging the court to review the decision of the Court of Appeals for the Eleventh Circuit affirming a finding of civil

contempt against his firm for violating a temporary restraining order (TRO) and asset freeze. Grossman had transferred defendants' funds that were held in a firm account while those funds were frozen by the TRO. Grossman argued to the Supreme Court that his firm was entitled to treat the TRO and asset freeze as having expired because they were extended beyond the 20-day limit in Fed. R. Civ. P. 65(b). The Supreme Court denied the petition.

## **Significant Adjudication Developments**

The staff submitted 81 draft opinions and orders resolving substantive motions to the Commission. The Commission issued 46 opinions and 17 related orders, and the staff resolved by delegated authority an additional 98 motions. Appeals from decisions of administrative law judges continue to make up a high percentage of the Commission's docket.

## **Sales Practice Abuses and Deficient Supervision**

As in previous years, the Commission reviewed several cases in this area. For example, in *Consolidated Investment Services, Inc.*,<sup>206</sup> the Commission concluded that a broker-dealer and two of its officers failed reasonably to supervise a registered representative who conducted a Ponzi-type scheme out of the firm's one-person satellite office. The registered representative defrauded more than 50 customers of \$5 million. The Commission found that the firm and its officers failed to inspect the satellite office during the salesman's five-year tenure and ignored numerous red flags indicating his failure to comply with established firm procedures. Noting that the firm and its officers had been disciplined previously for similar misconduct, the Commission suspended the firm for 30 days, barred the officers for one year, and imposed a \$50,000 penalty on each officer.

In *Franklin N. Wolf, James H. Petrantis, and Richard T. Sullivan*,<sup>207</sup> the Commission determined that in six months three principals of a broker-dealer formerly registered with the National Association of Securities Dealers (NASD) effected more than 2,400 retail sales in violation of an

Exchange Act rule governing the sale of low-priced securities. The Commission rejected their claim that the rule was vague and observed that before the period at issue, two of the three had reviewed an NASD Notice to Members explaining the rule. The Commission also found that Sullivan, who served as the firm's compliance director, was responsible for the firm's failure to implement sufficient procedures to ensure compliance with the rule. The Commission sustained the censures, fines, and suspensions imposed on the respondents.

#### Fraud in the Offer/Sale of Securities; Manipulative Activity

The Commission considered several appeals involving fraudulent and manipulative conduct. In *Ivan D. Jones, Jr.*,<sup>208</sup> the Commission determined that Jones, president of both a brokerage firm and a registered investment adviser, misappropriated proceeds from two offerings. Jones used the proceeds to benefit businesses in which he was an officer or part owner. Jones claimed that one of the offerings involved the sale of real estate partnerships and thus was not subject to the securities laws; however, he was charged only with violation of the Investment Advisers Act of 1940 in connection with that offering. The antifraud provisions of that Act cover all fraudulent conduct by investment advisers affecting clients or prospective clients, whether or not the conduct involves securities.

In *Thomas C. Kocherhans*,<sup>209</sup> the Commission found that in six months a registered representative effected 47 purchases of a particular common stock within 15 minutes of the market close. Of the 47 purchases, 35 caused the market to close at a price higher than the previously reported trade. Kocherhans admitted that he made the purchases to assist his customers in avoiding margin calls by increasing the equity in their margin accounts. The Commission determined that Kocherhans had a second motive for marking the close. The stock comprised more than 90 percent of Kocherhans' personal holdings, and he was having substantial difficulty in meeting margin calls. Given the seriousness of Kocherhans' misconduct, the Commission sustained the censure, \$50,500 fine, and one-year suspension the NASD had imposed.

## Effecting Transactions Based on Material, Non-public Information

In *Ralph Joseph Presutti*,<sup>210</sup> the Commission concluded that a registered representative violated New York Stock Exchange (NYSE) rules by carrying out securities transactions for customers acting on the basis of stock tips featured in *Business Week*. The customers obtained the magazine before its release to the public. Presutti learned several months into the scheme that his customer was not obtaining the magazine from a newsstand, as Presutti originally had been told, but from an employee of the printer. The Commission found that, although Presutti knew the *Business Week* information was market sensitive, he failed to investigate his customer's claim that the advance copies were a perk given to the printer's employees and continued for another year to effect the securities transactions. Presutti's customer had paid the printer's employee for the advance copies. The Commission sustained the censure and two-month suspension imposed by the NYSE.

## Excessive and Fraudulent Markups

The Commission further clarified the law governing excessive and fraudulent markups. In *Strategic Resource Management, Inc.*,<sup>211</sup> the Commission set aside the NASD's findings of excessive markups, rejecting the NASD's treatment of the firm as a non-market maker for certain trades. The Commission found that where a broker-dealer holds itself out as a market maker and regularly conducts inter-dealer trades on both the buy and sell sides of the market, it should be treated as a market maker for all transactions, not just those involving other dealers. Further, the Commission stated that the principal set forth in *Kevin B. Waide*<sup>212</sup>--in riskless principle transactions, markups should be based upon the dealer's contemporaneous cost--normally does not apply to market-making activity. The Commission explained that a market maker's purchase or sale of a security may occur when it holds the opposite order from a customer, thus offsetting that customer's order. Although the transaction could be viewed as happening on a riskless principal basis, it is part of a market maker's normal function.

In *Frank L. Palumbo, Salvatore A. Venezia and Sandra Solomon Venezia*,<sup>213</sup> the Commission determined that three officers of a broker-dealer formerly registered with the NASD recklessly overcharged customers. These officers imposed markups ranging from 5.14 to 83.77 percent of the prevailing market price in sales of three securities underwritten by the firm. In a earlier disciplinary proceeding, respondents had been put on notice that the firm's practice of basing its markups on unvalidated ask quotations was improper. The Commission agreed with the NASD that the firm's markups should have been based on the prices it paid to other dealers concurrently with its retail sales, where available, and otherwise on the basis of its contemporaneous purchases from retail customers, adjusted for a five percent markdown.

## Counseling and Regulatory Policy Services

The General Counsel provided technical assistance to Congress and others on legislative proposals, including the Improvement Act, and to the Commission on regulatory issues. Regulatory issues included reorganization of the NASD, adoption of the SEC's rules governing order handling by broker-dealers, and implementation issues arising from the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the General Counsel prepared a report to Congress regarding protections for senior citizens and qualified retirement plans required by the Private Securities Litigation Reform Act of 1995.

## Significant Legislative Developments

### Charitable Giving Protection

On October 31, 1995, the SEC testified before the House Commerce Committee's Subcommittee on Telecommunications and Finance in support of the Philanthropy Protection Act of 1995 (H.R. 2519). In December 1995, President Clinton signed H.R. 2519 into law (Pub. L. No. 104-62).

Charitable organizations and the securities issued by them generally are exempt from registration and reporting requirements under the federal securities laws. The Protection Act is intended to address interpretive questions that arose with respect to pooled accounts maintained by charitable organizations that contain donated property in which the donor retains a remainder or annuity interest (charitable income funds). Provided the charitable income fund qualifies to receive tax deductible contributions under the Internal Revenue Code, the Act exempts:

- such funds from registration under the federal securities laws,
- securities issued by these funds,
- persons soliciting on behalf of the funds,
- charitable organizations sponsoring the funds, and
- persons associated with the funds.

Charitable income funds and persons soliciting on their behalf remain subject to the antifraud provisions of the securities laws. The Act also requires certain disclosures to donors, prohibits incentive-based commissions, and preempts state regulation of charitable income funds with a three-year opt-out period.

### Securities Litigation Reform

In December 1995, the House and Senate voted to override President Clinton's veto of the Private Securities Litigation Reform Act of 1995 (Pub. L. No. 104-67), concluding a long legislative effort to bring about a revision of both substantive and procedural law governing private actions under the federal securities laws. For the most part, the Litigation Reform Act applies

only to private actions. Among the most significant measures instituted by the Litigation Reform Act are:

- a statutory safe harbor for forward-looking statements;
- a system of proportionate, as opposed to joint and several, liability for defendants in private actions who are not found to have knowingly committed a violation of the securities laws;
- mandatory sanctions for violations of Rule 11(b) of the Federal Rules of Civil Procedure; and
- a requirement that courts choose a lead plaintiff in securities class actions to represent the class, with the presumption that the most capable representative is the person or group with the largest financial interest in the case.

### Regulation of Public Utility Holding Companies

On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (Pub. L. No. 104-104), a comprehensive reform of federal telecommunications law. The Telecommunications Act amends the Public Utility Holding Company Act of 1935 to permit registered public utility holding companies to invest in telecommunications activities through separate subsidiaries, to issue or sell securities to finance the acquisition of telecommunications subsidiaries, and to guarantee securities of these subsidiaries without prior SEC approval. The Act authorizes the SEC to announce rules concerning additional reporting by registered holding companies or their subsidiaries that own securities of telecommunications subsidiaries.

### SEC Appropriation

In September 1996, the House and the Senate passed an omnibus appropriations bill for 1997, which the President signed into law on

September 30, 1996 (Pub. L. No. 104-208). The appropriations bill provides funding authority for the SEC for 1997 at \$305 million, which includes \$222 million in offsetting fee collections from an increase in the securities registration fees from 1/50th to 1/33rd of one percent and new transaction fees of 1/300th of one percent on sales of certain over-the-counter (Nasdaq) market securities. This funding level represents an increase over the \$297 million proposed in the House bill and a decrease from the \$306 million proposed in the Senate-reported bill. The SEC had requested appropriations of \$308 million.

### **Securities Deregulation**

In 1996, Congress debated significant revisions to the federal securities laws. The SEC testified on the following bills: (1) H.R. 1495, the Investment Company Act Amendments of 1995 (before the House Commerce Committee's Subcommittee on Telecommunications and Finance in October 1995); (2) H.R. 2131, the Capital Markets Deregulation and Liberalization Act of 1995 (before the House Commerce Committee's Subcommittee on Telecommunications and Finance in November 1995); and (3) S. 1815, the Securities Investment Promotion Act of 1996 (before the Senate Banking Committee in June 1996).

The House and Senate both passed H.R. 3005, the Improvement Act, which incorporated some provisions from earlier legislative proposals to revise the securities laws (including H.R. 1495, H.R. 2131, and S. 1815). The President signed the legislation into law on October 11, 1996 (Pub. L. No. 104-290). The most significant provisions of the legislation are outlined below.

#### *Securities Registration*

The Improvement Act for the most part preempts state blue-sky registration of covered securities, which includes securities listed on the NYSE, the American Stock Exchange (AMEX), and the National Association of Securities Dealers Automated Quotation/National Market

System (Nasdaq/NMS), exchanges with substantially similar listing standards as NYSE, AMEX, Nasdaq/NMS (as determined by the SEC), registered investment companies, securities sold to qualified purchasers (to be defined by the SEC), and securities sold in certain offerings exempt from federal legislation. The Act also prohibits states from limiting or imposing conditions on the sales of such securities. States retain securities registration (and review) of small-cap Nasdaq offerings, regional exchange offerings, offerings listed on the pink sheets, and certain offerings that are exempt under the federal securities laws. In addition, states retain state law authority to investigate and bring enforcement actions with respect to fraud in connection with securities transactions.

#### *Broker-Dealer Regulation*

The Improvement Act preempts state regulation of broker-dealers in the areas of financial responsibility, recordkeeping, reporting, margin, and custody requirements to the extent that state requirements in these areas are inconsistent with or exceed requirements established under the Exchange Act. The Act also removes legislative restrictions on the sources from which broker-dealers may obtain financing and encourages the SEC and SROs to eliminate duplication in the examination process.

#### *Exemptive Authority*

The Improvement Act grants the SEC general exemptive authority under the Securities Act of 1933 (Securities Act) and the Exchange Act.

#### *Investment Companies*

The Improvement Act makes significant amendments to the Investment Company Act of 1940. These amendments:

- lift restrictions on mutual funds making investments in other mutual funds in the same fund complex;

- simplify the system under which mutual funds pay registration fees;
- give funds greater advertising flexibility;
- permit greater flexibility in regulating variable insurance products;
- give the SEC authority to prohibit misleading and deceptive fund names;
- permit investment advisers to qualified purchaser pools and foreign persons to obtain fees based on investment performance;
- exempt from regulation under the Investment Company Act funds whose securities are held only by qualified purchasers; and
- streamline the existing exception for private investment companies. In addition, the Act exempts from most federal securities regulations church employee pension plans if the assets are held for the exclusive benefit of employees.

### *Investment Advisers*

The Improvement Act prohibits investment advisers that manage less than \$25 million in assets from registering with the SEC, makes the states responsible for regulating them, and preempts most state investment adviser laws with respect to advisers registered with the SEC. The SEC retains authority to regulate foreign advisers and advisers who are not regulated by their home state. In certain circumstances, the SEC also has exemptive authority to continue regulating advisers with assets under management of less than \$25 million. The SEC and the states each retain authority to investigate allegations of fraud involving any investment adviser, whether registered with the SEC or with a state regulator. In addition, the Act (1) facilitates the creation of a one-stop filing depository for investment adviser registrations; (2) prohibits regulation of books, records, and capital and bonding requirements of investment advisers by states other than the

adviser's home state; (3) prohibits states from requiring registration or licensing of investment advisers that do not have their principal place of business or have less than six clients in the state; (4) allows the SEC to prohibit registration of any person convicted of any felony; and (5) maintains state authority to require filings made with the SEC and certain remedies to assure fee payments and filings. The Act also authorizes appropriation of \$20 million to the SEC for enforcement of the Investment Advisers Act.

### *SEC Authorization*

The Improvement Act authorizes the SEC to receive funding in the amount of \$300 million (plus \$20 million in additional funds for enforcement of the Investment Advisers Act) in 1997. The Act provides for a gradual reduction over 10 years in fees for filings of registration statements under Section 6(b) of the Securities Act. The securities registration fee is authorized at \$295 per \$1 million (1/34th of one percent) in 1998 and declines to \$67 per \$1 million (1/150th of one percent) in 2007. The Act also extends transaction fees under Section 31 of the Exchange Act to sales of securities in the over-the-counter markets. The transaction fee is authorized at 1/300th of one percent beginning in 1997 through 2006 (the same rate currently imposed on sales of exchange-registered securities) and is scheduled to decline to 1/800th of one percent in 2007.

### *SEC Reports*

The Improvement Act requires the SEC to prepare reports on a variety of topics not later than October 11, 1997. These reports include (1) the extent to which the states have acted to achieve uniform regulatory requirements for securities that are not preempted by the Improvement Act, (2) the impact of technological advances on the securities markets, (3) the market practice known as preferencing (due April 9, 1997), (4) the impact of disparate state licensing requirements on associated persons of registered broker-dealers, (5) proposals to privatize EDGAR (due April 11, 1997), and (6) progress in the development of international accounting standards and the outlook for completion of a set of such standards acceptable to the SEC.

## **Regulatory Reform**

In March 1996, the 104th Congress passed the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121). Among other things, the legislation (1) imposes certain obligations on all federal agencies to assist small businesses in complying with agency rules; (2) expands the class of litigants eligible for awards under the Equal Access to Justice Act and makes such awards available if an agency's demand was unreasonable when measured against the final outcome; (3) amends the Regulatory Flexibility Act, among other things, permit small entities to challenge agency compliance with that Act; and (4) provides for congressional review of all final agency rules. The SEC is implementing new requirements under these laws.

## **SEC Testimony**

In other areas, the SEC testified before Congress regarding mutual funds and mutual fund investors (before the House Banking Committee's Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises in June 1996), and frauds involving fictitious financial instruments (before the Senate Banking Committee in July 1996).

## **Corporate Reorganizations**

The Commission, as a statutory adviser in cases under Chapter 11 of the Bankruptcy Code, seeks to assure that the interests of public investors are protected. During the year, there were 109 active Chapter 11 cases involving public companies. The Commission entered a formal appearance in 14 cases with significant public investor interest. The Commission also was actively involved in the *Orange County*<sup>214</sup> bankruptcy, the largest municipal bankruptcy ever filed under Chapter 9 of the Bankruptcy Code, in order to protect the holders of the county's public debt securities and the municipal bond market generally.

## Committees

Official committees negotiate with debtors on the formulation of reorganization plans and participate generally in all aspects of a Chapter 11 case. The Bankruptcy Code provides for the appointment of an official committee for stockholders where necessary to assure adequate representation of their interests.

During 1996, the Commission successfully supported a motion for an equity committee in *In re Hamburger Hamlet*.<sup>215</sup> The Commission was unsuccessful in supporting the formation of an equity committee in *In re Edison Brothers Stores, Inc.*,<sup>216</sup> in which the district court, on appeal, sustained the bankruptcy judge's determination that management could adequately represent shareholders because of its substantial stock ownership. The U.S. Trustee, however, later appointed an official committee in *In re Edison Brothers Stores, Inc.* Committees also were appointed in three cases as a result of informal discussions with U.S. Trustees and the Case Administrator for the District of North Carolina.<sup>217</sup>

The Commission reiterated its position that insider trading prohibitions apply to members of official committees, who frequently receive confidential information on a company's operations and prospects. In *In re WRT Energy*<sup>218</sup> and *In re Baldwin Builders*,<sup>219</sup> the Commission supported the adoption of court orders permitting trading in the debtor's securities only by committee members engaged in securities trading in the regular course of their business and that implement procedures designed to prevent the misuse of inside information.

## Disclosure Statements/Reorganization Plans

A disclosure statement is a combination proxy and offering statement used to solicit acceptances for a reorganization plan. Such plans often provide for the issuance of large quantities of new unregistered securities pursuant to an exemption from Securities Act registration contained in the Bankruptcy Code. During 1996, the Office of General Counsel commented on 66 of the

68 plans and disclosure statements it reviewed. In addition, the office commented on 44 of the 52 amended disclosure statements it reviewed. Recurring problems with disclosure statements included inadequate financial information, lack of disclosure on the issuance of unregistered securities and insider transactions, and plan provisions that contravene the Bankruptcy Code. Most of the office's comments were adopted by the debtors without the need for formal Commission intervention.

In *In re NVF Corp.*,<sup>220</sup> the Commission successfully objected to the debtor's attempt to obtain a release from liability for Victor Posner, NVF's principal shareholder, officer, and director. The release of third parties from liability is significant to investors because in many cases debtors seek to use the Chapter 11 process to protect officers and directors from personal liability for various kinds of claims, including liability under the federal securities laws. As a result of the Commission's comment process for plan disclosure statements, improper third party release provisions were abandoned in five cases.<sup>221</sup>

In *In re Americare International*<sup>222</sup> and *In re Micro Security*,<sup>223</sup> the Commission successfully objected to attempts to discharge claims of creditors and sell the remaining asset-less public shell corporations.

## Enforcement Matters

Bankruptcy issues frequently arise in Commission enforcement actions. In *In re Bilzerian*,<sup>224</sup> the district court overruled a bankruptcy court order that had refused to give collateral estoppel effect (*i.e.*, to accept the factual findings of the district court) to the Commission's \$33 million securities fraud disgorgement judgment. The district court directed the bankruptcy judge to enter summary judgment for the Commission that its disgorgement judgment is nondischargeable.

In *In re ACI-HDT Supply*,<sup>225</sup> the Commission objected to the method of calculating the claims of victims of a fraudulent Ponzi scheme. Relying on Ninth Circuit precedent,<sup>226</sup> the Commission argued that the claims of

defrauded investors should be based on out-of-pocket loss rather than benefit of the bargain damages. The matter is pending.

In *In re Hibbard Brown*,<sup>227</sup> a Chapter 11 case involving a penny stock broker-dealer, the Commission objected to the fairness of a proposed settlement with certain former registered representatives and employees who are alleged to have defrauded investors of more than \$115 million. The Commission argued that the proposed contributions by these third parties were inadequate to support a general release of all claims arising from their fraudulent activity. After the Commission raised its objections, the bankruptcy court appointed an examiner to evaluate the fairness of the proposed settlement. The Commission is prepared to seek conversion of this Chapter 11 case to a liquidation under Chapter 7 unless the proposed amount of contributions by the third parties is increased substantially.

### **Ethical Conduct Program**

In 1996, the staff responded to 1,135 counseling inquiries. The staff continued to provide training, prepare memoranda on ethics issues, and revise the Commission's Conduct Regulation.

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## **Municipal Securities Initiatives**

*The Office of Municipal Securities provides expertise to the Commission and staff, assists on municipal securities enforcement cases, coordinates disclosure rules and other ongoing municipal regulatory initiatives, and addresses new issues that arise in the municipal area. In addition, the office provides assistance on legislative matters and works directly with issuers, investors, brokers, municipal securities dealers, and other professionals on issues relating to municipal securities.*

### **Key 1996 Results**

Together with the Office of the General Counsel, the Office of Municipal Securities continued its efforts on the Orange County, California municipal bankruptcy and related issues. The office also (1) provided the Division of Enforcement and the regional and district offices with technical assistance in municipal securities investigations and enforcement proceedings; (2) provided guidance to participants in the municipal markets regarding the secondary market disclosure required by amended Rule 15c2-12 of the Securities Exchange Act of 1934; and (3) worked with the Division of Market Regulation on the interpretation and implementation of Municipal Securities Rulemaking Board (MSRB) Rule G-37, relating to restrictions on political contributions, and Rule G-38, which requires disclosure of consulting arrangements.

### **Municipal Securities Disclosure**

The municipal securities office participated in a number of seminars and conferences designed to assist municipal market participants. The office used these forums, among other things, to explain to issuers, financial advisers, dealers, and counsel how to implement and comply with

amendments to Rule 15c2-12, concerning secondary market disclosure. These forums also were used to provide guidance on recent SEC enforcement decisions that apply the antifraud provisions of the federal securities laws to municipal securities. The office also prepared educational materials to foster compliance with the federal securities laws.

## Technical Assistance

In this area, the municipal securities office provided support to Chairman Levitt's and Secretary of the Treasury Rubin's joint efforts to increase local government finance officers' awareness of the need for the prudent management of public funds in today's markets. In this regard, the municipal securities office worked alongside the Office of Legislative Affairs to provide technical assistance to Congress on issues, such as the investment of public funds, suitability requirements, and the municipal bankruptcy in Orange County, California.

In conjunction with the Division of Market Regulation, the municipal securities staff assisted in implementing, amending, and interpreting of MSRB Rules G-37 and G-38. MSRB Rule G-37 prohibits brokers, dealers, and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers. MSRB Rule G-38 requires disclosure of consulting arrangements. The staff also worked with the Divisions of Market Regulation and Corporation Finance to implement amendments to Rule 15c2-12.

The municipal securities staff worked with the Office of the General Counsel on municipal bankruptcy and other municipal securities matters, provided technical assistance to the Division of Enforcement and regional and district offices on several municipal securities enforcement actions, assisted the Office of Compliance Inspections and Examinations in oversight matters concerning municipal securities regulations, provided expertise for

various compliance training programs, and assisted the Office of Investor Education and Assistance on issues pertaining to individual investors and municipal securities price transparency.

## **Outreach**

As part of its outreach efforts, the municipal securities staff met periodically with numerous organizations representing participants involved in the municipal finance industry. Among the organizations represented were the Government Finance Officers Association, National League of Cities, National Association of Counties, U.S. Conference of Mayors, Council of Infrastructure Financing Authorities, Public Securities Association, California Debt Advisory Commission, and the National Association of Bond Lawyers. The primary focus of these meetings was methods of improving compliance with existing regulations. The recent pamphlet prepared by several issuer groups *Questions to Ask Before You Approve A Bond Issue* is a product of these meetings.

An ombudsman within the office acted as a point of contact and provided municipal bond issuers ready access to the Commission. The ombudsman also provided municipal bond issuers a means of obtaining general information about the Commission and its initiatives.

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## Economic Analysis

*The Office of Economic Analysis provides expertise in financial economics to the Commission and the operating divisions, evaluates the economic impact of proposed rules, conducts studies that are designed to expand the Commission's understanding of capital markets, and plays a major role in the Commission's enforcement effort by applying economic and statistical tools to issues such as materiality and disgorgement. The office analyzes rule proposals to assess (1) their potential effects on small entities, as required by the Regulatory Flexibility Act and Section 502 of the Small Business Investment Incentive Act, both enacted in 1980, and (2) their impact on competition within the securities industry and among competing securities markets, as required by the 1975 amendments to the Securities Exchange Act of 1934.*

### Key 1996 Results

In 1996, the office participated in the Commission's investigation regarding the National Association of Securities Dealers (NASD) and the Nasdaq Market. The office also analyzed the economic impact of the Commission's recently adopted Display Rule and amendments to the Quote Rule (collectively Order Handling Rules), provided economic analysis for the Advisory Committee on Capital Formation and the Regulatory Process, and produced a report summarizing the results of the Commission's survey of the financial literacy of mutual fund purchasers.

### Economic Analysis and Technical Assistance

The office analyzed 65 Commission and self-regulatory organization rules to assess the costs and benefits, the Paperwork Reduction Act compliance burdens, and the potential effects on small entities as required by the

Regulatory Flexibility Act of 1980. In general, increased staff resources were devoted to rule reviews following passage of the Small Business Regulatory Enforcement Act of 1996.

On August 29, 1996, the SEC adopted the Display Rule, which requires the display of customer limit orders, and amended the Quote Rule, which directs publication of quotations to improve both the quality of published quotations and pricing efficiency in markets.

In the enforcement area, the office assisted the Division of Enforcement in several cases involving insider trading, market manipulation, fraudulent financial reporting, and other violations of securities laws. The economic analysis staff applied financial economics and statistical techniques to determine whether the elements of fraud were present and to estimate, where appropriate, the amount of disgorgement to be sought. The office also assisted in evaluating the testimony of experts hired by opposing parties.

The office also actively participated in the Commission's investigation regarding the NASD and the Nasdaq Market by conducting extensive statistical analyses of audit trail data on securities transactions and quotations. The statistical analyses confirmed testimony on the existence and functioning of a pricing convention and demonstrated the breadth and magnitude of its impact.

In conjunction with the Office of the Comptroller of the Currency, the office produced a report for a jointly sponsored study of the financial literacy and knowledge of mutual fund purchasers. This study was based on a survey of 2,000 randomly selected mutual fund investors and collected information on the demographic, financial, and fund ownership characteristics of the respondents. It paid particular attention to the distribution channel (bank, broker, direct sales, etc.) through which respondents bought mutual fund shares and the respondents' level of financial literacy. The study included a number of important findings. For example, although the survey respondents consulted the prospectus more than any other source for information, it was rated as only the fifth best

source of information, regardless of the distribution channel used to purchase shares. However, the likelihood that an investor who bought a fund actually consulted the prospectus depended on the distribution channel used to buy the fund. Finally, approximately one-third of all fund owners still believe that money market funds are insured.

In July 1996, the Commission's Advisory Committee on Capital Formation and Regulatory Processes issued its final report which recommended a shift to a system of company registration versus the registration of individual securities offerings. The economic analysis staff provided extensive statistical analysis for the report, addressing the costs of new issues, the volume of offerings, the effects of various thresholds for issuer participation in a pilot program of company registration, and the value added by SEC review of prospectuses.

As part of an evaluation of the Nasdaq OTC Bulletin Board, the office analyzed the U.S. over-the-counter market for unregistered foreign equities. The Nasdaq OTC Bulletin Board is a proprietary electronic quotation medium on which broker-dealers post quotations and indications of interest for unlisted domestic stocks and foreign equities. The office analyzed the adequacy of price transparency as well as the potential harm to retail investors from the lack of U.S. Generally Accepted Accounting Principles financial disclosure by issuers of unregistered foreign equities. The size of this market relative to worldwide trading in the same foreign equities, dealer concentration, and the degree of retail participation also were evaluated.

During the year, the Commission proposed Regulation M to replace its trading practice rules, which govern potentially manipulative trading during a securities distribution. To facilitate the Commission's efforts, the office analyzed data on potential manipulations and provided estimates of the impacts of proposed changes to the existing rules.

The economic analysis staff analyzed the accuracy of transaction fees collected by the Commission, certain applications by exchanges to trade options and swaps contracts, certain applications for exemptions filed by

public utilities, and the extent of price improvement for certain stock exchange transactions.

During the year, the office pursued a variety of projects designed to expand the Commission's understanding of the capital markets. These projects are long-term in nature and focus on the use and economics of soft dollar commissions, the extent of price pressure resulting from the sale of unregistered securities, price stabilization in the initial public offering aftermarket, and the demand for proprietary trading systems.

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## **Policy Management and Administrative Support**

*Policy management and administrative support provide the Commission and operating divisions with the necessary services to accomplish the agency's mission. Policy management is provided by the executive staff and Offices of Legislative Affairs; the Secretary; Public Affairs, Policy Evaluation and Research; the Executive Director; and Equal Employment Opportunity. The responsibilities and activities of policy management include developing and executing management policies, formulating and communicating program policy, overseeing the allocation and expenditure of agency funds, maintaining liaison with the Congress, disseminating information to the press, and facilitating Commission meetings.*

*Administrative support includes services such as accounting, financial management, fee collection, information technology management, data processing, space and facilities management, and human resources management. Under the direction of the Office of the Executive Director, these services are provided by the Offices of the Comptroller, Information Technology, Administrative and Personnel Management, and Filings and Information Services.*

### **Key 1996 Results**

In 1996, the Commission held 30 meetings at which it considered 104 matters. Major activities of the Commission included the adoption of a wide variety of rule amendments designed to simplify the disclosure process, amendments to rules governing money market funds, and rules concerning broker-dealers' order execution obligations designed to enhance the quality of published quotations for securities and to enhance competition and pricing efficiency in our markets.

The agency collected fees for the United States Treasury in excess of its appropriation for the fourteenth consecutive year. In 1996, total SEC fees collected as revenue were \$774 million and the net gain to the Treasury was \$429 million.

## **Policy Management**

### **Commission Activities**

During the 30 Commission meetings held in 1996, the Commission considered 104 matters, including the proposal and adoption of Commission rules, enforcement actions, and other items that affect the stability of the nation's capital markets and the economy. The Commission also acted on 1,101 staff recommendations by *seriatim* vote. Significant regulatory actions taken by the Commission included:

- elimination of numerous disclosure rules and forms and adoption of minor and technical amendments, in response to recommendations of the Commission's Task Force on Disclosure Simplification (Task Force);
- publication of proposals to implement additional recommendations made by the Task Force to eliminate unnecessary requirements and streamline the disclosure process;
- adoption of amendments to rules governing money market funds; and
- adoption of rules on order execution obligations of broker-dealers.

Congressional interest in the agency's activities and initiatives remained high. The Commission and staff members testified at 10 congressional

hearings during the year. In addition, the Congress actively considered a number of important issues under the Commission's jurisdiction, including:

- the omnibus securities reform bill, the National Securities Markets Improvement Act of 1996, which subsequently was enacted into law (Pub. L. No. 104-290);
- bank sales of mutual funds;
- possible reform of the regulation of public utility holding companies; and
- the SEC's appropriation.

## Public Affairs

The Office of Public Affairs, Policy Evaluation and Research communicated information on Commission activities to those interested in or affected by Commission actions, including the press, regulated entities, the general public, and SEC employees. The office published the *SEC News Digest* daily, which provides information on rule changes, enforcement actions against individuals or corporate entities, administrative actions, decisions on requests for exemptions, upcoming Commission meetings, and other events of interest and *The SEC Employee News*, a regular newsletter. The public affairs staff also prepared a daily summary of news clips for agency employees. In addition, the office provided support for activities related to the Chairman's investor education initiatives, the further development of the SEC's internet website, and the agency's International Institute for Securities Markets Development.

Many of the agency's actions are of national and international interest. When appropriate, these actions are brought to the attention of regional, national, and international press. The public affairs office issued 182 press releases on upcoming events, SEC programs, enforcement actions, and special projects. The office also responded to approximately 50,000 requests

for specific information on the SEC or its activities and coordinated visits of domestic and foreign officials to the SEC. In total, programs for 952 foreign visitors were coordinated during the year.

### Management Activities

The Office of the Executive Director continued to promote management controls and financial integrity and to manage the agency's audit follow-up system. The office continued to analyze the efficiency and effectiveness of operating divisions and support offices and to coordinate and implement the agency's compliance with and response to actions under the National Performance Review (NPR) and the Government Performance and Results Act of 1993, including development of the agency's strategic plan. Working closely with other senior officials, the office formulated the agency's budget submissions to the Office of Management and Budget and the Congress.

### Equal Employment Opportunity

The Office of Equal Employment Opportunity provided the agency with support for compliance with Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; and the Equal Pay Act of 1963. This support included counseling, mediation, dispute resolution, administrative fact-finding investigations, final agency decisions on formal complaints of employment discrimination, EEO orientation programs for new employees, and EEO training for managers and supervisors in various divisions. Through the Securities and Exchange Commission-Securities Industry Committee on Equal Opportunity, the office functioned as the industry liaison for the agency on EEO issues. The office also administered the Federal Women's Program, the Hispanic Employment Program, and the Black Employment Program and sponsored, along with the Office of Administrative and Personnel Management, the SEC's Disability Issues Advisory Committee.

## **Freedom of Information Act and Privacy Act**

The Office of Freedom of Information Act (FOIA) and Privacy Act Operations responded to requests for access to information under FOIA, the Privacy Act, and the Government in the Sunshine Act, and processed requests under the agency's confidential treatment rules. Confidential treatment requests were generally made in connection with proprietary corporate information and evaluated in conjunction with access requests to prevent the unwarranted disclosure of information exempt under the FOIA. All responses to FOIA, Privacy Act, and Government in the Sunshine Act requests were made within the statutory time frame.

## **Administrative Support**

### **Commission Operations**

For the fourteenth consecutive year the SEC collected revenue in excess of its appropriation. The SEC's total revenue was \$774 million, 260 percent of the agency's appropriated spending authority of \$297.4 million. The \$774 million in total fees collected as revenue, minus the SEC's current year spending authority of \$287 million (\$297.4 million less \$10 million from prior year offsetting fee collections) and \$58 million in excess offsetting collections, resulted in a net gain of \$429 million to the United States Treasury. Fee revenue was collected from four basic sources: securities registered under Section 6(b) of the Securities Act of 1933 (75 percent of the total 1996 fee revenue), transactions of covered exchange-listed securities (17 percent), tender offer and merger filings (7 percent), and miscellaneous filings (1 percent). Offsetting fee collections were generated from an increase in the fee rate under Section 6(b) of the Securities Act from one-fiftieth of one percent to one-twenty-ninth of one percent.

## Financial Management

In this area, the Office of the Comptroller updated the agency's Five-Year Financial Management Plan. This plan responds to current financial system issues, recognizes new legislative and NPR requirements, and is consistent with the agency's information technology plan. To further strengthen financial management, the office also began full-scale implementation of a LAN-based travel management system in headquarters, implemented a new budget system to increase agency-wide availability of financial data, and installed a new on-line system to facilitate the transmittal of budget allowances and preparation of budget estimates.

## Information Resources Management

The Office of Information Technology continued to develop and enhance SEC information resources. Notably, phase-in of all domestic filers to the agency's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system was completed in May 1996.

On September 10, 1996, the EDGAR recompetition notice was released in the *Commerce Business Daily*. This will be a fully competitive, two-phase acquisition for replacement of the existing SEC EDGAR contract. The requirements consist of two elements in phase 1. The first element of phase 1 is a conceptual plan to modernize and privatize the EDGAR system. The second is the capability to operate and maintain the government-furnished equipment and software of the existing system, and to provide those portions of the existing system which will not be transferred by the government at the conclusion of the current contract, *e.g.*, the Dissemination subsystem, a full text document storage and retrieval capability, and a means for notifying filers of filing success or failure. Offerors must include both elements in their proposals in order to be considered for award. All offerors determined to be within the competitive range upon completion of phase 1 will be included in phase 2. The SEC in phase 2 will require those offerors in the competitive range to bid a detailed modernization and privatization plan. Competitive range offerors must have offered both a comprehensive

modernization and privatization conceptual plan and have demonstrated within their proposals their capability to implement and transition to a new system while maintaining the current system during transition. The Request for Proposals was issued on October 30, 1996.

Continued emphasis was placed on the agency's strategic automation initiative. For example, the office:

- developed new desktop querying systems to support reporting on the agency's enforcement actions and to provide powerful tools to analyze certain market data,
- developed replacements and/or enhancements for aging mainframe software applications, and
- upgraded the SEC's personnel and payroll systems to enhance administrative functions.

The agency's website provided basic access to the EDGAR database of electronic filings on a 24-hour delayed basis, and served as a forum for litigation releases, news digests, press releases, Commission rulemaking activities, and a wide range of other information of interest to the investing public. During the first full year of operation the system was heavily accessed, serving over 44,453,180 files and 1,768,567,980,000 bytes of data. This amounts to 75,450,000 pages of text. Average daily connections exceeded 267,000 and daily data volume downloaded averaged over 10,500,000 bytes. The SEC's website address is <http://www.sec.gov>.

Substantial resources also were directed toward critical new initiatives, including the Year 2000 and the Data Center Consolidation (Office of Management and Budget (OMB) Bulletin 96-02) directives.

- *Year 2000 Initiative.* The Year 2000 initiative will ensure that all SEC databases, applications, systems and user interfaces that are dependent upon dates will be checked to ensure that the advent of the century mark, the year 2000, does not adversely affect the SEC. To achieve this, the information technology staff began inventorying all systems (applications and databases) to certify that the change in the century date will be accommodated.
- *Data Center Consolidation.* During the year, OMB issued a directive mandating that all agencies with data centers below a certain minimum level of processing power consolidate their data centers. As a result, the information technology staff initiated a complete analysis/inventory of data, applications, hardware, and software.

#### Administrative and Personnel Management

The Office of Administrative and Personnel Management provided a wide range of personnel and office support functions. For example, the office:

- modified the agency's policies on alternate work schedules and flexiplace to better assist employees in balancing work and family demands while still meeting agency mission needs;
- initiated a project to "reinvent" the Personnel Operating Policies and Procedures Manual to better meet customer needs, demonstrate support for the agency's plain English initiative, and comply with NPR streamlining initiatives;
- continued streamlining and automating internal processes by implementing a second phase of the automated Personnel Resource System;

- continued to participate actively in a consortium of federal agencies in sponsoring Phase Two of the in-depth study by the National Academy of Public Administration of innovative human resources practices and implementing change;
- participated in job fairs, on-campus recruitment interviews at law schools, and used various hiring programs and authorities available to increase diversity in the agency (a total of 24.3 percent of new hires were minorities during 1996, including 22.6 percent of new attorneys and law clerks, 4.3 percent of new accountants, and 34.0 percent of new securities compliance examiners);
- successfully passed the Office of Personnel Management's (OPM) review and recertification of the delegated examining authority so that it now handles hiring for the full range of competitive service positions without OPM involvement; and
- coordinated training programs for 1,647 employees, who attended 5,408 varied training events.

The administrative and personnel management staff also acquired additional space in the Operations Center in Alexandria, Virginia to accommodate SEC employees being relocated from offices in the Judiciary Plaza building in connection with the building renovation. Continued security enhancements for headquarters and field offices were completed, such as the relocation and expansion of the Judiciary Plaza Visitor's Center and the establishment of a new Central Monitoring Station for a comprehensive security camera system.

Finally, a new three-phase program was developed to provide litigation copying support for the agency's Division of Enforcement. During 1996, the first two phases were implemented and work on phase three was initiated.

## Public Reference

The SEC maintains public reference rooms in its Washington, D.C., New York, and Chicago offices. Modifications were made to the headquarters public reference room to better utilize the space. During the year, 36,682 visitors used the Commission's public reference rooms. At these facilities, the public can examine and review Commission rules, orders, studies, reports, and speeches made by SEC officials. A total of 815,655 microfiche records were added to the existing collections of information made available to the public.

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## Endnotes

<sup>1</sup>*SEC v. Robert L. Citron*, Litigation Release No. 14792 (Jan. 24, 1996), 61 SEC Docket 574.

<sup>2</sup>*In the Matter of County of Orange*, Release No. 34-36760 (Jan. 24, 1996), 61 SEC Docket 574.

<sup>3</sup>*Report of Investigation in the Matter of County of Orange, California*, Release No. 34-36761 (Jan. 24, 1996), 61 SEC Docket 487.

<sup>4</sup>*In the Matter of Maricopa County*, Release No. 34-37748 (Sept. 30, 1996), 62 SEC Docket 2797.

<sup>5</sup>*In the Matter of Peacock, Hislop, Staley & Given, Inc.*, Release No. 34-37777 (Oct. 2, 1996), 62 SEC Docket 2830.

<sup>6</sup>*In the Matter of First Fidelity Securities Group*, Release No. 34-36694 (Jan. 9, 1996), 61 SEC Docket 68.

<sup>7</sup>*In the Matter of FAIC Securities, Inc.*, Release No. 34-36937 (Mar. 7, 1996), 61 SEC Docket 1256.

<sup>8</sup>*In the Matter of Lazard Freres & Co. LLC*, Release No. 34-36419 (Oct. 26, 1995), 60 SEC Docket 1698.

<sup>9</sup>*SEC v. Octagon Technology Group, Inc.*, Litigation Release No. 14942 (June 11, 1996), 62 SEC Docket 377.

<sup>10</sup>*SEC v. Scott A. Frye*, Litigation Release No. 14702 (Oct. 30, 1995), 60 SEC Docket 1882.

<sup>11</sup>*SEC v. Donald B. Spencer*, Litigation Release No. 14856 (Mar. 29, 1996), 61 SEC Docket 1960.

<sup>12</sup>*SEC v. Wye Resources*, Litigation Release No. 15073 (Sept. 26, 1996), 62 SEC Docket 2762.

<sup>13</sup>*SEC v. Comparator Systems Corporation*, Litigation Release No. 14927 (May 31, 1996), 62 SEC Docket 236.

<sup>14</sup>*In the Matter of Eli Buchalter, CPA*, Release No. 34-37702 (Sept. 19, 1996), 62 SEC Docket 2495.

<sup>15</sup>*SEC v. The Bennett Funding Group, Inc.*, Litigation Release No. 14991 (Apr. 15, 1996), 62 SEC Docket 1291.

<sup>16</sup>*SEC v. Douglas Frankel*, Litigation Release No. 14820 (Feb. 22, 1996), 61 SEC Docket 1043.

<sup>17</sup>*SEC v. Axiom Security Solutions, Inc.*, Litigation Release No. 15096 (Sept. 30, 1996), 62 SEC Docket 2969.

<sup>18</sup>*In the Matter of Republic International Corporation*, Release No. 34-37741 (Sept. 27, 1996), 62 SEC Docket 2846.

<sup>19</sup>*In the Matter of Norman L. Sirak*, Release No. 34-37740 (Sept. 27, 1996), 62 SEC Docket 2776.

<sup>20</sup>*In the Matter of Candie's, Inc.*, Release No. 34-36865 (Feb. 21, 1996), 61 SEC Docket 966.

<sup>21</sup>*SEC v. Giancarlo Parretti*, Litigation Release No. 14770, (Jan. 3, 1996), 60 SEC Docket 3336.

<sup>22</sup>*In the Matter of Florio Fiorini*, Release No. 34-36669, (Jan. 3, 1996), 60 SEC Docket 3240.

<sup>23</sup>*In the Matter of Fernando Cappuccio*, Release No. 34-36670 (Jan. 3, 1996), 60 SEC Docket 3246.

<sup>24</sup>*In the Matter of Cypress Bioscience, Inc.*, Release No. 34-37701 (Sept. 19, 1996), 62 SEC Docket 2495.

<sup>25</sup>*In the Matter of Bank of Boston Corp.*, Initial Decision No. 81 (Dec. 22, 1995), 62 SEC Docket 2495.

<sup>26</sup>*SEC v. Christopher Kent Bagdasarian*, Litigation Release No. 15075 (Sept. 26, 1996), 62 SEC Docket 2765.

<sup>27</sup>*In the Matter of Platinum Software Corporation*, Release No. 34-37185 (May 9, 1996), 61 SEC Docket 2615.

<sup>28</sup>*SEC v. Gerald R. Blackie*, Litigation Release No. 14905 (May 9, 1996), 61 SEC Docket 2680.

<sup>29</sup>*In the Matter of Jon R. Erickson, CPA*, Release No. 34-37269 (June 3, 1996), 62 SEC Docket 159.

<sup>30</sup>*In the Matter of Mark S. Tague, CPA*, Release No. 34-37270 (June 3, 1996), 62 SEC Docket 162.

<sup>31</sup>*SEC v. McDonnell Douglas Corporation*, Litigation Release No. 14958 (June 24, 1996), 62 SEC Docket 676.

<sup>32</sup>*SEC v. Kendall Square Research Corporation*, Litigation Release No. 14895 (Apr. 29, 1996), 61 SEC Docket 2517.

<sup>33</sup>*In the Matter of Thomas J. MacCormack*, Release No. 34-37147 (Apr. 29, 1996), 61 SEC Docket 2427.

<sup>34</sup>*SEC v. Automated Telephone Management Systems, Inc.*, Litigation Release No. 14710 (Nov. 2, 1995), 60 SEC Docket 1893.

<sup>35</sup>*SEC v. Earl V. Young*, Litigation Release No. 14981 (July 16, 1996), 62 SEC Docket 1043.

<sup>36</sup>*SEC v. Certain Purchasers of the Common Stock of CBI Industries, Inc.*, Litigation Release No. 14721 (Nov. 16, 1995), 60 SEC Docket 2124.

<sup>37</sup>*SEC v. Certain Purchasers of Call Options of Duracell International, Inc.*, Litigation Release No. 15045 (Sept. 16, 1996), 62 SEC Docket 2581.

<sup>38</sup>*SEC v. Kathleen Lane*, Litigation Release No. 14906 (May 9, 1996), 61 SEC Docket 2682.

<sup>39</sup>*SEC v. Mervyn Cooper*, Litigation Release No. 14878 (Apr. 16, 1996), 61 SEC Docket 2298.

<sup>40</sup>*SEC v. Donald John Tyson*, Litigation Release No. 15062 (Sept. 23, 1996), 62 SEC Docket 2747.

<sup>41</sup>*SEC v. Hugo Aldo Sallustro*, Litigation Release No. 14982 (July 18, 1996), 62 SEC Docket 1045.

<sup>42</sup>*In the Matter of National Association of Securities Dealers, Inc.*, Release No. 34-37538 (Aug. 8, 1996), 62 SEC Docket 1363.

<sup>43</sup>*Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market*, Release No. 34-37542 (Aug. 8, 1996), 62 SEC Docket 1375.

<sup>44</sup>*In the Matter of PaineWebber Incorporated*, Release No. 34-36724 (Jan. 17, 1996), 61 SEC Docket 248.

<sup>45</sup>*SEC v. PaineWebber Incorporated*, Litigation Release No. 14787 (Jan. 18, 1996), 61 SEC Docket 338.

<sup>46</sup>*In the Matter of Gruntal & Co., Incorporated*, Release No. 34-37085 (Apr. 9, 1996), 61 SEC Docket 2110.

<sup>47</sup>*SEC v. Gruntal & Co., Incorporated*, Litigation Release No. 14865 (Apr. 9, 1996), 61 SEC Docket 2171.

<sup>48</sup>*In the Matter of A.R. Baron & Co., Inc.*, Release No. 34-37240 (May 23, 1996), 61 SEC Docket 2869.

<sup>49</sup>*In the Matter of A.R. Baron & Co., Inc.*, Release No. 34-37831 (Oct. 17, 1996), 63 SEC Docket 57.

<sup>50</sup>*In the Matter of Jeffrey Weissman*, Release No. 34-37661 (Sept. 9, 1996), 62 SEC Docket 2272.

<sup>51</sup>*In the Matter of Fahnestock and Co., Inc.*, Release No. 34-37754 (Sept. 30, 1996), 62 SEC Docket 2859.

<sup>52</sup>*In the Matter of Wendell Jeffrey Lee*, Release No. 34-37247 (May 28, 1996), 62 SEC Docket 10.

<sup>53</sup>*In the Matter of Kimberly D. Goodman*, Release No. 34-37710 (Sept. 23, 1996), 62 SEC Docket 2638.

<sup>54</sup>*In the Matter of Gruntal & Co., Incorporated*, Release No. 34-37084 (Apr. 9, 1996), 61 SEC Docket 2110.

<sup>55</sup>*In the Matter of S Squared Technology Corporation*, Release No. IA-1575 (Aug. 7, 1996), 62 SEC Docket 1560.

<sup>56</sup>*In the Matter of Portfolio Management Consultants*, Release No. 34-37376 (June 27, 1996), 62 SEC Docket 511.

<sup>57</sup>*In the Matter of Marc N. Geman*, Release No. 34-37375 (June 27, 1996), 62 SEC Docket 510.

<sup>58</sup>*In the Matter of McKenzie Walker Investment Management*, Release No. IA-1571 (July 16, 1996), 62 SEC Docket 1016.

<sup>59</sup>*In the Matter of Leeb Investment Advisors*, Release No. 34-21671 (Jan. 16, 1996), 61 SEC Docket 311.

<sup>60</sup>*SEC v. Seaboard Investment Advisers, Inc.*, Litigation Release No. 15092 (Sept. 30, 1996), 62 SEC Docket 2965.

<sup>61</sup>*In the Matter of Michael C. Robertson*, Release No. 34-37729 (Sept. 26, 1996), 62 SEC Docket 2670.

<sup>62</sup>*SEC v. Wye Resources, Inc. and Rehan Malik*, Civil Act. No. 96-2223 (D.D.C. Sept. 26, 1996).

<sup>63</sup>*SEC v. Scorpion Technologies, Inc.*, Civil Act. No. 95-1005 (LMM) (S.D.N.Y. Feb. 9, 1996).

<sup>64</sup>*In the Matter of A.R. Baron & Co. Inc., Andrew Bressman, and Roman Okin*, Administrative Proceedings File No. 3-9010.

<sup>65</sup>Release Nos. 34-36371 (Oct. 13, 1995), 60 FR 54269 (Oct. 20, 1995); 34-36409 (Oct. 23, 1995), 60 FR 55399 (Oct. 31, 1995); and 34-36757 (Jan. 22, 1996), 61 FR 2854 (Jan. 29, 1996). Release Nos. 34-36858 and 34-37196 (Feb. 16, 1996 and May 10, 1996), 61 FR 7295 (Feb. 27, 1996) and 61 FR 24979 (May 17, 1996). Release No. 34-37676 (Sept. 13, 1996), 61 FR 49508 (Sept. 10, 1996).

<sup>66</sup>Release No. 34-37011 (Mar. 22, 1996), 61 FR 14177 (Mar. 29, 1996).

<sup>67</sup>Release No. 34-37441 (July 15, 1996), 61 FR 38234 (July 23, 1996).

<sup>68</sup>Release Nos. 34-37007 and 34-37445 (Mar. 21, 1996 and July 16, 1996), 61 FR 14165 (Mar. 29, 1996) and 61 FR 38494 (July 24, 1996).

<sup>69</sup>Release No. 34-37189 (May 9, 1996), 61 FR 24982 (May 17, 1996). Release Nos. 34-37693 and 34-37696 (Sept. 17, 1996), 61 FR 50358 and 50362 (Sept. 25, 1996). Release No. 34-36848 (Feb. 14, 1996), 61 FR 6872 (Feb. 22, 1996). Release No. 34-37195 (May 10, 1996), 61 FR 24976 (May 17, 1996). Release No. 34-37312 (June 14, 1996), 61 FR 31573 (June 20, 1996). Release No. 34-36369 (Oct. 13, 1995), 60 FR 54274 (Oct. 20, 1995). Release No. 34-36935 (Mar. 6, 1996), 61 FR 10417 (Mar. 13, 1996).

<sup>70</sup>Release No. 34-36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 18, 1996).

<sup>71</sup>Release Nos. 34-36841 and 34-37336 (Feb. 14, 1996 and June 19, 1996), 61 FR 6666 (Feb. 21, 1996) and 61 FR 33558 (June 27, 1996).

<sup>72</sup>Release No. 34-36923 (Mar. 5, 1996), 61 FR 10410 (Mar. 13, 1996).

<sup>73</sup>Release No. 34-36947 (Mar. 8, 1996), 61 FR 10606 (Mar. 14, 1996).

<sup>74</sup>Release No. 34-36530 (Nov. 30, 1996), 60 FR 62323 (Dec. 6, 1995).

<sup>75</sup>Release No. 34-36940 (Mar. 7, 1996), 61 FR 10271 (Mar. 13, 1996).

<sup>76</sup>Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Blake Imel, Deputy Director, Division of Economic Analysis, CFTC (Oct. 3, 1995).

<sup>77</sup>Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Elisse Walter, General Counsel, CFTC (Nov. 7, 1995).

<sup>78</sup>Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Blake Imel, Deputy Director, Division of Economic Analysis, CFTC (Mar. 20, 1996).

<sup>79</sup>Letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Stephen A. Sherrod, Chief, Financial Instruments Unit, CFTC (May 7, 1996).

<sup>80</sup>Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Blake Imel, Deputy Director, Division of Economic Analysis, CFTC (Feb. 1, 1996).

<sup>81</sup>Letter from Jonathan G. Katz, Secretary, SEC, to Elisse Walter, General Counsel, CFTC (Oct. 10, 1995).

<sup>82</sup>Release No. 34-37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996).

<sup>83</sup>Letter regarding Real Goods Trading Corporation (June 24, 1996). The staff subsequently issued a second letter, substantially similar to Real Goods Trading Corporation, *letter regarding* PerfectData Corp. (Aug. 5, 1996).

<sup>84</sup>Release No. 34-35124 (Dec. 20, 1994), 59 FR 66702 (Dec. 28, 1994).

<sup>85</sup>Release Nos. 34-27445 and 34-29185 (Nov. 16, 1989 and May 9, 1991), 54 FR 48703 (Nov. 24, 1989) and 56 FR 22490 (May 15, 1991).

<sup>86</sup>Letter regarding Chicago Board Brokerage, Inc. (Dec. 12, 1995) and letter regarding Institutional Real Estate Clearinghouse (May 28, 1996).

<sup>87</sup>Release No. 34-37271 (June 3, 1996), 61 FR 29145 (June 7, 1996).

<sup>88</sup>Letter regarding Merrill Lynch, Pierce, Fenner and Smith (Nov. 20, 1995).

<sup>89</sup>Release No. 34-37094 (April 11, 1996), 61 FR 17108 (Apr. 18, 1996).

<sup>90</sup>Release No. 34-37132 (Apr. 19, 1996) 61 FR 18306 (Apr. 25, 1996).

<sup>91</sup>Letters regarding North Carolina Power Agency Number 1 (Oct. 23, 1995); Wisconsin Public Power Incorporated System (Apr. 17, 1996).

<sup>92</sup>Letter regarding The Bond Guarantee Program of the Texas Permanent School Fund (Feb. 9, 1996).

<sup>93</sup>Letter regarding Rule 15c2-12 (Mar. 15, 1996).

<sup>94</sup>Release No. 34-37431 (July 12, 1996), 61 FR 37357 (July 18, 1996). *See also* Release No. 34-37632 (Sept. 4, 1996), 61 FR 47412 (Sept. 9, 1996) (suspending the compliance date for the amendments to Form BD pending the implementation of the redesigned CRD system).

<sup>95</sup>Release No. 34-37432 (July 12, 1996), 61 FR 37701 (July 19, 1996).

<sup>96</sup>Letter regarding Transactions in Foreign Securities by Foreign Brokers or Dealers with Accounts of Certain Foreign Persons Managed or Advised by U.S. Resident Fiduciaries (Jan. 30, 1996).

<sup>97</sup>15 U.S.C. §§ 6101-08 (1996).

<sup>98</sup>Letter from Michael A. Macchiaroli, Associate Director, SEC, to Rochelle Pullman, Chairman, SIA, (March 15, 1996).

<sup>99</sup>Release No. 34-37772 (Oct. 1, 1996), 61 FR 52980 (Oct. 9, 1996).

<sup>100</sup>Release No. 34-37595 (Aug. 22, 1996), 61 FR 44249 (Aug. 28, 1996).

<sup>101</sup>Release No. 34-35038 (Dec. 1, 1994), 59 FR 63652 (Dec. 8, 1994).

<sup>102</sup>Release Nos. 34-37457 (July 19, 1996), 61 FR 39176 (July 26, 1996) (NYSE); 34-37458 (July 19, 1996), 61 FR 39167 (July 26, 1996) (AMEX); and 34-37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (BSE, CBOE, CHX, and Phlx).

<sup>103</sup>Release No. 34-37046 (Mar. 29, 1996), 61 FR 15322 (Apr. 5, 1996).

<sup>104</sup>Release No. 34-37045 (Mar. 29, 1996), 61 FR 15318 (Apr. 5, 1996).

<sup>105</sup>Release No. 34-37425 (July 11, 1996), 61 FR 37518 (July 18, 1996).

<sup>106</sup>Release No. 34-36303 (Sept. 29, 1995), 60 FR 52232 (Oct. 5, 1995).

<sup>107</sup>Release No. 34-36612 (Dec. 20, 1995), 61 FR 204 (Jan. 3, 1996).

<sup>108</sup>Release Nos. 34-36857 (Feb. 16, 1996), 61 FR 7034 (Feb. 23, 1996); 34-37675 (Sept. 12, 1996), 61 FR 49368 (Sept. 19, 1996); and 34-37591 (Aug. 21, 1996), 61 FR 44098 (Aug. 27, 1996).

<sup>109</sup>Release No. 34-37024 (Mar. 26, 1996), 61 FR 14357 (Apr. 1, 1996).

<sup>110</sup>Release No. 34-37372 (Mar. 26, 1996), 61 FR 35281 (July 5, 1996).

<sup>111</sup>Release No. 34-36508 (Nov. 27, 1995), 60 FR 61719 (Dec. 1, 1995).

<sup>112</sup>Release No. 34-36573 (Dec. 12, 1995), 60 FR 65076 (Dec. 18, 1995).

<sup>113</sup>Release No. 34-37309 (June 12, 1996), 61 FR 31201 (June 19, 1996)

<sup>114</sup>Release No. 34-37731 (Sept. 26, 1996), 61 FR 51731 (Oct. 3, 1996).

<sup>115</sup>Release No. 34-36788 (Jan. 30, 1996), 61 FR 4500 (Feb. 6, 1996).

<sup>116</sup>Release No. 34-37208 (May 13, 1996), 61 FR 25253 (May 20, 1996).

<sup>117</sup>*In the Matter of Dennis T. Palmeri, Sr.*, Release No. 34-36487 (Nov. 16, 1995), 60 SEC Docket 2098; this filing was made by the CHX in 1995.

<sup>118</sup>John Hancock Funds, Inc. (pub. avail. June 28, 1996).

<sup>119</sup>Release No. IC-21538 (Nov. 22, 1995), 60 SEC Docket 2142.

<sup>120</sup>Release No. IC-21837 (Mar. 21, 1996), 61 SEC Docket 1494. The Commission later suspended the compliance date for these amendments pending the adoption of certain technical changes. Release No. IC-22135 (Aug. 13, 1996), 62 SEC Docket 1632.

<sup>121</sup>Release No. IC-22202 (Sept. 9, 1996), 62 SEC Docket 2199.

<sup>122</sup>Release No. IC-22201 (Sept. 9, 1996), 62 SEC Docket 2365.

<sup>123</sup>Release No. IC-22203 (Sept. 9, 1996), 62 SEC Docket 2367.

<sup>124</sup>*Id.*

<sup>125</sup>Release No. IC-21838 (Mar. 21, 1996), 61 SEC Docket 1710.

<sup>126</sup>The CountryBasket Index Fund, Inc., Release Nos. IC-21736 (Feb. 6, 1996), 61 SEC Docket 824 (Notice), and IC-21802 (Mar. 5, 1996), 61 SEC Docket 1306 (Order); The Foreign Fund, Inc., Release Nos. IC-21737 (Feb. 6, 1996), 61 SEC Docket 828 (Notice), and IC-21803 (Mar. 5, 1996), 61 SEC Docket 1307 (Order).

<sup>127</sup>Investment Company Institute (pub. avail. Feb. 15, 1996).

<sup>128</sup>Investment Funds Institute of Canada (pub. avail. Mar. 4, 1996).

<sup>129</sup>Nicholas-Applegate Mutual Funds (pub. avail. Aug. 6, 1996); Bramwell Growth Fund (pub. avail. Aug. 7, 1996).

<sup>130</sup>Portico Funds, Inc. (pub. avail. Apr. 11, 1996).

<sup>131</sup>Merrill Lynch Asset Management, L.P. (pub. avail. July 2, 1996).

<sup>132</sup>United Export-Import Bank of Russia (pub. avail. May 13, 1996).

<sup>133</sup>Managed Futures Association (pub. avail. July 15, 1996).

<sup>134</sup>J.P. Morgan Investment Management Inc. (pub. avail. May 7, 1996).

<sup>135</sup>Munder Capital Management (pub. avail. May 17, 1996).

<sup>136</sup>United States Department of Labor (pub. avail. Feb. 22, 1996 and Dec. 5, 1995).

<sup>137</sup>Letter from Heidi Stam, Associate Director, SEC, to Mark J. Mackey, President & Chief Executive Officer, National Association for Variable Annuities (June 4, 1996).

<sup>138</sup>Cova Financial Services Life Insurance Company, et al. (pub. avail. Apr. 15, 1996).

<sup>139</sup>TIAA Real Estate Account (pub. avail. May 1, 1996).

<sup>140</sup>The Equitable Life Assurance Society of the United States (pub. avail. Dec. 22, 1995).

<sup>141</sup>General Public Utilities Corporation, Release No. 35-26463 (Jan. 26, 1996), 61 SEC Docket 661.

<sup>142</sup>Fidelity Management & Research Company, Release No. 35-26448 (Jan. 5, 1996), 61 SEC Docket 115.

<sup>143</sup>Southern Company, Release No. 35-26501 (Apr. 1, 1996), 61 SEC Docket 1909.

<sup>144</sup>SEI Holdings, Inc., Release No. 35-026581 (Sept. 26, 1996).

<sup>145</sup>Consolidated Natural Gas Company, Release No. 35-26512 (Apr. 30, 1996), 61 SEC Docket 2473.

<sup>146</sup>MCN Corporation, Release No. 35-26576 (Sept. 17, 1996), 62 SEC Docket 2530.

<sup>147</sup>*Report of the Task Force on Disclosure Simplification* (Mar. 1996).

<sup>148</sup>*Report of the Advisory Committee on the Capital Formation and Regulatory Processes* (July 24, 1996).

<sup>149</sup>Release No. 33-7314 (July 25, 1996), 62 SEC Docket 9.

<sup>150</sup>Release No. 34-37403 (July 3, 1996), 62 SEC Docket 6.

<sup>151</sup>Release No. 33-7301 (May 31, 1996), 62 SEC Docket 2.

<sup>152</sup>Release No. 33-7301 (May 31, 1996), 62 SEC Docket 2.

<sup>153</sup>Release No. 33-7288 (May 9, 1996), 61 SEC Docket 18, and the first interpretive release, Release No. 33-7233, (Oct. 6, 1995), 60 SEC Docket 8.

<sup>154</sup>Release No. 33-7289 (May 9, 1996), 61 SEC Docket 18.

<sup>155</sup>Release No. 33-7285 (May 9, 1996), 61 SEC Docket 17.

<sup>156</sup>Release No. 34-37157 (May 9, 1996), 61 SEC Docket 17.

<sup>157</sup>Release No. 34-37260 (May 31, 1996), 62 SEC Docket 2.

<sup>158</sup>Release No. 33-7326 (Aug. 30, 1996), 62 SEC Docket 15.

<sup>159</sup>Release No. 33-7250 (Dec. 28, 1995), 60 SEC Docket 19.

<sup>160</sup>Release No. 33-7280 (Apr. 9, 1996), 61 SEC Docket 14.

<sup>161</sup>Release No. 34-37801 (Oct. 10, 1996), 62 SEC Docket 20.

<sup>162</sup>Release No. 33-7355 (Oct. 8, 1996), 62 SEC Docket 20.

<sup>163</sup>Release No. 33-7356 (Oct. 10, 1996), 62 SEC Docket 20.

<sup>164</sup>Release No. 33-7300 (May 31, 1996), 62 SEC Docket 0096.

<sup>165</sup>Release No. 33-7250 (Dec. 28, 1995), 60 SEC Docket 3011.

<sup>166</sup>Staff Accounting Bulletin No. 96 (Mar. 19, 1996), 61 SEC Docket 1731.

<sup>167</sup>Staff Accounting Bulletin No. 97 (July 31, 1996), 62 SEC Docket 1299.

<sup>168</sup>Proposed Statement of Financial Accounting Standards, "Reporting Disaggregated Information About a Business Enterprise" (Jan. 19, 1996).

<sup>169</sup>Proposed Statement of Financial Accounting Standards, "Earnings Per Share and Disclosure of Information About Capital Structure" (Jan. 19, 1996).

<sup>170</sup>Proposed Statement of Financial Accounting Standards, "Accounting for Derivative and Similar Financial Instruments and for Hedging Activities" (June 20, 1996).

<sup>171</sup>Proposed Statement of Financial Accounting Standards, "Reporting Comprehensive Income" (June 20, 1996).

<sup>172</sup>Statement of Financial Accounting Standards No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" (June 1996).

<sup>173</sup>Proposed Statement of Financial Accounting Standards, "Accounting for Certain Liabilities Relating to Closure or Removal of Long-lived Assets" (Feb. 1996).

<sup>174</sup>Proposed Statement on Auditing Standards, "Consideration of Fraud in a Financial Statement of Audit" (May 1, 1996).

<sup>175</sup>Statement of Position 96-1, "Environmental Remediation Liabilities" (Oct. 10, 1996).

<sup>176</sup>IAS 12 (revised 1996), Income Taxes (Oct. 1996).

<sup>177</sup>International Accounting Standards Committee, Exposure Draft E51, Reporting Financial Information by Segment (Dec. 1995).

<sup>178</sup>International Accounting Standards Committee, Exposure Draft E52, Earnings Per Share (Jan. 1996)

<sup>179</sup>International Accounting Standards Committee, Exposure Draft E53, Presentation of Financial Statements (July 1996).

<sup>180</sup>International Accounting Standards Committee, Exposure Draft E54, Employee Benefits (Oct. 1996).

<sup>181</sup>No. 94-16136 (9th Cir. 1996).

<sup>182</sup>58 F.3d 933 (4th Cir. 1995).

<sup>183</sup>92 F.3d 612 (8th Cir. 1996).

<sup>184</sup>87 F.3d 536 (D.C. Cir. 1996).

<sup>185</sup>Nos. 95-6192 and 95-6194 (2d Cir.).

<sup>186</sup>Nos. 94-1844 and 94-1845 (3d Cir.).

<sup>187</sup>No. 94-16136 (9th Cir. 1996).

<sup>188</sup>95 F.3d 821 (9th Cir. 1996).

<sup>189</sup>58 F.3d 484 (D.C. Cir. 1996).

<sup>190</sup>92 F.3d 612 (8th Cir. 1996).

<sup>191</sup>87 F.3d 536 (D.C. Cir. 1996).

<sup>192</sup>87 F.3d 484 (D.C. Cir. 1996).

<sup>193</sup>83 F.3d 132 (6th Cir. 1996).

<sup>194</sup>75 F.3d 92 (2d Cir. 1996).

<sup>195</sup>116 S. Ct. 1351 (1996).

<sup>196</sup>No. 96-1052 (D.C. Cir.).

<sup>197</sup>Nos. 95-55747 and 95-56467 (9th Cir.).

<sup>198</sup>*Berliner Zisser Walter & Gallegos v. SEC*, No. 95-D-94 (D. Colo.).

<sup>199</sup>*Parsons v. SEC*, No. C-2-96-0001, Slip Op. (S.D. Ohio Sept. 6, 1996).

<sup>200</sup>*SEC v. Worthen*, 1996 WL 593538 (9th Cir. Oct. 17, 1996).

<sup>201</sup>*Colello and Romano v. SEC*, 908 F. Supp. 738 (C.D. Cal. 1995).

<sup>202</sup>*Colello and Romano v. SEC*, No. 94-6022, Slip Op. (C.D. Cal. Oct. 24, 1996).

<sup>203</sup>*Hunter v. SEC*, No. 94-5340, Slip Op. (E.D. Pa. Sept. 26, 1996).

<sup>204</sup>*SEC v. Krause*, No. 96-15810 (9th Cir. May 20, 1996); *SEC v. RNR Enterprises, Inc.*, No. 96-6237 (2d Cir. Sept. 23, 1996); *SEC v. B.M.C. Enterprises, Inc.*, No. 96-55464 (9th Cir. Apr. 12, 1996).

<sup>205</sup>*Law Practice of J.B. Grossman, P.A. v. SEC*, 117 S. Ct. 53 (1996).

<sup>206</sup>*Consolidated Investment Services, Inc.*, Release No. 34-36687 (Jan. 5, 1996), 61 SEC Docket 20.

<sup>207</sup>*Franklin N. Wolf, James H. Petrantis, and Richard T. Sullivan*, Release No. 34-36523 (Nov. 29, 1995), 60 SEC Docket 2417.

<sup>208</sup>*Ivan D. Jones, Jr.*, Release No. 34-36355 (Oct. 10, 1995), 60 SEC Docket 1377, *appeal filed*, No. 95-3119 (4th Cir.).

<sup>209</sup>*Thomas C. Kocherhans*, Release No. 34-36556 (Dec. 6, 1995), 60 SEC Docket 2589.

<sup>210</sup>*Ralph Joseph Presutti*, Release No. 34-37351 (June 24, 1996), 62 SEC Docket 527.

<sup>211</sup>*Strategic Resource Management, Inc.*, Release No. 34-36618 (Dec. 21, 1995), 60 SEC Docket 2902.

<sup>212</sup>*Kevin B. Waide*, 50 S.E.C. 932 (1992).

<sup>213</sup>*Frank L. Palumbo, Salvatore A. Venezia and Sandra Solomon Venezia*, Release No. 34-36427 (Oct. 26, 1995), 60 SEC Docket 1736.

<sup>214</sup>*In County of Orange*, No. 94-22272-JR (Bankr. C.D. CA).

<sup>215</sup>*In re Hamburger Hamlet Restaurants, Inc.*, Case No. SV 95-19654-GM (Bankr. C.D. CA).

<sup>216</sup>*In re Edison Brothers Stores, Inc.*, No. 96-177 (SLR) (D DE).

<sup>217</sup>*In re Sizzler Restaurants International, Inc.*, Case No. SV 96-16076-AG (Bankr. C.D. CA); *In re Neostar Retail Group, Inc.*, Case No. 396-36648-SAF-11 (Bankr. N.D. TX); *In re Brendle's Inc.*, Case No. 96-50495-C-11W (Bankr. M.D. N.C.).

<sup>218</sup>*In re WRT Energy Corp.*, Case No. 96BK-50212 (Bankr. W.D. LA).

<sup>219</sup>*In re Baldwin Builders*, Nos. ND 95-13057 RR and ND 95-13058 RR (Bankr. C.D. CA).

<sup>220</sup>*In re NVF Company*, Case No. 93-1020 (Bankr. D. DE).

<sup>221</sup>*In re Automotive Credit Finance, Inc.*, Case No. 395-34981 RCM-11 (Bankr. N.D. TX); *In re North Atlantic Technologies, Inc.*, Case No. 96-30526 (Bankr. D. MN); *In re St. Louis Leasing Corp.* No. 96-40001-293 (Bankr. E.D. MO); *In re Sybaris Clubs Int'l, Inc.*, Case No. 94-B-16498

(Bankr. N.D. IL); *In re Rexon, Inc.*, Case No. 95-19439 CEM (Bankr. D. CO).

<sup>222</sup>*In re Americare International, Inc.*, Case No. 95-00787-881 (Bankr. M.D. FL)

<sup>223</sup>*In re Micro Security Systems, Inc.*, Case No. 94B-23643 (Bankr. D. Utah).

<sup>224</sup>*In re Bilzerian*, No. 96-513-CIV-T-23B (M.D. FL).

<sup>225</sup>*In re ACI-HDT Supply Company*, Case No. 95-08253-A11 (Bankr. S.D. CA).

<sup>226</sup>*In re Tedlock Cattle Company*, 552 F.2d 1351 (9th Cir. 1977).

<sup>227</sup>*In re Hibbard Brown & Co., Inc.*, Case No. 94 B 44809 (CB) (Bankr. S.D. N.Y.).

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**Table 1**  
**ENFORCEMENT CASES INITIATED BY THE COMMISSION**  
**DURING FISCAL YEAR 1996 IN VARIOUS PROGRAM AREAS**

(Each case initiated has been included in only one category listed below, even though many cases involve multiple allegations and may fall under more than one category.  
The number of defendants and respondents is noted parenthetically.)

Program Area in Which a Civil Action or Administrative Proceeding Was Initiated	Civil Actions 1/	Administrative Proceedings	Total	% of Total Cases
<b>Securities Offering Cases</b>				
(a) Non-regulated Entity	51 (201)	17 ( 26)	68 (227)	
(b) Regulated Entity	25 ( 87)	34 ( 55)	59 (142)	
<b>Total Securities Offering Cases</b>	<b>76 (288)</b>	<b>51 ( 81)</b>	<b>127 (369)</b>	<b>28%</b>
<b>Broker-dealer Cases</b>				
(a) Fraud Against Customer	18 ( 60)	43 ( 60)	61 (120)	
(b) Failure to Supervise	0 ( 0)	17 ( 22)	17 ( 22)	
(c) Government Securities	2 ( 2)	3 ( 4)	5 ( 6)	
(d) Books & Records	2 ( 2)	8 ( 11)	10 ( 13)	
(e) Other	0 ( 0)	7 ( 8)	7 ( 8)	
<b>Total Broker-dealer Cases</b>	<b>22 ( 64)</b>	<b>78 (105)</b>	<b>100 (169)</b>	<b>22%</b>
<b>Issuer Financial Statement and Reporting Cases</b>				
(a) Issuer Financial Disclosure	23 ( 76)	49 ( 71)	72 (147)	
(b) Issuer Reporting Other	3 ( 4)	1 ( 1)	4 ( 5)	
<b>Total Issuer Financial Statement and Reporting Cases</b>	<b>26 ( 80)</b>	<b>50 ( 72)</b>	<b>76 (152)</b>	<b>17%</b>
<b>Other Regulated Entity Cases</b>				
(a) Investment Advisers	8 ( 21)	34 ( 47)	42 ( 68)	
(b) Investment Companies	2 ( 4)	4 ( 5)	6 ( 9)	
(c) Transfer Agent	0 ( 0)	1 ( 1)	1 ( 1)	
(d) SROs	0 ( 0)	2 ( 2)	2 ( 2)	
<b>Total Other Regulated Entity Cases</b>	<b>10 ( 25)</b>	<b>41 ( 55)</b>	<b>51 ( 80)</b>	<b>11%</b>
<b>Contempt Proceedings</b>	<b>32 ( 47)</b>	<b>0 ( 0)</b>	<b>32 ( 47)</b>	<b>7%</b>
<b>Insider Trading Cases</b>	<b>29 ( 92)</b>	<b>0 ( 0)</b>	<b>29 ( 92)</b>	<b>6%</b>
<b>Delinquent Filings</b>				
(a) Issuer Reporting	5 ( 4)	1 ( 1)	6 ( 5)	
(b) Forms 3/4/5	2 ( 5)	7 ( 11)	9 ( 16)	
<b>Total Delinquent Filings Cases</b>	<b>7 ( 9)</b>	<b>8 ( 12)</b>	<b>15 ( 21)</b>	<b>3%</b>
<b>Market Manipulation Cases</b>	<b>4 ( 13)</b>	<b>7 ( 15)</b>	<b>11 ( 28)</b>	<b>2%</b>
<b>Fraud Against Regulated Entities</b>	<b>3 ( 10)</b>	<b>1 ( 1)</b>	<b>4 ( 11)</b>	<b>1%</b>
<b>Corporate Control Cases</b>	<b>0 ( 0)</b>	<b>3 ( 3)</b>	<b>3 ( 3)</b>	<b>1%</b>
<b>Miscellaneous Disclosure/ Reporting</b>	<b>3 ( 7)</b>	<b>2 ( 2)</b>	<b>5 ( 9)</b>	<b>1%</b>
<b>GRAND TOTAL</b>	<b>212 (635)</b>	<b>241 (346)</b>	<b>453 (981)</b>	<b>100%</b>

1/ This category includes injunctive actions and civil and criminal contempt proceedings

**Table 2**  
**FISCAL 1996 ENFORCEMENT CASES**  
**LISTED BY PROGRAM AREA**

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<b>Broker-Dealer: Books &amp; Records</b>		
<i>In the Matter of Orlando Joseph Jett</i>	34-36696	01/09/96
<i>In the Matter of James S. Small</i>	34-36829	02/12/96
<i>In the Matter of Robert J. Dantone</i>	34-3753	08/06/96
<i>SEC v. Linda M. King</i>	LR-15054	09/09/96
<i>In the Matter of Moors &amp; Cabot, Inc.</i>	34-37720	09/24/96
<i>SEC v. James W. Adams</i>	LR-15118	09/30/96
<i>In the Matter of Robert O. Glau</i>	34-36438	10/31/95
<i>In the Matter of Monte S. Colbert, CPA</i>	AAER 835	09/30/96
<i>In the Matter of Philip Greifeld, CPA</i>	AAER 836	09/30/96
<i>In the Matter of Flagship Securities., Inc.</i>	34-37065	04/04/96
<i>In the Matter of The O.N. Equities Sales Co.</i>	34-37755	09/30/96
<i>In the Matter of William V. Giordano</i>	34-36742	01/19/96
<i>In the Matter of The Robinson-Humphrey Co., Inc.</i>	34-36773	01/25/96
<i>In the Matter of F. Otto Busot</i>	34-37660	09/09/96
<i>In the Matter of Lehman Brothers Inc.</i>	34-37673	09/12/96
<i>In the Matter of Edward A. Cerullo</i>	34-36695	01/09/96
<i>In the Matter of Michael Zaccaro</i>	34-36703	01/11/96
<i>In the Matter of Westcap Securities, L.P.</i>	34-36845	02/14/96
<i>In the Matter of Dickinson &amp; Co.</i>	34-36338	10/05/95
<i>In the Matter of James Warren</i>	34-37715	09/24/96
<i>In the Matter of Fahnestock &amp; Co., Inc.</i>	34-37754	09/30/96
<i>In the Matter of James Thornton</i>	34-37477	07/25/96
<i>In the Matter of Howe Barnes Investments Inc.</i>	34-37707	09/23/96
<i>In the Matter of Patricia Ann Bellows</i>	34-36854	02/16/96
<i>In the Matter of Philadelphia Inv. Ltd.</i>	34-37743	09/27/96
<i>In the Matter of Sandra Logay</i>	34-36929	03/06/96
<i>In the Matter of Quest Capital Strategies, Inc.</i>	34-36909	02/29/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>In the Matter of Stanley L. Swoyer</i>	34-37709	09/23/96
<i>In the Matter of Richardt-Alyn &amp; Co.</i>	34-37727	09/26/96
<i>SEC v. Atlantic Capital Corp.</i>	LR-15082	09/27/96
<i>SEC v. Robert C. Wilson</i>	LR-14761	12/20/95
<i>In the Matter of James M. Hatfield</i>	34-36502	11/22/95
<i>In the Matter of Stephen J. Kandel</i>	34-37483	07/26/96
<i>In the Matter of Frank Duca</i>	34-37544	08/08/96
<i>SEC v. Gruntal &amp; Co., Inc.</i>	LR-14865	04/09/96
<i>In the Matter of A.R. Baron &amp; Co., Inc.</i>	34-37240	05/23/96
<i>In the Matter of Al Rizek</i>	34-37422	07/11/96
<i>SEC v. Kimberly D. Goodman</i>	LR-15005	08/06/96
<i>In the Matter of Robert Gilbert</i>	34-37662	09/09/96
<i>In the Matter of Painewebber, Inc.</i>	34-36724	01/17/96
<i>SEC v. Wayne T. Drinkwine</i>	LR-14781	01/16/96
<i>SEC v. James Zimmerman</i>	LR-15029	08/28/96
<i>In the Matter of David Arnold</i>	34-36870	02/22/96
<i>In the Matter of Frederick C. Gartz</i>	34-37556	08/12/96
<i>In the Matter of David G. Batu</i>	34-37722	09/25/96
<i>In the Matter of Jeffrey L. Dunn</i>	34-37723	09/25/96
<i>SEC v. Peter Tosto</i>	34-37734	09/26/96
<i>In the Matter of Seth R. Roberts</i>	34-36978	03/15/96
<i>In the Matter of Bernard Zelenka</i>	34-37760	09/30/96
<i>In the Matter of George R. Johnston</i>	34-36614	12/20/95
<i>In the Matter of John L. Fauls, III</i>	34-36838	02/13/96
<i>SEC v. Richard J. Line</i>	LR-14994	07/30/96
<i>In the Matter of Kenneth J. Schulte</i>	34-37494	07/30/96
<i>In the Matter of Mitchell A. Vazquez</i>	AAER 766	02/29/96
<i>SEC v. Peter M. Harrington</i>	LR-14812	02/02/96
<i>In the Matter of Robert M. Simpson</i>	34-36928	03/06/96
<i>In the Matter of Gruntal &amp; Co., Inc.</i>	AAER 771	04/09/96
<i>SEC v. Michael Anthony Pierce</i>	LR-14855	03/21/96
<i>In the Matter of Michael G. Cohen</i>	34-37742	09/27/96
<i>In the Matter of Monness, Crespi, Hardt &amp; Co., Inc.</i>	34-37712	09/23/96
<i>In the Matter of Alfred M. Bauer</i>	34-37386	06/28/96
<i>SEC v. Stanley J. Feminella</i>	LR-14786	01/18/96

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<i>In the Matter of Richard J. Line</i>	34-37764	09/30/96
<i>In the Matter of Craig I. Deitchman</i>	34-37325	06/19/96
<i>SEC v. Craig I. Deitchman</i>	LR-14879	04/16/96
<i>SEC v. James Russell Cleveland</i>	LR-14919	05/22/96
<i>In the Matter of Kimberly D. Goodman</i>	34-37710	09/23/96
<i>SEC v. Joseph Brooks</i>	LR-14971	06/27/96
<i>In the Matter of Robert E. Lindley</i>	34-36599	12/18/95
<i>In the Matter of Valerie Jensen</i>	34-36600	12/18/95
<i>In the Matter of Gary S. Missner</i>	AAER 791	06/11/96
<i>In the Matter of P. Michael Goodman</i>	34-37111	01/18/96
<i>In the Matter of John S. Griffin</i>	34-36872	02/22/96
<i>SEC v. Penn Capital Financial Services, Inc.</i>	LR-14676	10/02/95
<i>SEC v. Edward F. Bao</i>	LR-14865	04/09/96
<i>In the Matter of Michael J. Randy</i>	34-36735	01/18/96
<i>In the Matter of Linda J. Bustin</i>	34-37129	04/19/96
<i>In the Matter of Kevin Bartholomew</i>	34-37153	04/30/96
<i>In the Matter of George J. Conway</i>	34-37063	01/18/96
<i>SEC v. Frank Duca</i>	LR-14709	11/02/95
<i>In the Matter of William F. Lincoln</i>	34-37168	05/06/96
<i>In the Matter of Michael J. Eberle</i>	34-37340	06/20/96
<i>In the Matter of Daniel L. Osborn</i>	34-36642	12/27/95
<i>SEC v. Selheimer &amp; Co.</i>	LR-15070	09/24/96
<i>In the Matter of Wendell Jeffrey Lee</i>	34-37247	05/28/96
<i>SEC v. Thomas J. Fox</i>	LR-15067	09/24/96
<i>In the Matter of Benjamin Rex Moses</i>	34-37286	06/07/96
<i>In the Matter of Fu-sung Peter Wu</i>	34-37300	06/11/96
<i>In the Matter of First Fidelity Securities Group</i>	34-36694	01/09/96
<i>SEC v. Richard T. Taylor</i>	LR-15077	09/26/96
<i>SEC v. Fenchurch Capital Management Corp.</i>	LR-14977	07/10/96
<i>In the Matter of Lazard Freres &amp; Co., LLC</i>	34-36419	10/26/95

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<i>In the Matter of FAIC Securities Inc.</i>	34-36937	03/07/96
<i>In the Matter of Bradford P. Gillingham</i>	34-36679	01/04/96
<i>In the Matter of Greenway Capital Corp.</i>	34-37254	05/30/96
<i>In the Matter of Jon Edelman</i>	34-36847	02/14/96
<i>In the Matter of Bankers Pension Services Inc.</i>	34-37567	08/14/96
<i>In the Matter of Patrick J. Doherty</i>	34-36839	02/13/96
<i>In the Matter of Lewco Securities Corp.</i>	34-36334	10/04/95

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<i>In the Matter of Transcorp Pensions Services Inc.</i>	34-37278	06/04/96
<i>SEC v. Pamela Woods</i>	NONE	08/19/96
<i>SEC v. Philip Snyder</i>	NONE	08/19/96
<i>SEC v. Oscar Olson</i>	NONE	05/08/96
<i>SEC v. Gene Block</i>	NONE	10/23/95
<i>SEC v. Jerry J. Fraschilla</i>	NONE	10/18/95
<i>SEC v. Yaska Ginsberg</i>	NONE	04/24/96
<i>SEC v. Vision Communications, Inc.</i>	NONE	06/07/96
<i>SEC v. Sarah Delaney</i>	NONE	01/08/96
<i>SEC v. Eugene Konev</i>	34-37137	03/25/96
<i>SEC v. Geoffrey Paul Adams</i>	NONE	04/29/96
<i>SEC v. Michael J. Randy</i>	LR-15050	08/29/96
<i>SEC v. Alexander C. Fuentes</i>	NONE	05/20/96
<i>SEC v. Michael Schouman</i>	NONE	10/02/95
<i>SEC v. Sarah Delaney</i>	LR-14871	04/05/96
<i>SEC v. Carroll E. Siemens</i>	LR-14824	02/16/96
<i>SEC v. Michael J. Colello</i>	LR-14728	11/20/95
<i>SEC v. Michael J. Colello</i>	LR-14887	04/12/96
<i>SEC v. Renate Haag</i>	LR-14828	12/11/95
<i>SEC v. O'Neill, Lysaght &amp; Sun</i>	LR-14763	12/13/95
<i>SEC v. Jeffrey L. Casperson</i>	NONE	01/12/96
<i>SEC v. Raymond C. Gross</i>	LR-14968	06/28/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>SEC v. Gateways to Space, Inc.</i>	NONE	08/16/96
<i>SEC v. Gerard A. Spataro</i>	LR-15086	08/16/96
<i>SEC v. Kupchinsky</i>	NONE	12/01/96
<i>SEC v. Harvey P. Tabb</i>	LR-14974	06/28/96
<i>SEC v. Owen R. Fox</i>	LR-14715	11/08/95
<i>SEC v. Henry Don Jeffries</i>	NONE	09/19/96
<i>SEC v. Melvin H. Cox</i>	NONE	08/13/96
<i>SEC v. Hochman</i>	NONE	12/01/96
<i>SEC v. Vista Communications Inc.</i>	NONE	06/07/96
<i>SEC v. Danny Sterk</i>	LR-15089	08/06/96
<i>SEC v. H. Ralph Sylvester</i>	LR-15050	08/29/96

### **Corporate Control**

<i>In the Matter of Michael N. Karp, Esquire</i>	34-36664	12/29/95
<i>In the Matter of Edward F. Duffy, Esquire</i>	34-36663	12/29/95
<i>In the Matter of Carolyn Safer Kenner</i>	AAER 829	09/27/96

### **Delinquent Filings: Forms 3, 4 & 5**

<i>In the Matter of Stephen J. Sogin</i>	34-37766	09/30/96
<i>In the Matter of Neil J. Colvin</i>	34-37408	07/08/96
<i>In the Matter of Robert D. Carl, III</i>	34-36678	01/04/96
<i>In the Matter of Food Research Corp.</i>	34-37641	09/05/96
<i>In the Matter of Montgomery Medical Ventures, L.P.</i>	34-37352	06/24/96
<i>In the Matter of Richard D. Propper</i>	34-37354	06/24/96
<i>SEC v. Robert D. Carl, III</i>	LR-14774	01/04/96
<i>SEC v. Montgomery Medical Ventures L.P.</i>	LR-14959	06/24/96
<i>In the Matter of Jack Olshasky</i>	34-37353	06/24/96

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<b>Delinquent Filings: Issuer Reporting</b>		
<i>SEC v. Wincanton Corp.</i>	LR-15052	09/17/96
<i>SEC v. American Cascade Energy Inc.</i>	LR-14857	03/29/96
<i>SEC v. Equity AU Inc.</i>	LR-14993	07/30/96
<i>In the Matter of Republic International Corp.</i>	34-37741	09/27/96
<i>SEC v. Parallel Technologies Inc.</i>	LR-14848	03/19/96
<i>SEC v. Cayman Resources Corp.</i>	LR-14894	04/26/96
<b>Fraud Against Regulated Entities</b>		
<i>SEC v. William P. Dillon</i>	LR-14950	06/19/96
<i>In the Matter of David Lee Printy</i>	34-37468	07/23/96
<i>SEC v. Ronald C. Black</i>	LR-14691	10/16/95
<i>SEC v. Jury Matt Hansen</i>	LR-14699	10/25/95
<b>Insider Trading</b>		
<i>SEC v. Roger D. Wyatt</i>	LR-15002	08/05/96
<i>SEC v. Kathleen Lane</i>	LR-14906	05/09/96
<i>SEC v. Edward Warren Eizman</i>	LR-14891	04/25/96
<i>SEC v. Nir Kantor</i>	LR-14923	05/29/96
<i>SEC v. Joseph J. Evans</i>	LR-14767	12/27/95
<i>SEC v. Roseann Martucci</i>	LR-14890	04/25/96
<i>SEC v. Andrea Fiabane</i>	LR-15010	08/12/96
<i>SEC v. John P. O'Grady</i>	LR-14870	04/11/96
<i>SEC v. Charles Brumfield</i>	LR-14706	10/31/95
<i>SEC v. Michael P. Angelos</i>	LR-14850	03/20/96
<i>SEC v. Casey Abe</i>	LR-15100	09/30/96
<i>SEC v. Donald John Tyson</i>	LR-15062	09/23/96
<i>SEC v. Duracell International Inc.</i>	LR-15045	09/16/96
<i>SEC v. Abul Bhuiyan</i>	LR-15033	09/05/96
<i>SEC v. The Hallwood Group</i>	LR-14986	07/22/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>SEC v. Mary Ann Shank</i>	LR-15040	09/12/96
<i>SEC v. William J. Rauwerdink</i>	LR-14731	11/27/95
<i>SEC v. Harold Fitzgerald Lenfest</i>	LR-14747	12/06/95
<i>SEC v. Linda Lou Taylor</i>	LR-14775	01/04/96
<i>SEC v. Mervyn Cooper</i>	LR-14754	12/11/95
<i>SEC v. Richard G. Marcus</i>	LR-14843	02/27/96
<i>SEC v. Donald C. Ferguson</i>	LR-14843	03/12/96
<i>SEC v. Michael G. Sargent</i>	LR-14854	03/25/96
<i>SEC v. Nabeeh I. Totah</i>	LR-14752	12/11/95
<i>SEC v. CBI Industries Inc.</i>	LR-14721	11/14/95
<i>SEC v. John A. Prevost</i>	LR-14989	07/19/96
<i>SEC v. Hugo Aldo Sallustro</i>	LR-14982	07/18/96
<i>SEC v. Timothy J. Moriarty</i>	LR-14933	06/06/96
<i>SEC v. James M. League, Jr.</i>	LR-14932	06/06/96

## Investment Adviser

<i>In the Matter of Robert K. Williams</i>	34-37231	05/21/96
<i>In the Matter of McKenzie Walker Investment Management, Inc.</i>	IA-1571	07/16/96
<i>In the Matter of Jay DeForest Moore</i>	IA-1548	01/19/96
<i>In the Matter of Ronald M. Zook</i>	IA-1576	08/08/96
<i>SEC v. Gary L. Hamby</i>	LR-15030	08/30/96
<i>In the Matter of IMS/CPAs &amp; Associates</i>	APR-520	07/11/96
<i>In the Matter of Portfolio Management Consultants Inc.</i>	34-37376	06/27/96
<i>In the Matter of James A. Pearce</i>	34-36608	12/20/95
<i>In the Matter of Michael C. Robertson</i>	34-37729	09/26/96
<i>In the Matter of Steen Ronlov</i>	IA-1544	12/28/95
<i>In the Matter of Frederick V. Dona, Jr.</i>	34-37758	09/30/96
<i>In the Matter of Tudor Investment Corp.</i>	34-37669	09/12/96
<i>In the Matter of Leroy S. Brenna</i>	IA-1553	02/22/96
<i>SEC v. Seaboard Investment Advisers, Inc.</i>	LR-15092	09/30/96

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<i>SEC v. Benjamin Franklin Bush, III</i>	LR-15101	09/25/96
<i>In the Matter of Douglas L. Blair</i>	IA-1574	08/06/96
<i>In the Matter of Refco Securities Inc.</i>	34-37531	08/06/96
<i>In the Matter of Wayne A. Maki</i>	IA-1572	07/26/96
<i>In the Matter of John Francis D'Acquisto</i>	IA-1541	12/18/95
<i>SEC v. William Barney Thomas</i>	LR-15080	09/26/96
<i>In the Matter of Ira William Scott</i>	IA-1582	09/27/96
<i>In the Matter of Charles Russell Williams</i>	IA-1551	02/14/96
<i>In the Matter of S Squared Technology Corporation</i>	IA-1575	08/07/96
<i>In the Matter of Joseph Edwin Giewartowski</i>	IA-1546	01/16/96
<i>SEC v. Tudor Investment Corp.</i>	LR-15038	09/12/96
<i>SEC v. Randall E. Bradbury</i>	LR-14908	05/13/96
<i>In the Matter of Gerald Johnson</i>	34-37737	09/27/96
<i>In the Matter of C&amp;G Asset Management Inc.</i>	IA-1536	11/09/95
<i>In the Matter of Patricia Owen-Michel</i>	IA-1584	09/27/96
<i>In the Matter of The Feldman Investment Group, Inc.</i>	IA-1538	11/27/95
<i>In the Matter of John J. Kaweske</i>	34-36518	11/27/95
<i>In the Matter of Concord Investment Co.</i>	IA-1585	09/27/96
<i>SEC v. Donald Malcolm Johnson</i>	LR-14807	01/18/96
<i>In the Matter of Cabot Money Management Inc.</i>	34-37573	08/15/96
<i>In the Matter of Keypoint Financial Corp.</i>	IA-1534	11/06/95
<i>In the Matter of Gruntal &amp; Co., Inc.</i>	34-37084	04/09/96
<i>In the Matter of Marc N. Geman</i>	34-37375	06/27/96
<i>SEC v. Tandem Management Inc.</i>	LR-14670	10/02/95
<i>In the Matter of Brian Jeffrey Sheen</i>	IA-1533	10/31/95
<i>In the Matter of Investors Income Systems of Florida Inc.</i>	IA-1547	01/16/96
<i>In the Matter of Vigil Asset Management Corp., Inc.</i>	IA-1588	09/30/96
<i>In the Matter of Domenic P. Ferrante</i>	34-37763	09/30/96
<i>In the Matter of Anthony J. Negus</i>	34-36749	01/22/96

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<b>Investment Company</b>		
<i>SEC v. Duane V. Midgley</i>	AAER 815	09/16/96
<i>SEC v. Geoffrey Paul Adams</i>	LR-14806	01/30/96
<i>In the Matter of Vector Index</i>	IA-1569	07/08/96
<i>In the Matter of David F. Smith</i>	34-37018	03/25/96
<i>In the Matter of Becky A. Swantson</i>	34-37019	03/25/96
<b>Issuer Financial Disclosure</b>		
<i>In the Matter of Maricopa County Arizona</i>	34-37748	09/30/96
<i>In the Matter of Calvin Shenkir, Jr.</i>	AAER 734	10/31/95
<i>SEC v. Americare International Inc.</i>	LR-14964	06/24/96
<i>In the Matter of Gerald M. Kudler</i>	AAER 740	12/18/95
<i>In the Matter of 3Net Systems Inc.</i>	AAER 833	09/30/96
<i>In the Matter of Advanced Medical Products, Inc.</i>	AAER 812	09/05/96
<i>In the Matter of M. Susan Soltis, CPA</i>	AAER 782	05/10/96
<i>SEC v. Edmund J. Lopinski, Jr.</i>	LR-14773	12/22/95
<i>In the Matter of Atlantis Group Inc.</i>	34-37749	09/30/96
<i>SEC v. Kendall Square Research Corp.</i>	AAER 777	04/29/96
<i>In the Matter of Milton Mermelstein</i>	AAER 783	05/16/96
<i>SEC v. International Communications &amp; Technologies Corp.</i>	AAER 800	07/03/96
<i>In the Matter of Thomas J. MacCormack</i>	AAER 776	04/29/96
<i>SEC v. Michael W. Crow</i>	LR-15071	09/24/96
<i>SEC v. Jerald Beagelman</i>	AAER 807	08/06/96
<i>In the Matter of The County of Orange California</i>	34-36761	01/24/96
<i>SEC v. Healthcare Services Group, Inc.</i>	AAER 823	09/24/96
<i>In the Matter of Wilshire Technologies, Inc.</i>	AAER 821	09/24/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>SEC v. Pierce Lowrey, Jr.</i>	AAER 738	12/05/95
<i>SEC v. Surendra Gupta</i>	LR-15097	09/30/96
<i>In the Matter of Urohealth System, Inc.</i>	34-36560	12/07/95
<i>SEC v. Robert L. "Bob" Citron</i>	LR-14792	01/24/96
<i>SEC v. Bollinger Industries Inc.</i>	AAER 834	09/30/96
<i>In the Matter of William W. Krueger, CPA</i>	AAER 748	01/03/96
<i>In the Matter of Russell Ponce</i>	AAER 759	02/13/96
<i>In the Matter of Fernando Cappuccio</i>	AAER 745	01/03/96
<i>In the Matter of Florio Fiorini</i>	AAER 744	01/03/96
<i>SEC v. Ronald A. Romito</i>	AAER 750	12/19/95
<i>In the Matter of Advanced Micro Devices, Inc.</i>	34-37730	09/26/96
<i>In the Matter of Octagon, Inc.</i>	34-37762	09/30/96
<i>In the Matter of Morris F. Baughman, CPA</i>	AAER 784	05/23/96
<i>In the Matter of William E. Moody, Jr.</i>	AAER 751	01/11/96
<i>In the Matter of American Aircraft Corp.</i>	AAER 752	01/11/96
<i>In the Matter of the County of Orange California</i>	34-36760	01/24/96
<i>SEC v. The AppleTree Companies, Inc.</i>	AAER 840	09/30/96
<i>In the Matter of Cypress Bioscience Inc.</i>	AAER 817	09/19/96
<i>SEC v. Gordon L. Hall</i>	AAER 830	09/26/96
<i>In the Matter of Robert McClernon, CPA</i>	AAER 820	09/24/96
<i>In the Matter of Gary E. Stern, CPA</i>	AAER 732	10/17/95
<i>In the Matter of Stanley Goodman</i>	34-36591	12/14/95
<i>In the Matter of Eli Buchalter, CPA</i>	AAER 818	09/19/96
<i>In the Matter of Everlast Filtration Corp.</i>	AAER 736	11/06/95
<i>In the Matter of Frederick W. Smith, CPA</i>	AAER 828	09/27/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>In the Matter of Gibson Greetings, Inc.</i>	AAER 730	10/11/95
<i>In the Matter of Peter C. Ferraro, CPA</i>	AAER 804	07/24/96
<i>In the Matter of Louis R. Weiss</i>	AAER 768	03/11/96
<i>In the Matter of John M. Goldberger</i>	AAER 767	03/05/96
<i>In the Matter Rom N. DeGuzman, CPA</i>	AAER 831	09/30/96
<i>In the Matter of Lawrence M. Gress</i>	AAER 832	09/30/96
<i>In the Matter of Diagnostek Inc.</i>	AAER 762	02/23/96
<i>In the Matter of Ronald A. Romito, CPA</i>	AAER 757	02/01/96
<i>In the Matter of Mark S. Tague, CPA</i>	AAER 788	06/03/96
<i>In the Matter of Jon R. Erickson, CPA</i>	AAER 787	06/03/96
<i>In the Matter of David Sims</i>	AAER 741	12/27/95
<i>In the Matter of Bernard H. Levy, CPA</i>	AAER 770	03/29/96
<i>In the Matter of Sulcus Computer Corp.</i>	AAER 778	05/02/96
<i>In the Matter of Platinum Software Corp.</i>	AAER 781	05/09/96
<i>In the Matter of Centuri Inc.</i>	AAER 775	04/19/96
<i>In the Matter of Charles W. Wallin, CPA</i>	AAER 774	04/19/96
<i>SEC v. Earl V. Young</i>	LR-14981	07/16/96
<i>SEC v. Comparator Systems Corp.</i>	AAER 786	05/31/96
<i>SEC v. McDonnell Douglas Corp.</i>	AAER 797	06/24/96
<i>SEC v. Gerald R. Blackie</i>	AAER 780	05/09/96
<i>SEC v. Stephen R. B. Bingham</i>	AAER 773	04/16/96
<i>SEC v. Automated Telephone Management Systems Inc.</i>	AAER 735	11/01/95
<i>SEC v. Giancarlo Parretti</i>	AAER 746	01/06/96
<i>In the Matter of Richard A. Knight, CPA</i>	AAER 764	02/27/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>SEC v. Sage Technology Inc.</i>	LR-14818	02/15/96
<i>SEC v. Anthony Sarivola</i>	LR-14704	10/31/95
<i>In the Matter of Anthony Sarivola</i>	34-37768	09/30/96
<i>In the Matter of Hein &amp; Associates</i>	34-37396	07/02/96
<i>In the Matter of Salomon Inc.</i>	AAER 808	08/26/96

### **Issuer Reporting: Other**

<i>SEC v. Victor R. Gomez</i>	LR-14851	03/21/96
<i>In the Matter of Edmund C. Lipinski</i>	AAER 749	01/03/96
<i>SEC v. Jerry B. Silver</i>	LR-15000	08/06/96
<i>SEC v. Tellus Industries Inc.</i>	LR-14877	04/16/96

### **Market Manipulation**

<i>In the Matter of Jeffrey Weissman</i>	34-37661	09/09/96
<i>SEC v. Allan G. Kern</i>	LR-15000	08/06/96
<i>In the Matter of David Anderson</i>	34-37207	05/13/96
<i>In the Matter of Paul Stansberry</i>	34-37698	09/18/96
<i>In the Matter of John Silseth</i>	34-3720	05/13/96
<i>SEC v. Michael Zaman</i>	LR-14947	06/12/96
<i>In the Matter of Robert Sayegh</i>	34-37272	06/04/96
<i>SEC v. John Fiebelkorn</i>	LR-15026	08/14/96
<i>In the Matter of Alexander Sheshunoff, Sr.</i>	34-37419	07/11/96
<i>SEC v. Steven McMichael</i>	LR-14900	05/02/96
<i>In the Matter of Michael J. Eberle</i>	34-37674	06/20/96

### **Miscellaneous Disclosure/Reporting**

<i>SEC v. James S. Faller II</i>	LR-15117	09/30/96
<i>SEC v. Royce Laboratories, Inc.</i>	LR-14902	05/07/96
<i>SEC v. Thomas S. Mackie, Jr.</i>	LR-14732	11/27/95
<i>In the Matter of French American Banking Corp.</i>	34-36333	10/04/95
<i>In the Matter of Continental Capital &amp; Equity Corp.</i>	34-36886	02/26/96

Name of Case

## Release

NumberDate Filed**Offering Violations (By  
Non-Regulated Entities)**

<i>SEC v. Christopher Kent Bagdasarian</i>	AAER 825	09/26/96
<i>In the Matter Douglas W. Osborne</i>	34-37232	05/21/96
<i>SEC v. Gary J. Divall</i>	NONE	08/02/96
<i>SEC v. Henry Don Jeffries</i>	NONE	09/12/96
<i>SEC v. Citi Financial Services</i>	LR-14789	01/18/96
<i>SEC v. James G. Freeman</i>	LR-14970	06/25/96
<i>SEC v. Mary S. Pate</i>	LR-14915	05/15/96
<i>SEC v. Melvin H. Cox</i>	LR-14880	04/01/96
<i>SEC v. American Telecom Interconnect Inc.</i>	LR-14892	04/24/96
<i>SEC v. Dennis Lindsay Helliwell</i>	LR-14816	02/13/96
<i>SEC v. Raejean S. Bonham</i>	LR-14899	04/26/96
<i>SEC v. Thaddeus E. Watley</i>	LR-14896	05/01/96
<i>In the Matter of Raul N. Rodriguez</i>	34-37682	09/16/96
<i>SEC v. Futrex Inc.</i>	LR-15061	09/23/96
<i>SEC v. Smartbox Systems Group, Inc.</i>	LR-14733	11/16/95
<i>SEC v. Express Communications Inc.</i>	LR-14753	12/13/95
<i>SEC v. Gregory Lee Miller</i>	LR-14791	01/23/96
<i>SEC v. Douglas Frankel</i>	LR-14820	02/21/96
<i>SEC v. Lazare Industries Inc.</i>	LR-14893	04/22/96
<i>In the Matter of Carl E. Lovell</i>	34-37108	04/12/96
<i>SEC v. Carl E. Lovell</i>	LR-14873	02/28/96
<i>SEC v. Jetlease/Finance Corp.</i>	LR-14867	04/02/96
<i>SEC v. KS Resources</i>	LR-14766	12/19/95
<i>SEC v. Alexander Charles Fuentes</i>	LR-14860	03/25/96
<i>SEC v. Future Vision Direct Marketing Inc.</i>	LR-14903	05/07/96
<i>SEC v. Investors Dynamics Corp.</i>	LR-14844	03/12/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>In the Matter of Joseph M. Aaron</i>	34-36768	01/25/96
<i>In the Matter of Philip Forma, Sr.</i>	34-37637	09/04/96
<i>SEC v. Aym Financial Corp.</i>	LR-14837	03/06/96
<i>SEC v. Joseph M. Aaron</i>	LR-14796	01/18/96
<i>SEC v. Scorpion Technologies Inc.</i>	AAER 758	02/09/96
<i>SEC v. Robert D. Gersh</i>	LR-14742	11/19/95
<i>SEC v. Douglas R. Damon</i>	LR-14782	12/22/95
<i>In the Matter of Henry P. Becker</i>	34-37299	06/11/96
<i>In the Matter of Melvin H. Takaki</i>	33-7302	05/31/96
<i>SEC v. The Bennett Funding Group, Inc.</i>	AAER 772	03/28/96
<i>In the Matter of Anthony Escobar</i>	34-37584	08/19/96
<i>SEC v. Michael Rosoff</i>	AAER 816	07/19/96
<i>SEC v. Offshore Financial Corp.</i>	LR-15064	09/20/96
<i>SEC v. Daniel R. Morris</i>	LR-14826	12/18/95
<i>SEC v. Robert E. Polansky</i>	AAER 810	09/04/96
<i>In the Matter of Voucher Investment Fund Russ-Invest</i>	IC 21966	05/21/96
<i>In the Matter of William Scott Smith</i>	34-37683	09/16/96
<i>SEC v. Dan Stuart</i>	LR-14909	04/22/96
<i>SEC v. Kathy S. Kingsmore</i>	LR-15078	09/16/96
<i>SEC v. Direct Participation Services Inc.</i>	LR-15060	09/19/96
<i>SEC v. Ted E. Mong</i>	LR-15094	09/30/96
<i>In the Matter of Candie's Inc.</i>	34-36865	02/21/96
<i>SEC v. Wye Resources Inc.</i>	LR-15073	09/26/96
<i>SEC v. Russell S. Smith</i>	LR-15083	09/27/96
<i>In the Matter of Stuart D. Cooper, CPA</i>	AAER 743	12/28/95
<i>SEC v. Nu-Life International of Georgia Inc.</i>	LR-15099	09/20/96
<i>SEC v. Robert D. Poirier</i>	LR-15091	09/30/96
<i>SEC v. The Home Link Corp.</i>	LR-15017	07/29/96
<i>SEC v. MTL International Finance Inc.</i>	LR-15090	09/30/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>In the Matter of M. Charles Zanaty</i>	33-7346	09/30/96
<i>SEC v. William B. Sellin II</i>	LR-15012	07/24/96
<i>In the Matter of Broad Capital Associates, Inc.</i>	33-7338	09/26/96
<i>SEC v. Axiom Security Solutions, Inc.</i>	LR-15096	09/27/96
<i>SEC v. Americomm Properties, Inc.</i>	LR-15006	08/07/96
<i>SEC v. Brent Molovinsky</i>	LR-15088	09/27/96
<i>In the Matter of Norman L. Sirak</i>	34-37740	09/27/96
<i>In the Matter of George C. Bergleitner, Jr.</i>	34-37708	09/23/96
<i>In the Matter of Rhema Foundation</i>	33-7239	11/02/95
<i>In the Matter of Charles E. Michael, Jr.</i>	34-36561	12/07/95
<i>SEC v. Scott A. Frye</i>	LR-14702	10/27/95
<i>SEC v. Donald B. Spencer</i>	LR-14856	03/29/96
<i>SEC v. Octagon Technology Group, Inc.</i>	LR-14942	06/11/96
<i>SEC v. Boston Acceptance Corp.</i>	LR-15059	09/19/96
<i>In the Matter of James McCurry</i>	34-36654	12/29/95
<i>SEC v. W. Ralph Wills, III</i>	LR-15152	09/23/96
<i>In the Matter of Vytas Jonusas</i>	34-37362	06/25/96
<i>SEC v. Larry R. Ryan</i>	LR-15044	07/18/96
<i>In the Matter of Eugene Konev</i>	34-37137	02/22/96
<i>In the Matter of Kevin P. Sisti</i>	34-37266	06/03/96
<i>In the Matter of Robert Vecchioni</i>	34-36779	01/26/96
<i>In the Matter of William E. Powdrill, III</i>	34-36695	12/29/96
<i>In the Matter of Stephen R. Parker</i>	34-37664	09/10/96
<i>SEC v. David Edward Freitag</i>	LR-15098	09/30/96
<i>In the Matter of Michael D. Gibson</i>	34-37756	09/30/96
<i>In the Matter of Curtis Lynch</i>	34-37751	09/30/96
<i>SEC v. Painewebber, Inc.</i>	LR-14787	01/18/96
<i>In the Matter of William Cho</i>	34-36787	01/30/96
<i>In the Matter of Domenick M. Schina</i>	34-37685	09/16/96
<i>In the Matter of Nicholas P. Howard</i>	34-36433	10/30/95
<i>In the Matter of Vincent P. Loban</i>	34-37700	09/19/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>In the Matter of Larry R. Earp</i>	34-37665	09/11/96
<i>In the Matter of Roc G. Hatfield</i>	34-36846	02/14/96
<i>In the Matter of Stephen M. Jordan</i>	34-37671	09/12/96
<i>SEC v. John Dankovich</i>	LR-14847	03/20/96
<i>SEC v. John S. Griffin</i>	LR-14802	01/30/96
<i>In the Matter of Ralph E. McKittrick</i>	34-36878	02/23/96
<i>SEC v. William R. Palmer</i>	LR-15034	09/05/96
<i>SEC v. David M. Carmichael</i>	LR-14810	02/01/96
<i>SEC v. John Acord</i>	LR-14739	11/15/95
<i>SEC v. Tixmax I General Partnership</i>	LR-14898	03/20/96
<i>SEC v. Ronald A. Monzzone</i>	LR-15107	09/30/96
<i>SEC v. Gary W. Berus</i>	LR-15105	09/30/96
<i>SEC v. Joseph P. Medsker</i>	LR-15104	09/30/96
<i>SEC v. Internet Broadcast Group</i>	LR-150	09/26/96
<i>In the Matter of Stires &amp; Co., Inc.</i>	34-37750	09/30/96
<i>In the Matter of Wayne J. Connors</i>	34-37757	09/30/96
<i>In the Matter of American Financial Partners Ltd.</i>	34-37759	09/30/96
<i>SEC v. CNC Trading Co., Inc.</i>	LR-15085	09/24/96
<i>SEC v. Daniel E. Goodman</i>	LR-15079	09/18/96
<i>In the Matter of David C. Connolly</i>	34-37410	07/08/96
<i>In the Matter of H. Ralph Sylvester</i>	34-37733	09/26/96
<i>SEC v. Empower Telecommunications Corp.</i>	LR-15081	09/26/96
<i>SEC v. Kenneth E. Edwards</i>	LR-15111	09/27/96
<i>In the Matter of Michael W. Adams</i>	34-36454	11/03/95
<i>SEC v. Tina M. Applegate</i>	LR-15044	05/15/96
<i>In the Matter of Roswitha Klement-Frances</i>	34-36520	11/28/95
<i>In the Matter of Jerry Revalee</i>	34-36519	11/28/95
<i>SEC v. Richard Jenkins</i>	LR-15009	07/10/96
<i>SEC v. Technology International Ltd.</i>	AAER 754	01/17/96
<i>In the Matter of Churchill Securities, Inc.</i>	34-37246	05/24/96
<i>In the Matter of Lawrence R. Hartz</i>	34-37167	05/03/96
<i>In the Matter of Richard Jenkins</i>	34-37545	08/08/96

<u>Name of Case</u>	<u>Release Number</u>	<u>Date Filed</u>
<i>SEC v. The Windgate Fund, LLC</i>	LR-14864	04/09/96
<i>SEC v. Trans-American Ostrich Traders, Inc.</i>	LR-14835	03/05/96
<i>In the Matter of Gary Steven Williky</i>	34-36986	03/18/96
<i>SEC v. Thomas W. Collins</i>	LR-14757	12/11/95
<i>SEC v. Michael Tropiano</i>	LR-14778	01/11/95
<i>In the Matter of Daniel D. Dietrich</i>	34-37486	07/26/96
<i>In the Matter of Victor L. Kashner</i>	34-37485	07/26/96
<i>In the Matter of Michael J. Clark</i>	34-37566	08/14/96
<i>In the Matter of Kenneth A. Zak</i>	34-36879	03/23/96

### **Self-Regulatory Organization**

<i>The NASD and the Nasdaq Market</i>	34-37542	08/08/96
<i>In the Matter of National Association of Securities Dealers, Inc.</i>	34-37538	08/08/96

### **Transfer Agent**

<i>In the Matter of Richard S. Berger</i>	34-37705	09/20/96
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**Table 3**  
**INVESTIGATIONS OF POSSIBLE VIOLATIONS OF THE ACTS  
ADMINISTERED BY THE COMMISSION**

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Pending as of October 1, 1995 .....	1,528
Opened in Fiscal Year 1996 .....	426
Total .....	1,954
Closed in Fiscal Year 1996 .....	340
Pending as of September 30, 1996 .....	1,614
Formal Orders of Investigation	
Issued in Fiscal Year 1996 .....	189

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**Table 4**  
**ADMINISTRATIVE PROCEEDINGS INSTITUTED  
DURING FISCAL YEAR ENDING SEPTEMBER 30, 1996**

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Broker-dealer Proceedings .....	123
Investment Adviser, Investment Company and Transfer Agent Proceedings .....	45
Stop Order Proceedings .....	47
Rule 102 Proceedings .....	30
Suspensions of Trading in Securities in Fiscal Year 1996 .....	18

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**Table 5**  
**INJUNCTIVE ACTIONS**

Fiscal Year	Actions Initiated	Defendants Named
1987	144	373
1988	125	401
1989	140	422
1990	186	557
1991	171	503
1992	156	487
1993	172	571
1994	197	620
1995	171	549
1996	180	588

### **Right to Financial Privacy**

Section 21(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(h)(6)] requires that the Commission "compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of [Section 21(h)(2)] or the provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401-22 (the RFPA)] to obtain access to financial records of a customer and include it in its annual report to the Congress." During the fiscal year, the Commission made one application for judicial orders pursuant to Section 21(h)(2). Set forth below are the number of occasions on which the Commission obtained customer records pursuant to the provisions of the RFPA:

Section 1104 (Customer Authorizations)	11
Section 1105 (Administrative Subpoenas)	426
Section 1107 (Judicial Subpoenas)	5

**Table 6**  
**TYPES OF PROCEEDINGS**

**ADMINISTRATIVE PROCEEDINGS**

<b>Persons Subject to, Acts Constituting, and Basis for, Enforcement Action</b>	<b>Sanction</b>
<b>Any person</b>	
Violation of the federal securities laws.	Cease-and-desist order, which may also require a person to comply or take steps to effect compliance with federal securities laws; accounting and disgorgement of illegal profits. (Securities Act, Section 8A; Exchange Act, Section 21C(a); Investment Company Act, Section 9(f); Investment Advisers Act, Section 203(k)).
<b>Broker-dealer, municipal securities dealer, government securities dealer, transfer agent, investment adviser or associated person</b>	
Willful violation of securities laws or rules; aiding or abetting such violation; failure reasonably to supervise others; willful misstatement or omission in filing with the Commission; conviction of or injunction against certain crimes or conduct.	Censure or limitation on activities; revocation, suspension or denial of registration; bar or suspension from association (Exchange Act, Sections 15(b)(4)-(6), 15B(c)(2)-(5), 15(C)(c)(1)-(2), 17A(c)(3)-(4); Investment Advisers Act, Section 203(e)-(f)).
	Civil penalty up to \$100,000 for a natural person or \$500,000 for any other person; accounting and disgorgement of illegal profits. Penalties are subject to other limitations depending on the nature of the violation. (Exchange Act, Section 21B; Investment Company Act, Section 9; Investment Advisers Act, Section 203).
	Temporary cease-and-desist order, which may, in appropriate cases, be issued <i>ex parte</i> . (Exchange Act, Section 21C).
<b>Registered securities association</b>	
Violation of or inability to comply with the Exchange Act, rules thereunder, or its own rules; unjustified failure to enforce compliance with the foregoing or with rules of the Municipal Securities Rulemaking Board by a member or person associated with a member	Suspension or revocation of registration; censure or limitation of activities, functions, or operations (Exchange Act, Section 19(h)(1)).

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**Member of registered securities association, or associated person**

Entry of Commission order against person pursuant to Exchange Act, Section 15(b), willful violation of securities laws or rules thereunder or rules of Municipal Securities Rulemaking Board; effecting transaction for other person with reason to believe that person was committing violations of securities laws.

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Suspension or expulsion from the association; bar or suspension from association with member of association (Exchange Act, Section 19(h)(2)-(3)).

**National securities exchange**

Violation of or inability to comply with Exchange Act, rules thereunder or its own rules; unjustified failure to enforce compliance with the foregoing by a member or person associated with a member

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Suspension or revocation of registration, censure or limitation of activities, functions, or operations (Exchange Act, Section 19(h)(1))

**Member of national securities exchange, or associated person**

Entry of Commission order against person pursuant to Exchange Act, Section 15(b); willful violation of securities laws or rules thereunder, effecting transaction for other person with reason to believe that person was committing violation of securities laws

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Suspension or expulsion from exchange; bar or suspension from association with member (Exchange Act, Section 19(h)(2)-(3)).

**Registered clearing agency**

Violation of or inability to comply with Exchange Act, rules thereunder, or its own rules; failure to enforce compliance with its own rules by participants.

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Suspension or revocation of registration; censure or limitation of activities, functions, or operations (Exchange Act, Section 19(h)(1)).

**Participant in registered clearing agency**

Entry of Commission order against participant pursuant to Exchange Act, Section 15(b)(4); willful violation of clearing agency rules, effecting transaction for other person with reason to believe that person was committing violations of securities laws.

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Suspension or expulsion from clearing agency (Exchange Act, Section 19(h)(2)).

**Securities information processor**

Violation of or inability to comply with provisions of Exchange Act or rules thereunder.

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Censure or limitation of activities; suspension or revocation of registration (Exchange Act, Section 11A(b)(6))

**Any person**

Willful violation of Securities Act, Exchange Act, Investment Company Act or rules thereunder; aiding or abetting such violation; willful misstatement in filing with Commission.

Temporary or permanent prohibition against serving in certain capacities with registered investment company (Investment Company Act, Section 9(b)).

**Officer or director of self-regulatory organization**

Willful violation of Exchange Act, rules thereunder or the organization's own rules; willful abuse of authority or unjustified failure to enforce compliance.

Removal from office or censure (Exchange Act, Section 19(h)(4)).

**Principal of broker-dealer**

Officer, director, general partner, ten-percent owner or controlling person of a broker-dealer for which a SIPC trustee has been appointed.

Bar or suspension from being or becoming associated with a broker-dealer (SIPA, Section 14(b)).

**Securities Act registration statement**

Statement materially inaccurate or incomplete.

Stop order refusing to permit or suspending effectiveness (Securities Act, Section 8(d)).

**Person subject to Sections 12, 13, 14 or 15(d) of the Exchange Act or associated person**

Failure to comply with such provisions or having caused such failure by an act or omission that person knew or should have known would contribute thereto.

Order directing compliance or steps effecting compliance (Exchange Act, Section 15(c)(4)).

**Securities registered pursuant to Section 12 of the Exchange Act**

Noncompliance by issuer with Exchange Act or rules thereunder.

Denial, suspension of effective date, suspension or revocation of registration (Exchange Act, Section 12(j)).

Public interest requires trading suspension.

Summary suspension of over-the-counter or exchange trading (Exchange Act, Section 12(k)).

**Registered investment company**

Failure to file Investment Company Act registration statement or required report; filing materially incomplete or misleading statement or report

Suspension or revocation of registration (Investment Company Act, Section 8(e)).

Company has not attained \$100,000 net worth 90 days after Securities Act registration statement became effective

Stop order under Securities Act; suspension or revocation of registration (Investment Company Act, Section 14(a)).

**Attorney, accountant, or other professional or expert**

Lack of requisite qualifications to represent others; lacking in character or integrity, unethical or improper professional conduct; willful violation of securities laws or rules, or aiding and abetting such violation.

Permanent or temporary denial of privilege of appearing or practicing before the Commission (17 CFR Section 201.102(e)(1))

Attorney suspended or disbarred by court; expert's license revoked or suspended; conviction of a felony or of a misdemeanor involving moral turpitude.

Automatic suspension from appearance or practice before the Commission (17 CFR Section 201.102(e)(2)).

Securities violation in Commission-instituted action; finding of securities violation by Commission in administrative proceedings.

Temporary suspension from practicing before the Commission; censure; permanent or temporary disqualification from practicing before the Commission (17 CFR Section 201.102(e)(3)).

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**Member or employee of Municipal Securities Rulemaking Board**

Willful violation of Exchange Act, rules thereunder, or rules of the Board; abuse of authority.

Censure or removal from office (Exchange Act, Section 15B(c)(8)).

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**CIVIL PROCEEDINGS IN FEDERAL DISTRICT COURTS**

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**Persons Subject to, Acts Constituting, and Basis for, Enforcement Action**

**Sanction**

**Any person**

Engaging in or about to engage in acts or practices violating securities laws, rules or orders thereunder (including rules of a registered self-regulatory organization).

Injunction against acts or practices constituting violations (plus other equitable relief under court's general equity powers) (Securities Act, Section 20(b), Exchange Act, Section 21(d); Holding Company Act, Section 18(e); Investment Company Act, Section 42(d), Investment Advisers Act, Section 209(d), Trust Indenture Act, Section 321)

Noncompliance with provisions of the laws, rules, or regulations under Securities Act, Exchange Act, or Holding Company Act, orders issued by Commission, rules of a registered self-regulatory organization, or undertaking in a registration statement

Writ of mandamus, injunction, or order directing compliance (Securities Act, Section 20(c), Exchange Act, Section 21(e), Holding Company Act, Section 18(f))

Violating the securities laws or a cease-and-desist order (other than through insider trading).	Civil penalty up to \$100,000 for a natural person or \$500,000 for any other person <u>or</u> , if greater, the gross gain to the defendant. Penalties are subject to other limitations dependent on nature of violation. (Securities Act, Section 20(d); Exchange Act, Section 21(d) (3); Investment Company Act, Section 42(e); Investment Advisers Act, Section 209(e)).
Trading while in possession of material non-public information in a transaction on an exchange or from or through a broker-dealer (and transaction not part of a public offering); aiding and abetting or directly or indirectly controlling the person who engages in such trading.	Maximum civil penalty: three times profit gained or loss avoided as a result of transaction (Exchange Act, Section 21A(a)-(b)).
Violating Securities Act Section 17(a)(1) or Exchange Act section 10(b), when conduct demonstrates substantial unfitness to serve as an officer or director.	Prohibition from acting as an officer or director of any public company. (Securities Act, Section 20(e); Exchange Act, Section 21(d)(2)).
<b>Issuer subject to Section 12 or 15(d) of the Exchange Act; officer, director, employee or agent of issuer; stockholder acting on behalf of issuer</b>	
Payment to foreign official, foreign political party or official, or candidate for foreign political office, for purposes of seeking the use of influence in order to assist issuer in obtaining or retaining business for or with, or directing business to, any person.	Maximum civil penalty: \$10,000 (Exchange Act, Section 32(c)).
<b>Securities Investor Protection Corporation</b>	
Refusal to commit funds or act for the protection of customers.	Order directing discharge of obligations and other appropriate relief (SIPA, Section 11(b)).
<b>National securities exchange or registered securities association</b>	
Failure to enforce compliance by members or persons associated with its members with the Exchange Act, rules or orders thereunder, or rules of the exchange or association.	Writ of mandamus, injunction or order directing such exchange or association to enforce compliance (Exchange Act, Section 21(e)).
<b>Registered clearing agency</b>	
Failure to enforce compliance by its participants with its own rules.	Writ of mandamus, injunction or order directing clearing agency to enforce compliance (Exchange Act, Section 21(e)).

**Issuer subject to Section 15(d) of 1934  
Act**

Failure to file required information,  
documents or reports.

Forfeiture of \$100 per day (Exchange Act,  
Section 32(b)).

**Registered investment company**

Name of company or of security issued by it  
deceptive or misleading.

Injunction against use of name (Investment  
Company Act, Section 35(d))

**Officer, director, member of advisory  
board, adviser, depositor, or underwriter  
of investment company**

Engage in act or practice constituting breach  
of fiduciary duty involving personal  
misconduct.

Injunction against acting in certain capacities  
for investment company and other  
appropriate relief (Investment Company Act,  
Section 36(a)).

**CRIMINAL PROSECUTION BY DEPARTMENT OF JUSTICE**

**Persons Subject to, Acts Constituting, and  
Basis for, Enforcement Action**

**Sanction**

**Any person**

Willful violation of securities laws or rules  
thereunder; willful misstatement in any  
document required to be filed by securities  
laws or rules; willful misstatement in any  
document required to be filed by self-  
regulatory organization in connection with an  
application for membership or association  
with member.

Maximum penalties: \$1,000,000 fine and ten  
years imprisonment for individuals,  
\$2,500,000 fine for non-natural persons  
(Exchange Act, Sections 21(d), 32(a));  
\$10,000 fine and five years imprisonment (or  
\$200,000 if a public utility holding company  
for violations of the Holding Company Act)  
(Securities Act, Sections 20(b), 24;  
Investment Company Act, Sections 42(e),  
49; Investment Advisers Act, Sections  
209(e), 217; Trust Indenture Act, Sections  
321, 325; Holding Company Act, Sections  
18(f), 29).

**Issuer subject to Section 12 or 15(d) of  
the Exchange Act; officer or director of  
issuer; stockholder acting on behalf of  
issuer; employee or agent subject to the  
jurisdiction of the United States**

Payment to foreign official, foreign political  
party or official, or candidate for foreign  
political office for purposes of seeking the  
use of influence in order to assist issuer in  
obtaining or retaining business for or with, or  
directing business to, any person.

Issuer - \$2,000,000; officer, director,  
employee, agent or stockholder - \$100,000  
and five years imprisonment (issuer may not  
pay fine for others) (Exchange Act, Section  
32(c)).

## **Self-Regulatory Organizations: Expenses, Pre-Tax Income, and Balance Sheet Structure<sup>1</sup>**

In 1995, the total revenues of all self-regulatory organizations (SROs) with marketplace jurisdiction rose approximately \$151 million, an increase of approximately 13% from 1994. The New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD), the American Stock Exchange (AMEX), and the Chicago Board Options Exchange (CBOE) accounted for 89% of total SRO revenues, up from 86% in 1994. Revenues were earned primarily from listing or issuer fees, trading fees, and market data fees. For example:

- The NYSE reported total revenue of \$501 million, an increase of 11% from 1994, of which 39% consisted of listing fees, 20% consisted of trading fees, and 15% consisted of market data fees.
- The NASD reported total revenue of \$438 million, an increase of 18% from 1994, of which 21% consisted of issuer fees and 39% consisted of trading and market data fees.
- The AMEX reported total revenue of \$153 million, an increase of 7% from 1994, of which 9% consisted of listing fees.

The remaining SROs also reported increases in revenues as follows:

- The Boston Stock Exchange (BSE) reported a \$796,000 increase (5%) to \$15.7 million.

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<sup>1</sup>After the close of its fiscal year ending December 31, 1993, the Cincinnati Stock Exchange (CSE) adopted a fiscal year ending June 30. As a result, the amounts set forth in this report representing total revenues, total expenses, and total pre-tax income for all SROs include financial information based on CSE's statements of revenues, expenses and members' equity for the year ended June 30, 1995 and for the six months ended June 30, 1994. Similarly, the amounts set forth in this report representing total liabilities, total assets, and total net worth for all SROs include financial information based on CSE's balance sheets as of June 30, 1995 and 1994.

- The CBOE reported a \$9.7 million increase (10%) to \$107.3 million.
- The Pacific Stock Exchange (PSE) reported a \$9.9 million increase, (21%) to \$56.7 million.
- The Philadelphia Stock Exchange (PHLX) reported a \$2.2 million increase (5%) to \$42.8 million.
- The CHX<sup>2</sup> reported a \$351,000 increase (1%) to \$30 million.

The CSE reported total revenues of \$7.9 million for the year ended June 30, 1995, as compared to its reported revenues of \$3.6 million for the six months ended June 30, 1994.

Of the SROs reporting financial information for a 12-month period in both 1994 and 1995, the CSE experienced the largest percentage increase in total revenues, 120%, while the NASD reported the largest dollar volume increase in total revenues, \$4.3 million (11%).

The total expenses of all marketplace SROs were \$1.2 billion in 1995, an increase of \$141 million, or 13%, over 1994. The NASD incurred the largest dollar volume increase in expenses, \$69.6 million (20%). Seven SROs incurred the following increases in expenses:

- The AMEX incurred a \$14.8 million increase (12%).
- The BSE incurred a \$775,000 increase (6%).
- The NYSE incurred \$31.7 million increase (9%).
- The PHLX incurred a \$2.2 million increase (5%).

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<sup>2</sup>The CHX adopted its current name in 1993. Previously, it was known as the Midwest Stock Exchange.

- The PSE incurred a \$4.7 million increase (11)%.
- The CBOE incurred a \$9.5 million increase (12%).
- The CHX incurred a \$5.2 million increase (17)%.

The CSE reported expenses of \$4.2 million for the fiscal year ended June 30, 1995, as compared to its reported expenses of \$2.0 million for the six months ended June 30, 1994.

Aggregate pre-tax income of the marketplace SROs rose to \$163.4 million, an increase of \$10.5 million (7%), from the \$152.9 million reported in 1994. The NYSE experienced the largest dollar volume increase in pre-tax income, \$16.9 million (21%). The PSE showed the largest percentage increase in pre-tax income, 108% (\$5.2 million). The remaining SROs reported pre-tax income in 1995 with the exception of the PHLX and CHX which reported pre-tax losses of \$1 million and \$5.5 million respectively. The CSE reported pre-tax income of \$3.9 million for the fiscal year ended June 30, 1995, as compared to its reported pre-tax income of \$1.4 million for the six months ended June 30, 1994.

The total assets of all marketplace SROs amounted to approximately \$1.8 billion in 1995, an increase of \$140 million (9%) over 1994. The NYSE showed the largest dollar volume increase in total assets, \$54.9 million (7%), while the PSE reported the largest percentage increase in total assets, 44%, (\$15.9 million). The BSE also reported a substantial percentage increase in total assets, 44% (\$7.1 million). The NASD, AMEX, CBOE, and PHLX also reported increases in total assets, equalling \$35.8 million (9%), \$11.8 million (9%), \$14.1 million (15%), and \$845,000 (1%) respectively. The CHX reported a decrease of \$3.1 million (8%). The CSE reported total assets of \$8.4 million as of June 30, 1995, as compared to its reported total assets of \$5.2 million as of June 30, 1994.

In 1995, the total liabilities of marketplace SROs increased \$43.1 million (6%) over 1994 levels. The NASD showed the greatest dollar volume increase in liabilities, \$18.7 million (14%), while the PSE reported the

greatest percentage increase, 82% (\$10 million). Increases in liabilities were also reported by the CHX (\$763,000 or 5%), the PHLX (\$127,000 or 0.3%), the AMEX (\$16.7 million or 17%), the BSE (\$6.3 million or 63%), and the CBOE (\$486,000 or 2%). Only the NYSE reported a dollar volume decline in liabilities, \$1.8 million or 0.4%. The CSE reported liabilities of \$2.2 million as of June 30, 1995, as compared to its reported liabilities of \$1.3 million as of June 30, 1994.

The aggregate net worth of the marketplace SROs rose \$98.3 million in 1995 to \$1.02 billion, an increase of 11% over 1994. The PSE incurred the largest percentage increase in net worth, 24% (\$5.9 million), while the largest dollar volume increase in net worth was reported by the NYSE, \$56.7 million (15%). The CBOE also reported a substantial increase in net worth of \$13.6 million or 19%. Other marketplace SROs also experienced positive growth in net worth with the AMEX reporting an increase of \$5.0 million or 5%; the NASD reporting an increase of \$17.1 million or 6%; the BSE reporting an increase of \$823,000 or 13%; and the PHLX reporting an increase of \$718,000 million or 3%. The CHX reported a decrease in net worth of \$3.9 million or 17%. The CSE reported a total net worth of \$6.2 million as of June 30, 1995, as compared to its reported net worth of \$3.9 million as of June 30, 1994.

Clearing agency results have been presented in two tables by their respective types: clearing corporations and depositories. In calendar year 1995, aggregate revenues from clearing agency services increased \$54 million, or 11%, to \$530 million from \$476 million in 1994. Interest income increased \$49 million, or 50%, to \$146 million in 1995. All clearing agencies adjust their fee structures and refunds of fees to provide participants with attractively priced services, to meet expenses, and to provide the amount of earnings which they desire to retain.

Service revenues at the depositories totalled \$353 million, up \$61 million, or 23%, from 1994. In part, this reflected the termination of Midwest Securities Trust Company (MSTC) at the end of calendar year 1994 and the redistribution of portions of its business. MSTC had \$31 million in service revenues during 1994 and \$500 million in pre-tax earnings. In 1995, Depository Trust Company (DTC) increased its service revenues by 2% or

\$5 million and increased its pre-tax earnings five-fold from \$4 million to \$21 million. The Philadelphia Depository Trust Company's 1995 service revenues decreased by 3% or \$305,000, and its pre-tax earnings decreased 51% from \$544,000 in 1994 to \$265,000 in 1995.

The depositories continued to expand their base for service revenues by increasing both the number of equity shares and principal amount of debt securities on deposit. This gain occurred, among other reasons, because of the further expansion of depository-eligible issues and the participants' increased use of depository services, *e.g.*, in 1995, 99.96% of new issue CUSIPs requested by underwriters were made depository eligible. At year end 1995, DTC alone had more than 1.2 million depository-eligible issues and a total value of securities in its depository system of \$10 trillion.

Service revenues of clearing corporations for 1995 decreased 2.3% to \$206 million from \$210 million for 1994, and earnings for clearing corporations decreased to \$16 million in 1995 from \$23 million in 1994, a decrease of 31%. The Midwest Clearing Corporation (MCC), with \$9 million in 1994 revenues and \$227,000 in 1994 earnings, was closed down at the end of calendar year 1994, and portions of its business were redistributed.

Regarding pre-tax earnings among individual clearing corporations, the trend was mixed. National Securities Clearing Corporation reported earnings of \$3.7 million for 1995 compared with \$2.6 million for 1994, a gain of 37%. Government Securities Clearing Corporation reported earnings of \$5,486 for 1995, against \$3,561 for 1994, a gain of 54%. The Options Clearing Corporation reported earnings of \$3.2 million for 1995, down from \$5.2 million in 1994, a decline of 38%. The Stock Clearing Corporation of Philadelphia reported a 1995 loss of \$717 million compared with a loss of \$173 million in 1994.

The aggregate shareholders' equity of all clearing corporations and depositories rose from \$116 million to \$120 million. Aggregate participant clearing funds, which protect clearing agencies in the event of a participant

default, increased by \$883 million, or 32%, to \$3.6 billion. If a participant defaults and its losses exceed its deposit at a clearing agency, the entire participants' fund of the clearing agency may be assessed on a pro rata basis.

**Table 7**  
**CONSOLIDATED FINANCIAL INFORMATION OF SELF-REGULATORY ORGANIZATIONS**  
**1992 - 1995**  
**(\$ in Thousands)**

	AMEX 1/	BSE 2/	CBOE 3/	CHX 4/	CSE 4/*	NASD 1/	NYSE 1/	PHLX 1/	PSE 1/	Total
Total Revenues										
1992	\$114,489	13,569	70,435	73,794	4,578	264,274	418,390	37,583	41,879	\$1,039,011
1993	\$131,024	14,055	80,997	70,134	6,057	332,126	445,037	38,808	43,457	\$1,161,695
1994	\$143,555	14,901	97,663	29,653***	3,582**	371,987	452,279	40,636	46,799	\$1,201,055
1995	\$153,114	15,987	107,320	30,004	7,890	437,571	500,815	42,792	56,710	\$1,351,913
Total Expenses										
1992	\$111,810	12,753	71,330	70,771	3,917	223,476	343,097	37,359	39,892	\$ 914,404
1993	\$119,744	13,031	80,349	71,920	4,157	275,014	348,412	37,864	41,747	\$ 992,148
1994	\$129,123	13,855	76,096	30,277***	2,175	340,929	372,140	41,559	41,989	\$1,048,144
1995	\$143,954	14,630	85,589	35,455	4,198	410,568	403,804	43,799	46,674	\$1,188,671
Pre-Tax Income (Loss)										
1992	\$ 2,679	836	(85)	3,023	661	40,798	75,293	224	1,987	\$ 124,667
1993	\$ 11,280	1,024	648	(1,786)***	1,900	57,112	96,625	944	1,710	\$ 169,457
1994	\$ 14,432	1,046	21,567	(624)***	1,427	31,058	80,139	(923)	4,810	\$ 152,932
1995	\$ 9,160	1,067	21,731	(5,451)	3,889***	27,003	97,011	(1,007)	10,036	\$ 163,439
Total Assets										
1992	\$104,801	19,419	84,916	594,581	3,745	295,915	611,228	83,863	38,977	\$ 1,837,445
1993	\$118,410	19,405	84,902	289,790	5,666	378,863	719,824	77,434	37,682	\$ 1,701,975
1994	\$135,498	16,247	93,730	37,705***	5,169	422,775	808,600	66,854**	36,292	\$ 1,622,871
1995	\$147,261	23,350	107,786	34,582	8,371	438,589	863,472	67,699	52,159	\$ 1,763,299
Total Liabilities										
1992	\$ 22,634	14,397	26,393	574,155	1,990	75,899	325,850	60,279	18,537	\$ 1,120,134
1993	\$ 29,436	13,338	25,805	288,317	2,675	110,252	380,515	52,455	16,286	\$ 869,478
1994	\$ 38,760	10,925	21,148	14,941***	1,310	133,033	425,312	43,623**	12,079	\$ 700,232
1995	\$ 45,519	16,305	21,634	15,704	2,153	151,703	423,500	43,750	22,031	\$ 742,299
Net Worth										
1992	\$ 82,167	5,022	58,523	20,426	1,755	220,016	285,378	23,584	20,440	\$ 717,311
1993	\$ 88,974	5,667	59,097	21,473	2,991	268,611	339,309	24,979	21,396	\$ 832,497
1994	\$ 96,738	6,222	72,582	22,764***	3,859	289,742	383,288	23,231	24,213	\$ 922,639
1995	\$101,742	7,045	86,152	18,878	6,218	306,886	439,972	23,949	30,128	\$1,020,970

1/ Fiscal year ending December 31.

2/ Fiscal year ending September 30.

3/ Fiscal year ending June 30.

4/ Fiscal year ending June 30 as of 1994. Previously, CSE used a fiscal year ending December 31.

\* Amounts for 1994 are based on consolidated statements for the six months ended June 30, 1994.

\*\* These amounts have been reclassified to conform with the 1995 presentation.

\*\*\* In 1995, CHX discontinued operations of several subsidiaries. The 1994 financial statements have been restated for the effects of operations discontinued in 1995.

\*\*\*\* Pre-tax income includes nonoperating income of \$196,940.

**Table 8**  
**SELF-REGULATORY ORGANIZATIONS — CLEARING CORPORATIONS**  
**1995 REVENUES and EXPENSES 1/**  
(\$ in thousands)

	Boston Stock Exchange Clearing Corporation	Delta Government Options Corporation	Government Securities Clearing Corporation	International Securities Cleaning Corporation	MBS Cleaning Corporation	National Securities Cleaning Corporation	Options Cleaning Corporation	Pacific Cleaning Corporation	Stock Cleaning Corporation of Philadelphia
	9/30/95 2/	12/31/95 3/	12/31/95 4/	12/31/95 5/	12/31/95 6/	12/31/95	12/31/95	12/31/95 7/	12/31/95
Revenues									Total
Clearing Services	\$ 4,853	\$ 110	\$ 13,901	\$ 2,597	\$ 6,955	\$ 90,677	\$ 47,012	\$ 6,614	\$ 4,558
Interest	654	344	3,638	205	869	8,691	2,256	0	264
All Other Revenues 8/	446	0	0	3,000	1,084	0	6,324	174	390
Total Revenues 8/	\$ 5,953	\$ 454	\$ 17,559	\$ 5,802	\$ 8,908	\$ 99,368	\$ 55,592	\$ 6,788	\$ 5,212
Expenses									\$ 205,616
Employee Costs	\$ 1,809	\$ 393	\$ 4,060	\$ 2,412	\$ 1,954	\$ 22,037	\$ 22,507	\$ 827	\$ 4,072
Data Processing and Communications Costs	767		6,333	2,178	1,720	45,821	10,155	910	496
Occupancy Costs	500		230	221	224	2,063	5,135	157	236
Contracted Services Costs	456			185	14		12,028		
All Other Expenses	1,972	1,125	1,245	1,500	2,278	13,776	14,558	1,296	1,125
Total Expenses	\$ 5,504	\$ 1,518	\$ 12,053	\$ 6,325	\$ 6,176	\$ 95,725	\$ 52,355	\$ 4,071	\$ 5,929
Excess of Revenues Over Expenses 9/	\$ 450	\$ (1,064)	\$ 5,486	\$ (523)	\$ 2,732	\$ 3,653	\$ 3,237	\$ 2,718	\$ (717)
Shareholders' Equity	\$ 2,571	\$ 6,352	\$ 14,587	\$ (22)	\$ 3240	\$ 25,000	\$ 16,980	\$ 7,651	\$ 1,517
Clearing Fund	\$ 595	\$ 0	\$ 606,163	\$ 3,555	\$ 986,040	\$ 61,1040	\$ 461,232	\$ 1,790	\$ 3,925

1/ Although efforts have been made to make the presentations comparable, any single revenue or expense category may not be completely comparable between any two clearing agencies because of (i) the varying classification methods employed by the clearing agencies in reporting operating results and (ii) the grouping methods employed by the SEC's staff due to these varying classification methods. Individual amounts are shown to the nearest thousand. Totals are the rounded result of the underlying amounts and may not be the arithmetic sums of the parts.

2/ The Boston Stock Exchange/Clearing Corporation is a wholly owned subsidiary of the Boston Stock Exchange and received operational and other services from its parent.

3/ The Delta Government Options Cleaning Corporation has a surety bond of \$100 million in lieu of a clearing fund. Costs of \$400,000 to this instrument are included in the other expense category.

4/ Effective in May 1988, the National Securities Cleaning Corporation (NSCC) sold 81% of the Government Securities Cleaning Corporation (GSCC) to certain of its participants. At that time NSCC entered into an agreement with GSCC to provide various support services and office facilities. The equity interest in GSCC is included in NSCC's results.

5/ The International Securities Cleaning Corporation is a wholly owned subsidiary of the NSCC and received operational and other services from its parent.

6/ On August 12, 1994, the Chicago Stock Exchange sold the MBS Cleaning Corporation to NSCC. The fair value of net assets exceeded the purchase by \$4,735,000. Fixed assets were reduced by \$1,488,000 in 1994 and the remaining \$3,250,000 excess will be amortized to operations on a straight line basis over three years.

7/ The Pacific Stock Exchange (PSE) has an agreement with NSCC to settle trades of PSE specialists through PSE's membership in NSCC. This may expose PSE to off-balance sheet risk in the event a specialist fails.

8/ Revenues are net of refunds which have the effect of reducing a clearing agency's base fee rates.

9/ This is the result of operations and before the effect of income taxes, which may significantly impact a clearing agency's net income.

10/ The International Securities Cleaning Corporation is a wholly owned subsidiary of the National Securities Cleaning Corporation (NSCC). This may expose PSE to off-balance sheet risk in the event a specialist fails.

11/ The Pacific Stock Exchange (PSE) established a clearing fund in 1994 and monitors capital compliance to mitigate this risk. PSE members' equity of \$24 million is available for reimbursement of liabilities incurred by the Pacific Cleaning Corporation.

**Table 9**  
**SELF-REGULATORY ORGANIZATIONS—DEPOSITORYES**  
**1995 REVENUES and EXPENSES 1/**  
**(*\$* in Thousands)**

	Depository Trust Company 12/31/95	Participants Trust Company 12/31/95	Philadelphia Depository Trust Company 12/31/95	Total
<b><u>Revenues</u></b>				
Depository Services	\$312,154	\$30,399	\$10,308	\$352,861
Interest	115,519	12,243	1,390	129,152
Other	(115,164)	(13,511)	713	(127,962)
<b>Total Revenues 2/</b>	<b>312,509</b>	<b>29,131</b>	<b>12,411</b>	<b>354,051</b>
<b><u>Expenses</u></b>				
Employee Costs	\$179,952	11,190	7,189	198,331
Data Processing and Communications Costs	23,142	3,833	599	27,574
Occupancy Costs	43,838	5,295	509	49,642
All Other Expenses	65,556	7,853	3,849	77,258
<b>Total Expenses</b>	<b>\$312,488</b>	<b>28,171</b>	<b>12,146</b>	<b>352,805</b>
<b>Excess of Revenues Over Expenses 3/</b>				
	\$21	\$960	\$265	\$1,246
Shareholders' Equity	\$19,406	\$19,573	\$3,822	\$42,801
Participant's Fund	\$692,198	\$264,385	\$792	\$957,375

- 1/ Although efforts have been made to make the presentations comparable, any single revenue or expense category may not be completely comparable between any two clearing agencies because of (i) the varying classification methods employed by the clearing agencies in reporting operating results and (ii) the grouping methods employed by the Commission staff due to these varying classification methods  
 Individual amounts are shown to the nearest thousand. Totals are the rounded result of the underlying amounts and may not be the arithmetic sums of the parts
- 2/ Revenues are net of refunds which have the effect of reducing a clearing agency's base fee rates
- 3/ This is the result of operations and before the effect of income taxes, which may significantly impact a clearing agency's net income

## Certificate Immobilization

Book-entry deliveries continued to outdistance physical deliveries in the settlement of securities transactions among depository participants of the Depository Trust Company (DTC). This tendency is illustrated in Table 10, CERTIFICATE IMMOBILIZATION TRENDS. The table captures the relative significance of the mediums employed, in a ratio of book-entry deliveries to certificates withdrawn from DTC. The figure include Direct Mail by Agents and municipal bearer bonds. In 1995, the total certificates withdrawn decreased by 19% from 1994, while the number of book-entry deliveries increased by 34%. In 1995, the ration was almost 3 times the 1991 ratio of 11.6 book-entry deliveries rendered for every certificate withdrawn.

Table 10

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**CERTIFICATE IMMOBILIZATION TRENDS**  
**Depository Trust Company**  
**(Including Bearer Certificates)**

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	1995	1994	1993	1992	1991
Book-entry Deliveries at DTC (in thousands)	119,000	105,500	98,300	83,300	73,200
Total of All Certificates Withdrawn (in thousands)	3,270	3,899	4,140	6,467	6,314
Book-entry Deliveries per Certificates Withdrawn	36.4	27.1	23.7	12.9	11.6

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## Investment Companies and Investment Advisers

The tables below show the number of registered investment companies and investment advisers and the amount of assets under management. All figures are reported for fiscal year-end.

Number of Active Registrants						
	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>% Change 1992-1996</u>
Investment Companies	3,850	4,300	4,530	4,900	5,285	37.2%
Investment Company Portfolios	18,700	21,200	22,486	23,139	24,265	29.8%
Investment Advisers	18,000	20,000	21,600	22,000	22,400	24.8%

Assets Under Management (\$ billions)						
	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>% Change 1992-1996</u>
Investment Companies	\$1,800	\$2,400	\$2,500	\$3,062	\$3,794	110.8%
Investment Advisers	\$8,100	\$9,600	\$9,600	\$10,600	\$10,700	32.1%

The number of registered investment companies increased by almost 8 percent during 1996. Many investment companies combine several separate portfolios or investment series in one investment company registration statement. The number of portfolios generally ranges from three to ten.

However, some unit investment trusts group as many as 1,256 separate portfolios under one Investment Company Act registration. The number of portfolios increased by almost 4.9% percent during fiscal year 1996. In addition, the Commission was responsible for regulating 22,400 investment advisers at the end of 1996, a 24.4 percent increase since 1992.

### **Section 13(f)(1) Reports**

Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder require "institutional investment managers" exercising investment discretion over accounts holding equity securities with a fair market value of at least \$100 million to file quarterly reports on Form 13F. The Division of Investment Management reviews approximately 50 requests each quarter from managers seeking to keep some or all of the information required to be filed on Form 13F from being disclosed to the public.

## **Exemptions**

### *Section 12(h) Exemptions*

Section 12(h) of the Exchange Act authorizes the Commission to grant a complete or partial exemption from the registration provisions of Section 12(g) or from the disclosure or insider reporting/trading provisions of the Exchange Act where such exemption is consistent with the public interest and the protection of investors. Four applications were pending at the beginning of 1996 and no applications were filed during the year. Requested relief was granted to one applicant.

### *Exemptions for Foreign Private Issuers*

Rule 12g3-2 provides various exemptions from the registration provisions of Section 12(g) of the Exchange Act for the securities of foreign private issuers. Perhaps the most important of these is that contained in subparagraph (b), which provides an exemption for certain foreign issuers that furnish to the Commission on a current basis the material specified in the rule. Such material includes that information about which investors ought to be reasonably informed and which the issuer has:

- made or is required to make public under the law of the country in which it is incorporated or organized;
- filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange; or
- distributed or is required to distribute to its securityholders.

Periodically, the SEC publishes a list of those foreign issuers that appear to be current under the exemptive provision. The most current list contains 1,221 foreign issuers.

## Corporate Reorganizations

During 1996, the Commission entered its appearance in 16 reorganization cases filed under Chapter 11 of the Bankruptcy Code involving companies with aggregated stated assets of about \$3 billion and about 75,000 public investors. Counting these new cases, the Commission was a party in a total of 110 Chapter 11 cases during the year. In these cases, the stated assets totalled approximately \$35 billion and involved almost 750,000 public investors. During the year, 46 cases were concluded through confirmation of a plan of reorganization, dismissal, or liquidation, leaving 64 cases in which the Commission was a party at year-end.

Table 11  
REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
OF THE BANKRUPTCY CODE IN WHICH  
THE SEC ENTERED APPEARANCE

Debtor	District	F.Y.	
		Opened	Closed
ACI-HDT Supply Co.	S.D.	CA	1996
Action Auto Rental, Inc.	D.	OH	1993
Aileen, Inc.	S.D.	NY	1994
Alexander's Inc.	S.D.	NY	1992
Alliant Computer Systems Corp.	E.D.	MA	1992
American Microtel, Inc.	D.	NV	1995
Baldwin Builders	C.D.	CA	1995
Barton Industries Inc.	W.D.	OK	1991
B-E Holdings, Inc.	E.D.	WI	1994
Ben Franklin Retail	N.D.	IL	1996
Bonneville Pacific Corporation	D.	UT	1992
Bradlees, Inc.	S.D.	NY	1996
Cambridge Biotech Corp.	D.M.	MA	1994
Carter Hawley Hale Stores Inc.	C.D.	CA	1991
Cascade International Inc. <sup>2/</sup>	S.D.	FL	1992
College Bound, Inc.	S.D.	FL	1993

Table 11 (continued)  
**REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
 OF THE BANKRUPTCY CODE IN WHICH  
 THE SEC ENTERED APPEARANCE**

Debtor	District		F.Y. Opened	F.Y. Close
Columbia Gas System, Inc. <u>1/</u>	D.	DE	1991	1996
CPT Corp.	D.	MN	1991	
Crazy Eddie, Inc., et al.	S.D.	NY	1989	
Dakota Minerals, Inc.	D.	WY	1986	
Damson Oil Co.	S.D.	TX	1991	
Dest Corp.	N.D.	CA	1989	
Eagle-Pitcher Industries, Inc. <u>1/</u>	S.D.	OH	1991	
Eastern Air Lines, Inc., et al.	S.D.	NY	1989	
Edison Brothers Stores, Inc.	D.	DE	1996	
Enterprise Technologies, Inc. <u>1/</u>	S.D.	TX	1984	1996
Enviropact, Inc. <u>2/</u>	S.D.	FL	1994	1996
First City Bancorporation of Texas	N.D.	TX	1994	
First Republicbank Corp.	N.D.	TX	1989	
Future Communications, Inc.	W.D.	OH	1994	
F & M Distributor Inc. <u>1/</u>	E.D.	MI	1995	1996
Gander Mountain, Inc.	E.D.	WI	1996	
Gerant Industries, Inc. <u>1/</u>	C.D.	CA	1996	1996
Great American Recreation, Inc.	D.	NJ	1996	
Gulf USA Corporation, <u>1/</u>	D.	ID	1994	1996
Hamburger Hamlet Restaurants, Inc.	C.D.	CA	1996	
Hannover Corporation of America <u>3/</u>	M.D.	LA	1993	1996
Helionetics, Inc. <u>1/</u>	C.D.	CA	1986	1996
Home Theater Products International, Inc.	C.D.	CA	1996	
House of Fabrics Inc.	C.D.	CA	1995	

Table 11 (continued)  
**REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
 OF THE BANKRUPTCY CODE IN WHICH  
 THE SEC ENTERED APPEARANCE**

Debtor	District		F.Y. Opened	F.Y. Closed
I C H Corporation	N.D.	TX	1996	
Integra-A Hotel and Restaurant Co.	D.	CO	1993	
International Tourist Entertainment Corporation	W.D.	MI	1996	
International Trading, Inc. <u>1/</u>	N.D.	GA	1994	1996
JWP, Inc. <u>1/</u>	S.D.	NY	1994	1996
Kaiser Steel Corp. <u>1/</u>	D.	CO	1987	1996
King of Video, Inc.	D.	NV	1989	
Leslie Fay Companies, Inc.	S.D.	NY	1993	
Library Bureau Inc.	N.D.	NY	1993	
LifeCo Investment Group, Inc.	D.	GA	1995	
Lomas Financial Corp. <u>1/</u>	S.D.	NY	1990	1996
Marathon Office Supply, Inc. <u>2/</u>	C.D.	CA	1988	1996
Maxicare Health Plus Inc. <u>1/</u>	C.D.	CA	1989	1996
MCorp (MCorp Financial, Inc. & MCorp Management)	S.D.	TX	1989	
Media Vision Technology, Inc.	N.D.	CA	1994	
Megafoods Stores, Inc.	D.	AZ	1995	
Meridian Reserve, Inc. <u>1/</u>	W.D.	OK	1989	1996
Merry-Go-Round Enterprises, Inc. <u>2/</u>	D.	MD	1994	1996
Micro Security System, Inc. <u>2/</u>	D.	UT	1996	1996
Midwest Communications Corp.	E.D.	KY	1991	

Table 11 (continued)

**REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
OF THE BANKRUPTCY CODE IN WHICH  
THE SEC ENTERED APPEARANCE**

Debtor	District		F.Y. Opened	F.Y. Closed
Mitchell Communications <sup>2/3/</sup>	N.D.	GA	1994	1996
Monarch Capitol Corp.	D.	MA	1991	
Morrison-Knudsen Corp. <sup>1/</sup>	D.	DE	1996	1996
National Gypsum Company	N.D.	TX	1991	
New Valley Corp. <sup>1/</sup>	S.D.	NY	1994	1996
NVF Company	D.	DE	1994	
O'Brien Environmental Energy, Inc. <sup>1/</sup>	D.	NJ	1995	1996
Occidental Development Fund III <sup>3/</sup>	C.D.	CA	1989	1996
Occidental Development Fund IV <sup>3/</sup>	C.D.	CA	1989	1996
Occidental Development Fund V <sup>3/</sup>	C.D.	CA	1989	1996
OLR Development Fund LP	C.D.	CA	1989	1996
OLR Development Fund II LP	C.D.	CA	1989	1996
Orbitron Capitol Corp. <sup>2/</sup>	W.T.	TX	1995	1996
PanAm Corporation	S.D.	NY	1991	
Penn Pacific	E.D.	OK	1994	
Phar-Mor, Inc.	N.D.	OH	1994	
Premier Benefit Capitol Trust	M.D.	FL	1993	1996
Premium Sales Corporation	M.D.	FL	1993	1996
Public Service Co. of New Hampshire	D.	NH	1988	
QT&T, Inc. <sup>1/</sup>	E.D.	NY	1987	1996

Table 11 (continued)  
 REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
 OF THE BANKRUPTCY CODE IN WHICH  
 THE SEC ENTERED APPEARANCE

Debtor	District		F.Y. Opened	F.Y. Closed
Ramtek Corporation <sup>1/</sup>	N.D.	CA	1989	1996
Residential Resources Mortgage Investment Corporation	D.	AZ	1989	1996
Rymer Foods, Inc.	N.D.	IL	1993	
Seatrain Lines, Inc. <sup>1/</sup>	S.D.	NY	1981	1996
SIS Corporation <sup>1/</sup>	N.D.	OH	1989	1996
Sizzler International, Inc.	C.D.	CA	1996	
Southland Corporation	N.D.	TX	1991	
Spectrum Information Technologies, Inc. <sup>1/</sup>	E.D.	NY	1995	1996
Spencer Cos., Inc.	D.	MA	1987	
SportsTown, Inc. <sup>1/</sup>	N.D.	GA	1995	1996
Standard Oil and Exploration of Delaware, Inc.	W.D.	MI	1991	
Sterling Optical Corp.	S.D.	NY	1992	
Swanton Corp. <sup>1/</sup>	S.D.	NY	1985	1996
Telstar Satellite Corp. of America <sup>3/</sup>	C.D.	CA	1989	
The Centennial Group, Inc. <sup>1/</sup>	C.D.	CA	1992	1996
The Circle K Corporation <sup>1/</sup>	D.	AZ	1990	1996
The Clothestime, Inc.	C.D.	CA	1996	
The First Connecticut Small Business Investments Company	D.	CT	1991	
The Group, Inc.	D.	NV	1990	
The Lionel Corp. <sup>1/</sup>	S.D.	NY	1991	1996

Table 11 (continued)  
**REORGANIZATION PROCEEDINGS UNDER CHAPTER 11  
 OF THE BANKRUPTCY CODE IN WHICH  
 THE SEC ENTERED APPEARANCE**

Debtor	District		F.Y. Opened	F.Y. Closed
Tidwell Industries, Inc. <u>2/</u>	N.D.	AL	1986	1996
Traweek Investment Fund				
No. 22, Ltd. <u>3/</u>	C.D.	CA	1988	1996
Traweek Investment Fund				
No. 21, Ltd.	C.D.	CA	1988	1996
TSL Holdings, Inc.	S.D.	CA	1993	
UDC Homes, Inc. <u>1/</u>	D.	DE	1995	1996
USA Classic, Inc.	S.D.	NY	1994	
Value Merchants, Inc.	E.D.	WI	1994	
Wedgestone Financial	D.	MA	1991	
Westworld Community				
Healthcare, Inc. <u>1/</u>	C.D.	CA	1987	1996
WRT Energy Corp.	W.D.	LA	1996	
Total Cases Opened (FY 1996) <u>4/</u>			16	
Total Cases Closed (FY 1996) <u>4/</u>				46

1/ Plan of reorganization confirmed.

2/ Debtor liquidated under Chapter 7.

3/ Debtor's securities not registered under Section 12(g) of the Securities Exchange Act of 1934.

4/ The number of cases reported in this table as opened and closed in 1996 differ from those reported in the Fiscal 1998 Budget Estimate. The numbers provided in this table are accurate and supercede those provided in the Budget.

## **The Securities Industry**

### **Revenues, Expenses, and Selected Balance Sheet Items**

Broker-dealers that are registered with the Securities and Exchange Commission earned a pre-tax profit of \$11.3 billion in calendar year 1995, \$7.8 billion more than that earned the previous year. The pre-tax return on equity capital of 20.1% was about average when compared to the results of the previous two decades.

Declining interest rates were the most significant factor behind the increased profitability of securities firms in 1995. As interest rates fell during the first half of 1995, the value of the bonds held in inventory by broker-dealers increased, contributing to proprietary trading gains. Securities firms earned \$29 billion in their trading and investment accounts in 1995, an increase of over \$8.7 billion from last year.

Lower interest rates and higher price-earnings ratios also encouraged debt and equity offerings. The value of new offerings of investment-grade debt rose 24% in 1995, while that for common stock increased 46%. The result was an increase in underwriting revenues of \$2 billion to \$8.9 billion in 1995.

The agency business also was very profitable in 1995. Exchange volume set a new record, and securities commissions of \$23.2 billion in 1995 were \$3.4 billion higher than 1994's near-record level. The volume of margin debt outstanding increased in 1995 and, combined with a higher average level of interest rates than that prevailing the previous year, resulted in a \$1.8 billion increase in margin interest to \$6.5 billion. Investors continued to invest heavily in mutual funds, particularly stock funds, which typically generate higher sales fees for firms. As a result, revenues from retailing mutual funds increased \$.5 billion to \$7.4 billion.

"All other revenues" are comprised primarily of interest income from securities purchased under agreements to resell and fees from handling private placements, mergers, and acquisitions. These revenues grew \$14.2 billion in 1995 to \$68.5 billion. Merger and acquisition activity was exceptional in 1995, with the volume of announced deals setting a new annual record. The average value of reverse repurchase agreements on the balance sheets of broker-dealers also increased in 1995 contributing to higher revenues.

Expenses rose 21% to \$132.1 billion in 1995, primarily due to higher interest expenses. Interest expenses, the largest expense item in 1995, increased \$16.6 billion (41%). Employee compensation rose 10.5% to \$41.5 billion. Total assets rose \$241 billion to \$1,493 billion. Equity capital rose \$4.9 billion to \$58.7 billion.

Table 12  
UNCONSOLIDATED FINANCIAL INFORMATION FOR BROKER-DEALERS  
1991 - 1995 1/  
(\$ in Millions)

	1991	1992	1993	1994 <sup>r</sup>	1995 <sup>p</sup>
<b>Revenues</b>					
Securities Commissions	\$ 14,209 7	\$ 16,248 9	\$ 19,904 8	\$ 19,846 7	\$ 23,215 9
Gains (Losses) in Trading and Investment Accounts	22,641.3	21,838 3	25,427 2	20,218 6	28,956 7
Profits (Losses) from Underwriting and Selling Groups	6,592 6	8,299 7	11,248 7	6,843 8	8,865 2
Margin Interest	2,771 1	2,689 6	3,235 2	4,668 4	6,470 2
Revenues from Sale of Investment Company Shares	4,176 3	5,950.1	8,115 3	6,887 2	7,433 5
All Other Revenues	34,498 5	35,557 4	40,912 6	54,293 4	68,477 9
Total Revenues	\$ 84,889 5	\$ 90,584 0	\$ 108,843 7	\$ 112,758 1	\$ 143,419 4
<b>Expenses</b>					
Registered Representatives' Compensation (Part II Only) 2/	\$ 9,911 7	\$ 12,111 1	\$ 14,696 0	\$ 13,711 0	\$ 15,526 5
Other Employee Compensation and Benefits	14,444.1	17,066 9	20,931 3	20,552 2	22,292 2
Compensation to Partners and Voting Stockholder Officers	2,560.5	2,892 9	3,498 0	3,332 4	3,729 3
Commissions and Clearance Paid to Other Brokers	3,200 5	3,722 1	5,337 8	5,360 3	5,699 2
Interest Expenses	27,511 8	24,576 3	26,615 6	40,250 4	56,883 8
Regulatory Fees and Expenses	577 1	639 2	629 7	627 8	673 6
All Other Expenses 2/	18,027 9	20,459 0	24,096 7	25,431 8	27,299 1
Total Expenses	\$ 76,233 6	\$ 81,467 4	\$ 95,805 1	\$ 109,265 9	\$ 132,103 6
<b>Income and Profitability</b>					
Pre-tax Income	\$ 8,655.9	\$ 9,116 6	\$ 13,038 6	\$ 3,492 2	\$ 11,315 8
Pre-tax Profit Margin	10 2	10 1	12 0	3 1	7 9
Pre-tax Return on Equity	23 6	22 0	26 7	6 5	20 1
<b>Assets, Liabilities and Capital</b>					
Total Assets	\$787,716 3	\$ 978,635 0	\$ 1,240,159 8	\$ 1,251,741 0	\$ 1,493,021 6
Liabilities					
(a) Unsubordinated Liabilities	732,290 2	916,545 3	1,160,456 0	1,169,136 6	1,403,081 0
(b) Subordinated Liabilities	16,347 1	18,155 8	25,787 6	28,809 7	31,277 5
(c) Total Liabilities	748,637 3	934,701 1	1,186,243 6	1,197,946 3	1,434,358 5
Ownership Equity	\$ 39,079 1	\$ 43,933 9	\$ 53,916 2	\$ 53,794 7	\$ 58,663 1
Number of Firms	7,763	7,793	7,674	7,632	7,670

Figures may not add due to rounding

r = revised

p = preliminary

1/ Calendar, rather than fiscal, year data is reported in this table

2/ Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report

Source FOCUS Report

**Table 13**  
**UNCONSOLIDATED ANNUAL REVENUES AND EXPENSES FOR BROKER-DEALERS**  
**DOING A PUBLIC BUSINESS**  
**1991 – 1995 1/**  
**(\$ in Millions)**

	1991	1992	1993	1994 <sup>r</sup>	1995 <sup>p</sup>
<b>Revenues</b>					
Securities Commissions	\$13,710.8	\$15,499.7	\$ 19,341.1	\$ 19,246.6	\$ 22,405.1
Gains (Losses) in Trading and Investment Accounts	21,371.7	20,790.7	24,042.5	18,918.3	27,089.6
Profits (Losses) from Underwriting and Selling Groups	6,591.4	8,202.8	11,248.6	6,840.5	8,882.2
Margin Interest	2,732.4	2,651.7	3,229.1	4,651.1	5,998.2
Revenues from Sale of Investment Company Shares	4,176.2	5,851.9	8,115.3	6,876.4	7,398.2
All Other Revenues	33,746.8	34,745.5	40,086.3	53,121.4	66,218.9
Total Revenues	\$82,329.3	\$87,742.2	\$106,062.9	\$109,654.3	\$137,992.1
<b>Expenses</b>					
Registered Representatives' Compensation (Part II only) 2/	\$ 9,900.6	\$11,791.1	\$ 14,671.9	\$ 13,689.0	\$ 15,506.2
Other Employee Compensation and Benefits	14,066.5	16,601.4	20,514.9	20,070.8	21,750.0
Compensation to Partners and Voting Stockholder Officers	2,376.4	2,695.5	3,293.4	3,096.1	3,512.0
Commissions and Clearance Paid to Other Brokers	3,003.2	3,500.0	5,083.3	5,088.4	5,356.6
Interest Expenses	27,088.1	24,235.8	26,222.9	39,582.1	54,564.8
Regulatory Fees and Expenses	511.2	580.0	573.3	534.6	614.5
All Other Expenses 2/	17,457.5	19,777.9	23,548.2	24,832.5	26,497.1
Total Expenses	\$74,403.4	\$79,181.7	\$ 93,908.0	\$106,893.5	\$127,801.2
<b>Income and Profitability</b>					
Pre-tax Income	\$ 7,925.9	\$ 8,560.5	\$ 12,154.9	\$ 2,760.8	\$ 10,190.9
Pre-tax Profit Margin	9.6	9.8	11.5	2.5	7.4
Pre-tax Return on Equity	23.3	22.2	26.5	5.4	19.2
Number of Firms	5,115	5,091	5,139	5,139	5,308

Figures may not add due to rounding.

r = revised

p = preliminary

1/ Calendar, rather than fiscal, year data is reported in this table.

2/ Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report.

Source FOCUS Report

**Table 14**  
**UNCONSOLIDATED BALANCE SHEET FOR BROKER-DEALERS**  
**DOING A PUBLIC BUSINESS**  
**YEAR-END, 1991 – 1995 1/**  
**(*\$ in Millions*)**

	1991	1992	1993	1994 <sup>r</sup>	1995 <sup>p</sup>
<b>Assets</b>					
Cash	\$ 10,351 2	\$ 11,024 4	\$ 13,128.1	\$ 13,500 4	\$ 14,549 0
Receivables from Other Broker-dealers	161,484 4	216,793 7	289,168 0	342,000 1	339,824 1
Receivables from Customers	50,861.1	49,333 5	68,526 1	66,911.6	66,200 9
Receivables from Non-customers	2,126 1	4,326 7	6,412 5	7,258 1	5,850 5
Long Positions in Securities and Commodities	245,164 5	294,294.5	363,864 3	317,625 7	422,866 7
Securities and Investments not Readily Marketable	1,863.9	2,376 0	4,124 4	4,481 1	5,359 4
Securities Purchased Under Agreements to Resell (Part II only) 2/	272,226 1	350,487 8	439,431 4	437,805 6	543,625 1
Exchange Membership	313.4	315 3	323.1	353 7	420 9
Other Assets 2/	23,521 2	26,502.9	30,615 8	33,818 8	34,015.0
Total Assets	\$767,911 8	\$955,454.8	\$1,215,593 8	\$1,233,755.0	\$1,432,711 6
<b>Liabilities and Equity Capital</b>					
Bank Loans Payable	\$ 24,905 6	\$ 33,908.8	\$ 41,991 9	\$ 34,471.4	\$ 41,903.8
Payables to Other Broker-dealers	63,291.9	68,569.0	105,115.2	130,736 4	150,726.8
Payables to Non-customers	13,730.6	6,607.7	10,836.0	11,921 5	9,977 2
Payables to Customers	71,977 5	70,089.7	90,942.9	98,534 4	96,671 0
Short Positions in Securities and Commodities	113,000.9	157,295.6	199,509 5	196,807 5	195,149.3
Securities Sold Under Repurchase Agreements (Part II only) 2/	385,655.1	500,714.1	607,827.1	591,423 1	767,670.9
Other Non-subordinated Liabilities 2/	43,738.8	59,534.8	83,124 4	80,846.3	84,921.6
Subordinated Liabilities	15,464.1	17,726 5	25,370 6	28,493.5	30,331.3
Total Liabilities	\$731,764.6	\$914,446.1	\$1,164,717 6	\$1,173,234.6	\$1,377,352.0
Equity Capital	\$ 36,147.3	\$ 41,008.7	\$ 50,876.2	\$ 50,520.4	\$ 55,359 5
Number of firms	5,115	5,091	5,139	5,237	5,308

Figures may not add due to rounding

r = revised

p = preliminary

1/ Calendar, rather than fiscal, year data is reported in this table.

2/ Resale agreements and repurchase agreements for firms that neither carry nor clear are included in "other assets" and "other non-subordinated liabilities," respectively, as these items are not reported separately on Part IIA of the FOCUS Report

Source. FOCUS Report

## **Carrying and Clearing Firms**

Data for carrying and clearing firms that do a public business is presented in more detail. Reporting requirements for firms that neither carry nor clear are less detailed. Carrying and clearing firms clear securities transactions or maintain possession or control of customers' cash or securities. These firms produced 82% of the securities industry's total revenues in calendar year 1995.

Brokerage activity accounted for about 23 cents of each revenue dollar in 1995, about one cent lower than the level in 1994. Securities commissions remained the most important component, producing 14 cents of each dollar of revenue. Margin interest generated about five cents of each dollar of revenue, while revenues from mutual fund sales accounted for about four cents.

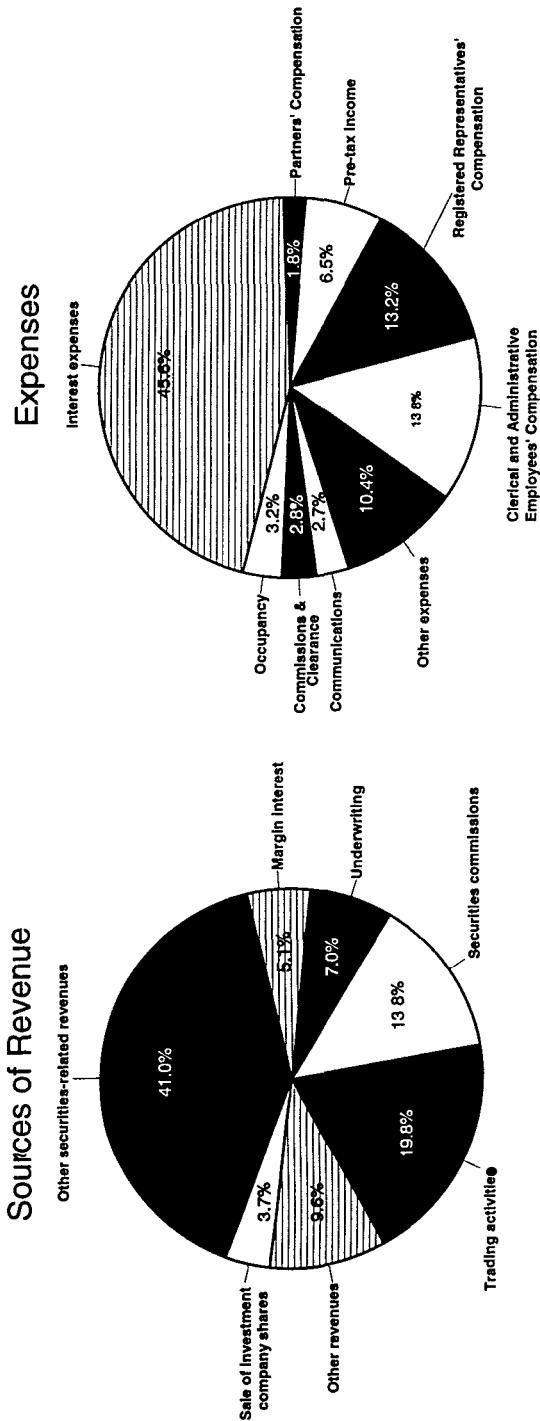
The dealer side produced 68 cents of each dollar of revenue in 1995, up from 61 cents in 1994. Twenty cents came from trading and investments, an increase from 18 cents in 1994. Seven cents came from underwriting, almost identical to that in 1994. Forty-one cents came from other securities-related revenues, an increase from thirty-six cents in 1994. This revenue is comprised primarily of interest income from securities purchased under agreements to resell and fees from handling private placements, mergers, and acquisitions.

Expenses accounted for 94 cents of each revenue dollar in 1995, resulting in a pre-tax profit margin of six cents per revenue dollar, about four cents higher than in 1994. Interest expense was the largest expense item, accounting for 46 cents of each revenue dollar in 1995 compared to 42 cents in 1994. Employee-related expenses--compensation received by registered representatives, partners, and other employees--consumed 29 cents of each revenue dollar in 1995, compared to 33 cents in 1994.

Total assets of broker-dealers carrying and clearing customer accounts were \$1,394 billion at year-end 1995, a 17% increase from 1994. Relative to other assets, the value of inventory on the books of broker-dealers increased during 1995, reflecting at least in part the increase in bond prices that took place over the course of the year. The relative value of reverse repurchase agreements also increased.

Total liabilities also increased approximately 17% to \$1,349 billion in 1995. Owners' equity rose eight percent to \$45.1 billion.

**Table 15**  
**Securities Industry Dollar in 1995**  
 For Carrying / Clearing Firms



Note: Includes information for firms doing a public business that carry customer accounts or clear securities transactions  
 SOURCE: FOCUS REPORTS

**Table 16**  
**UNCONSOLIDATED REVENUES AND EXPENSES FOR**  
**CARRYING/CLEARING BROKER-DEALERS 1/**  
(\$ in Millions)

	1994 <sup>t</sup>		1995 <sup>p</sup>		Percent Change 1994-1995
	Dollars	Percent of Total Revenues	Dollars	Percent of Total Revenues	
<b>Revenues</b>					
Securities Commissions	\$ 13,992.0	15.1%	\$ 16,210.7	13.8%	15.9%
Gains (Losses) in Trading and Investment Accounts	16,810.2	18.1	23,237.5	19.8	38.2
Profits (Losses) from Under-Writing and Selling Groups	6,254.6	6.7	8,211.7	7.0	31.3
Margin Interest	4,651.1	5.0	5,998.2	5.1	29.0
Revenues from Sale of Investment Company Shares	4,086.9	4.4	4,391.1	3.7	7.4
Miscellaneous Fees	4,795.4	5.2	5,176.9	4.4	8.0
Revenues from Research	32.5	0.0	31.3	0.0	-3.7
Other Securities Related Revenues	33,786.8	36.5	48,107.4	41.0	42.4
Commodities Revenues	2,030.0	2.2	(98.1)	-0.1	-104.8
All other Revenues	6,224.8	6.7	6,024.5	5.1	-3.2
Total Revenues	\$ 92,664.3	100.0%	\$117,291.2	100.0%	26.6%
<b>Expenses</b>					
Registered Representatives' Compensation (Part II Only) <sup>2/</sup>	\$ 13,689.0	14.8%	\$ 15,506.2	13.2%	13.3%
Other Employee Compensation and Benefits	15,169.7	16.4	16,189.9	13.8	6.7
Compensation to Partners and Voting Stockholder Officers	1,911.0	2.1	2,117.8	1.8	10.8
Commissions and Clearance Paid to Other Brokers	3,179.0	3.4	3,261.3	2.8	2.6
Communications	3,007.1	3.2	3,129.2	2.7	4.1
Occupancy and Equipment Costs	3,524.1	3.8	3,799.2	3.2	7.8
Data Processing Costs	1,342.9	1.4	1,415.7	1.2	5.4
Interest Expenses	38,894.7	42.0	53,499.0	45.6	37.5
Regulatory Fees and Expenses	416.2	0.4	479.5	0.4	15.2
Losses in Error Accounts and Bad Debts	3,999.9	4.3	308.5	0.3	-92.3
All Other Expenses	9,433.8	10.2	9,966.9	8.5	5.7
Total Expenses	\$ 90,967.4	98.2%	\$109,673.1	93.5%	20.6%
<b>Income and Profitability</b>					
Pre-tax Income	\$ 1,697.0	1.8%	\$ 7,618.1	6.5%	348.9%
Pre-tax Profit Margin	1.8		6.5		
Pre-tax Return on Equity	4.0		17.5		
Number of Firms	785		786		

Figures may not add due to rounding

r = revised

p = preliminary

1/ Calendar, rather than fiscal, year data is reported in this table.

Note Includes information for firms doing a public business that carry customer accounts or clear securities transactions  
Source FOCUS Report

**UNCONSOLIDATED BALANCE SHEET FOR CARRYING/CLEARING  
BROKER-DEALERS 1/  
(\$ in Millions)**

	Year-end 1994'		Year-end 1995 <sup>p</sup>		Percent Change 1994-1995
	Dollars	Percent of Total Assets	Dollars	Percent of Total Assets	
<b>Assets</b>					
Cash	\$ 12,390 7	1 0%	\$ 13,232 4	0 9%	6 8%
Receivables from Other Broker-dealers	334,607 9	28 1	330,529 9	23 7	-1 2
(a) Securities Failed to Deliver	21,976 0	1 8	5,920 1	0 4	-73 1
(b) Securities Borrowed	295,391 3	24 8	306,928 5	22 0	3 9
(c) Other	17,240 6	1 4	17,681 4	1 3	2 6
Receivables from Customers	66,911 6	5 6	66,200 9	4 8	-1 1
Receivables from Non-customers	6,769 7	0 6	5,260 6	0 4	-22 3
Long Positions in Securities and Commodities	300,784 9	25 2	401,747 5	28 8	33 6
(a) Bankers Acceptances, Certificates of Deposit and Commercial Paper	9,508 3	0 8	19,610 1	1 4	106 2
(b) U S and Canadian Government Obligations	189,091 2	15 9	248,826 8	17 9	31 6
(c) State and Municipal Government Obligations	15,460 2	1 3	12,722 9	0 9	-17 7
(d) Corporate Obligations	58,530 8	4 9	69,445 4	5 0	18 6
(e) Stocks and Warrants	19,894 7	1 7	33,741 5	2 4	69 6
(f) Options	1,949 6	0 2	5,586 9	0 4	186 6
(g) Arbitrage	4,265 4	0 4	9,182 5	0 7	115 3
(h) Other Securities	1,719 6	0 1	2,075 2	0 1	20 7
(i) Spot Commodities	365 0	0 0	556 4	0 0	52 4
Securities and Investments Not Readily Marketable	4,199 5	0 4	4,983 5	0 4	18 7
Securities Purchased Under Agreements					
to Resell (Part II Only)	437,805 6	36 7	543,625 1	39 0	24 2
Exchange Membership	312 9	0 0	371 6	0 0	18 8
Other Assets	28,048 1	2 4	27,701 3	2 0	-1 2
<b>Total Assets</b>	<b>\$1,191,830 8</b>	<b>100 0%</b>	<b>\$1,393,652 9</b>	<b>100.0%</b>	<b>16.9%</b>
<b>Liabilities and Equity Capital</b>					
Bank Loans Payable	\$ 34,334 8	2 9%	\$ 41,627 1	3 0%	21 2%
Payables to Other Broker-dealers	122,316 1	10 3	139,656 0	10 0	14 2
(a) Securities Failed to Receive	23,308 9	2 0	6,041 6	0 4	-74 1
(b) Securities Loaned	79,632 8	6 7	109,451 5	7 9	37 4
(c) Other	19,374 3	1 6	24,162 9	1 7	24 7
Payables to Non-customers	11,628 9	1 0	9,713 7	0 7	-16 5
Payables to Customers	98,534 4	8 3	96,671 1	6 9	-1 9
Short Positions in Securities and Commodities	185,842 8	15 6	181,772 7	13 0	-2 2
Securities Sold Under Repurchase Agreements (Part II Only)	591,423 1	49 6	767,670 9	55 1	29 8
Other Non-subordinated Liabilities	78,693 9	6 6	82,294 6	5 9	4 6
Subordinated Liabilities	27,287 4	2 3	29,168 8	2 1	6 9
<b>Total Liabilities</b>	<b>1,150,061 4</b>	<b>96 5</b>	<b>1,348,574 9</b>	<b>96 8</b>	<b>17 3</b>
<b>Equity Capital</b>	<b>\$ 41,769 4</b>	<b>3 5%</b>	<b>\$ 45,078 0</b>	<b>3 2%</b>	<b>7 9%</b>
<b>Number of Firms</b>		785		772	

Figures may not add due to rounding

r = revised

p = preliminary

1/ Calendar, rather than fiscal, year data is reported in this table

Note Includes information for firms doing a public business that carry customer accounts or clear securities transactions

Source FOCUS Report

## **Securities Traded on Exchanges**

### **Market Value and Volume**

The market value of equity and option transactions (trading in stocks, options, warrants, and rights) on registered exchanges totaled \$3.7 trillion in 1995. Of this total, approximately \$3.5 trillion, or 95%, represented the market value of transactions in stocks, rights, and warrants; \$170 billion, or 5%, were options transactions (including exercises of options on listed stocks).

The value of equity and option transactions on the New York Stock Exchange (NYSE) was \$3.1 trillion, up 24% from the previous year. The market value of such transactions on the American Stock Exchange (AMEX) increased 27.4% to \$105.3 billion and increased 26.5% to \$494.5 billion on all other exchanges. The volume of trading in stocks (excluding rights and warrants) on all registered exchanges totaled 106.4 billion shares, a 17.6% increase from the previous year, with 84.7% of the total accounted for by trading on the NYSE.

The volume of options contracts traded (excluding exercised contracts) was 287.3 million contracts in 1995, 2.1% greater than in 1994. The market value of these contracts increased 25.8% to \$118.9 billion. The volume of contracts executed on the Chicago Board Options Exchange decreased 2.9% to 178.5 million. Option trading on the AMEX and Pacific Stock Exchange rose 7.9% and 47.7% respectively while option trading on the Philadelphia Stock Exchange decreased 12.1%.

### **Nasdaq (Share Volume and Dollar Volume)**

Nasdaq share volume and dollar value information has been reported on a daily basis since November 1, 1971. At the end of 1994, there were 5,761 issues in the Nasdaq system, as compared to 5,393 a year earlier and 3,050 at the end of 1980.

Share volume for 1994 was 74.3 billion, as compared to 66.5 billion in 1993 and 6.7 billion in 1980. This trading volume encompasses the number of shares bought and sold by market makers plus their net inventory changes. The dollar volume of shares traded in the Nasdaq system was \$1.45 trillion during 1994, as compared to \$1.35 trillion in 1993 and 68.7 billion in 1980.

## **Share and Dollar Volume by Exchange**

Share volume on all registered stock exchanges totaled 106.4 billion, an increase of 17.6% from the previous year. The NYSE accounted for 85% of the 1995 share volume; the AMEX, 5%; the Chicago Stock Exchange, 4%, and the Pacific Stock Exchange, 3%.

The dollar value of stocks, rights, and warrants traded was \$3.5 trillion, 25% higher than the previous year. Trading on the NYSE contributed 88% of the total. The Chicago Stock Exchange and Pacific Stock Exchange contributed 3% and 2% respectively. The AMEX accounted for 2% of dollar volume.

**MARKET VALUE OF EQUITY/OPTIONS SALES ON U.S. EXCHANGES 1/**  
**(\$ in Thousands)**

	Total Market Value	Stocks 2/ Options 3/	Warrants	Rights	Equity Options Traded	Equity Options Exercised	Non-Equity Options 3/
All Registered Exchanges for Past Six Years							
Calendar Year.	1990	1,746,868,559	1,611,667,363	4,930,237	200,475	27,218,738	51,058,035
	1991	1,899,984,720	1,776,031,389	1,849,922	272,762	27,104,021	45,714,219
	1992	2,148,790,741	2,031,942,219	658,074	83,842	26,585,937	39,112,724
	1993	2,728,667,287	2,609,854,352	584,699	65,339	33,779,350	42,983,539
	1994	2,986,599,170	2,816,810,031	678,024	183,095	35,883,322	44,497,669
	1995	3,678,326,943	3,506,785,001	970,523	235,647	50,802,752	51,461,348
Breakdown of 1995 Data by Registered Exchanges							
All Registered Exchanges							
Exchanges	AMEX	105,343,217	72,942,406	383,697	185,641	14,623,355	14,530,786
	BSE	50,277,598	50,277,598	0	0	0	0
CHX 4/	114,237,169	114,237,169	0	0	0	0	0
CSE	69,767,274	69,767,274	0	0	0	0	0
NYSE	3,078,472,755	3,076,376,625	564,483	48,615	693,520	777,095	12,418
PSF	93,878,077	78,515,814	16,518	1,392	9,874,118	5,420,614	49,622
PHLX	58,873,256	44,667,916	5,825	0	3,437,767	5,755,260	5,006,488
CBQE	107,477,598	201	0	0	22,173,991	24,977,593	60,325,812

Figures may not sum due to rounding

1/ Data on the value and volume of equity security sales is reported in connection with fees paid under Section 31 of the Securities Exchange Act of 1934 as amended by the Securities Acts Amendments of 197

It covers odd-lot as well as round-lot transactions

2/ Includes voting trust certificates, certificate of deposit for stocks, and American Depository Receipts for stocks but excludes rights and warrants

3/ Includes all exchange trades of call and put options in stock indices, interest rates, and foreign currencies

4/ The Chicago Stock Exchange was formerly the Midwest Stock Exchange. The name change took effect on June 11, 1993

Table 19  
VOLUME OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES 1/  
(in Thousands)

	Stocks 2/ (Shares)	Warrants (Units)	Rights (Units)	Equity Options		Non-Equity Options 3/ (Contracts)
				Traded (Contracts)	Exercised (Contracts)	
All Registered Exchanges for Past Six Years						
Calendar Year.	1990	53,337,731	384,985	23,371	111,426	11,150
	1991	58,025,494	200,028	65,179	104,851	9,851
	1992	65,462,698	184,205	58,133	106,485	8,689
	1993	82,808,842	166,223	81,172	131,726	9,973
	1994	90,481,798	171,462	133,333	149,333	10,544
	1995	106,392,534	405,123	271,989	174,380	11,779
Breakdown of 1995 Data by All Registered Exchanges						
All Registered Exchanges						
Exchanges	AMEX*	4,842,647	99,897	171,933	48,887	3,223
	BSE*	1,554,392	0	0	0	0
	CHX 4/	3,924,673	0	0	0	0
	CSE*	1,781,844	0	0	0	0
	NYSE*	90,062,117	300,263	98,554	2,860	295
	PSE	2,737,689	3,714	1,452	30,853	1,582
	PHLX*	1,489,065	1,149	0	14,740	1,548
	CBOE*	106	0	0	77,040	5,131
						101,492

Figures may not sum due to rounding

\* Data of those exchanges marked with asterisk covers transactions cleared during the calendar month, clearance usually occurs within five days of the execution of a trade. Data of other exchanges covers transactions effected on trade dates falling within the reporting month.

1/ Data on the value and volume of equity security sales is reported in connection with fees paid under Section 31 of the Securities Exchange Act of 1934 as amended by the Securities Acts Amendments of 1975. It covers odd-lot as well as round-lot transactions

2/ Includes voting trust certificates, certificate of deposit for stocks, and American Depository Receipts for stocks but excludes rights and warrants

3/ Includes all exchange trades of call and put options in stock indices, interest rates, and foreign currencies

4/ The Chicago Stock Exchange was formerly the Midwest Stock Exchange. The name change took effect on June 11, 1993

**Table 20**  
**SHARE VOLUME BY EXCHANGES 1/**  
**(In Percentage)**

Year	Total Share Volume (in Thousands)	NYSE	AMEX	CHIC	PSE	PHLX	BSE	CSE	Others 2/
1945	769,018	65.87	21.31	1.77	2.98	1.06	0.66	0.05	6.30
1950	893,320	76.32	13.54	2.16	3.11	0.97	0.65	0.09	3.16
1955	1,321,401	68.85	19.19	2.09	3.08	0.85	0.48	0.05	5.41
1960	1,441,120	68.47	22.27	2.20	3.11	0.88	0.38	0.04	2.65
1961	2,142,523	64.99	25.58	2.22	3.41	0.79	0.30	0.04	2.67
1962	1,711,945	71.31	20.11	2.34	2.95	0.87	0.31	0.04	2.07
1963	1,880,793	72.93	18.83	2.32	2.82	0.83	0.29	0.04	1.94
1964	2,118,326	72.81	19.42	2.43	2.65	0.93	0.29	0.03	1.44
1965	2,671,012	69.90	22.53	2.63	2.33	0.81	0.26	0.05	1.49
1966	3,313,899	69.38	22.84	2.56	2.68	0.86	0.40	0.05	1.23
1967	4,646,553	64.40	28.41	2.35	2.46	0.87	0.43	0.02	1.06
1968	5,407,923	61.98	29.74	2.63	2.64	0.89	0.78	0.01	1.33
1969	5,134,856	63.16	27.61	2.84	3.47	1.22	0.51	0.00	1.19
1970	4,834,887	71.28	19.03	3.16	3.68	1.63	0.51	0.02	0.69
1971	6,172,668	71.34	18.42	3.52	3.72	1.91	0.43	0.03	0.63
1972	6,518,132	70.47	18.22	3.71	4.13	2.21	0.59	0.03	0.64
1973	5,899,678	74.92	13.75	4.09	3.68	2.19	0.71	0.04	0.62
1974	4,950,842	78.47	10.28	4.40	3.48	1.82	0.86	0.05	0.64
1975	6,376,094	80.99	8.97	3.97	3.26	1.54	0.85	0.13	0.29
1976	7,129,132	80.05	9.35	3.87	3.93	1.42	0.78	0.44	0.16
1977	7,124,640	79.71	9.56	3.96	3.72	1.49	0.66	0.64	0.26
1978	9,630,065	79.53	10.65	3.56	3.84	1.49	0.60	0.16	0.17
1979	10,960,424	79.88	10.85	3.30	3.27	1.64	0.55	0.28	0.23
1980	15,587,986	79.94	10.78	3.84	2.80	1.54	0.57	0.32	0.21
1981	15,969,186	80.68	9.32	4.60	2.87	1.55	0.51	0.37	0.10
1982	22,491,935	81.22	6.96	5.09	3.62	2.18	0.48	0.38	0.07
1983	30,316,014	80.37	7.45	5.48	3.56	2.20	0.65	0.19	0.10
1984	30,548,014	82.54	5.26	6.03	3.31	1.79	0.85	0.18	0.04
1985	37,187,567	81.52	5.78	6.12	3.66	1.47	1.27	0.15	0.03
1986	48,580,524	81.12	6.28	5.73	3.68	1.53	1.33	0.30	0.02
1987	64,082,996	83.09	5.57	5.19	3.23	1.30	1.28	0.30	0.04
1988	52,665,654	83.74	4.95	5.26	3.03	1.29	1.32	0.39	0.02
1989	54,416,790	81.33	6.02	5.44	3.34	1.80	1.64	0.41	0.02
1990	53,746,087	81.86	6.23	4.68	3.16	1.82	1.71	0.53	0.01
1991 <sup>r</sup>	58,290,641	82.01	5.52	4.66	3.59	1.60	1.77	0.86	0.01
1992 <sup>r</sup>	65,705,037	81.34	5.74	4.62	3.19	1.72	1.57	1.83	0.01
1993	83,056,237	82.90	5.53	4.57	2.81	1.55	1.47	1.17	0.00
1994	90,786,603	84.55	4.96	3.88	2.37	1.42	1.39	1.42	0.01
1995	107,069,656	84.49	4.78	3.67	2.56	1.39	1.45	1.66	0.00

<sup>r</sup>=revised

1/ Share volume for exchanges includes stocks, rights and warrants, calendar, rather than fiscal, year data is reported in this table.

2/ Includes all exchanges not listed individually

Source SEC Form R-31

Table 21  
DOLLAR VOLUME BY EXCHANGES 1/  
(In Percentage)

Year	(\$ in Thousands)	Total Dollar Volume		CHIC	PSE	PHLX	BSE	CSE	Others 2/
		NYSE	AMEX						
1945	\$ 16,284,552	82.75	0.81	2.00	1.78	0.96	1.16	0.06	0.48
1950	21,808,284	85.91	6.85	2.35	2.19	1.03	1.12	0.11	0.44
1955	38,039,107	86.31	6.98	2.44	1.90	1.03	0.78	0.09	0.47
1960	45,309,825	83.80	9.35	2.72	1.94	1.03	0.60	0.07	0.49
1961	64,071,623	82.43	10.71	2.75	1.99	1.03	0.49	0.07	0.53
1962	54,855,293	86.32	6.81	2.75	2.00	1.05	0.46	0.07	0.54
1963	64,437,900	85.19	7.51	2.72	2.39	1.06	0.41	0.06	0.66
1964	72,461,584	83.49	8.45	3.15	2.48	1.14	0.42	0.06	0.81
1965	89,549,093	81.78	9.91	3.44	2.43	1.12	0.42	0.08	0.82
1966	123,697,737	79.77	11.84	3.14	2.84	1.10	0.56	0.07	0.68
1967	162,189,211	77.29	14.48	3.08	2.79	1.13	0.66	0.03	0.54
1968	197,116,367	73.55	17.99	3.12	2.65	1.13	1.04	0.01	0.51
1969	176,389,759	73.48	17.59	3.39	3.12	1.43	0.67	0.01	0.31
1970	131,707,946	78.44	11.11	3.76	3.81	1.99	0.67	0.03	0.19
1971	186,375,130	79.07	9.98	4.00	3.79	2.29	0.58	0.05	0.24
1972	205,956,263	77.77	10.37	4.29	3.94	2.56	0.75	0.05	0.27
1973	178,863,622	82.07	6.06	4.54	3.55	2.45	1.00	0.06	0.27
1974	118,828,270	83.63	4.40	4.90	3.50	2.03	1.24	0.06	0.24
1975	157,256,676	85.20	3.67	4.64	3.26	1.73	1.19	0.17	0.14
1976	195,224,812	84.35	3.88	4.76	3.83	1.69	0.94	0.53	0.02
1977	187,393,084	83.96	4.60	4.79	3.53	1.62	0.74	0.75	0.01
1978	251,618,179	83.67	6.13	4.16	3.64	1.62	0.61	0.17	0.00
1979	300,475,510	83.72	6.94	3.83	2.78	1.80	0.56	0.35	0.02
1980	476,500,688	83.53	7.33	4.33	2.27	1.61	0.52	0.40	0.01
1981	491,017,139	84.74	5.41	5.04	2.32	1.60	0.49	0.40	0.00
1982	603,094,266	85.32	3.27	5.83	3.05	1.59	0.51	0.43	0.00
1983	958,304,168	85.13	3.32	6.28	2.86	1.55	0.66	0.16	0.04
1984	951,318,448	85.61	2.26	6.57	2.93	1.58	0.85	0.19	0.00
1985	1,200,127,848	85.25	2.23	6.59	3.06	1.49	1.20	0.18	0.00
1986	1,707,117,112	85.02	2.56	6.00	3.00	1.57	1.44	0.41	0.00
1987	2,286,902,788	86.79	2.32	5.32	2.53	1.35	1.33	0.35	0.00
1988	1,587,950,769	86.81	1.96	5.46	2.62	1.33	1.34	0.49	0.00
1989	1,847,766,971	85.49	2.35	5.46	2.84	1.77	1.56	0.54	0.00
1990	1,616,798,075	86.15	2.33	4.58	2.77	1.79	1.63	0.74	0.00
1991	1,778,154,074	86.20	2.31	4.34	3.05	1.54	1.72	0.83	0.01
1992	2,032,684,135	86.47	2.07	4.28	2.87	1.70	1.52	1.09	0.00
1993	2,610,504,390	87.21	2.08	4.10	2.38	1.52	1.35	1.37	0.00
1994	2,817,671,150	88.08	2.01	3.49	2.09	1.34	1.31	1.68	0.00
1995	3,507,991,171	87.71	2.10	3.26	2.24	1.27	1.43	1.99	0.00

1/ Dollar volume for exchanges includes stocks, rights and warrants, calendar, rather than fiscal, year data is reported in this table

2/ Includes all exchanges not listed individually

Table 22  
SECURITIES LISTED ON EXCHANGES 1/  
December 31, 1995

EXCHANGE Registered	COMMON		PREFERRED		BONDS		TOTAL SECURITIES	
	Number	Market Value (in Millions)	Number	Market Value (in Millions)	Number	Market Value (in Millions)	Number	Market Value (in Millions)
Domestic Securities								
American	819	111,082	65	2,246	86	9,263	970	122,392
Boston	159	3,110	8	10	1	168	3,121	na
Cincinnati	na	na	na	na	na	na	na	na
Chicago	14	2,409	2	8	0	0	16	2,417
New York	2,441	5,695,784	493	59,761	1,896	2,701,612	4,830	8,457,157
Pacific	17	438	7	396	14	644	38	1,477
Philadelphia	5	24	37	364	7	83	49	471
Total	3,455	5,812,848	612	62,785	2,004	2,711,603	6,071	8,587,235
Includes Foreign Stocks								
Foreign Securities								
New York	149	247,734	43	9,693	201	46,163	393	303,590
American 2/	72	25,876	1	246	4	449	77	26,571
Boston	0	0	0	0	0	0	0	0
Pacific	1	9	0	0	0	0	1	9
Philadelphia	0	0	0	0	0	0	0	0
Total	222	273,619	44	9,939	205	46,612	471	330,170

NA = Not Available

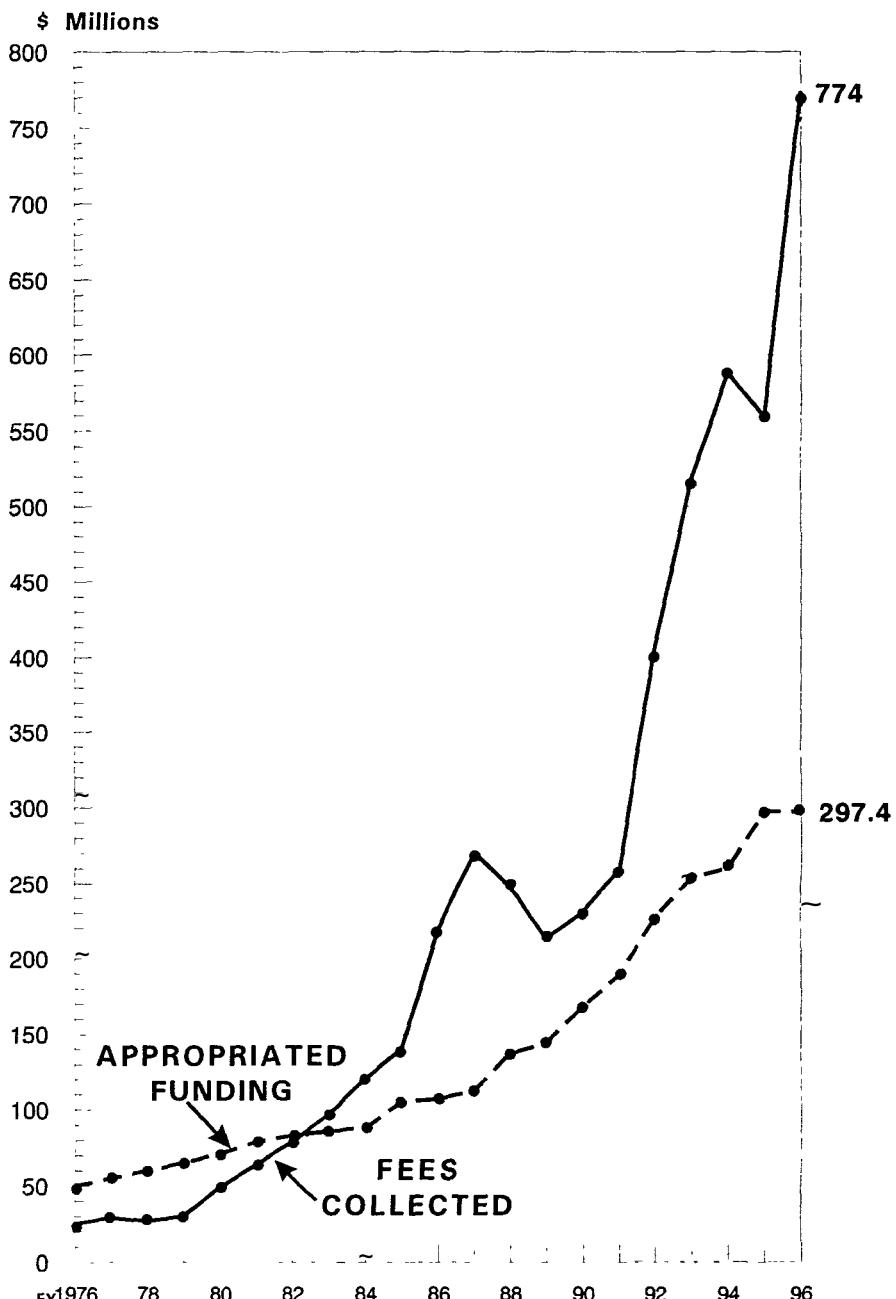
1/ Excludes securities that were suspended from trading at the end of the year and securities that, because of inactivity, had no available quotes

2/ Includes companies traded on the American Stock Exchange Emerging Company Marketplace

**Table 23**  
**VALUE OF STOCKS LISTED ON EXCHANGES**  
 (\$ in Billions)

As of Dec 31	New York Stock Exchange	American Stock Exchange	Exclusively On Other Exchanges	Total
1938	\$ 47.5	\$ 10.8	\$ .	\$ 58.3
1940	46.5	10.1	.	56.6
1941	41.9	8.6	.	50.5
1942	35.8	7.4	.	43.2
1943	47.6	9.9	.	57.5
1944	55.5	11.2	.	66.7
1945	73.8	14.4	.	88.2
1946	68.6	13.2	.	81.8
1947	68.3	12.1	.	80.4
1948	67.0	11.9	3.0	81.9
1949	76.3	12.2	3.1	91.6
1950	93.8	13.9	3.3	111.0
1951	109.5	16.5	3.2	129.2
1952	120.5	16.9	3.1	140.5
1953	117.3	15.3	2.8	135.4
1954	169.1	22.1	3.6	194.8
1955	207.7	27.1	4.0	238.8
1956	219.2	31.0	3.8	254.0
1957	195.6	25.5	3.1	224.2
1958	276.7	31.7	4.3	312.7
1959	307.7	25.4	4.2	337.3
1960	307.0	24.2	4.1	335.3
1961	387.8	33.0	5.3	426.1
1962	345.8	24.4	4.0	374.2
1963	411.3	26.1	4.3	441.7
1964	474.3	28.2	4.3	506.8
1965	537.5	30.9	4.7	573.1
1966	482.5	27.9	4.0	514.4
1967	605.8	43.0	3.9	652.7
1968	692.3	61.2	6.0	759.5
1969	629.5	47.7	5.4	682.6
1970	636.4	39.5	4.8	680.7
1971	741.8	49.1	4.7	795.6
1972	871.5	55.6	5.6	932.7
1973	721.0	38.7	4.1	763.8
1974	511.1	23.3	2.9	537.3
1975	685.1	29.3	4.3	718.7
1976	858.3	36.0	4.2	898.5
1977	776.7	37.6	4.2	818.5
1978	822.7	39.2	2.9	864.8
1979	960.6	57.8	3.9	1,022.3
1980	1,242.8	103.5	2.9	1,349.2
1981	1,143.8	89.4	5.0	1,238.2
1982	1,305.4	77.6	6.8	1,389.7
1983	1,522.2	80.1	6.6	1,608.8
1984	1,529.5	52.0	5.8	1,587.3
1985	1,882.7	63.2	5.9	1,951.8
1986	2,128.5	70.3	6.5	2,205.3
1987	2,132.2	67.0	5.9	2,205.1
1988	2,366.1	84.1	4.9	2,455.1
1989	2,903.5	100.9	4.6	3,009.0
1990	2,692.1	69.9	3.9	2,765.9
1991	3,547.5	90.3	4.3	3,642.1
1992	3,877.9	86.4	5.9	3,970.2
1993	4,314.9	98.1	7.2	4,420.2
1994	4,240.8	86.5	4.7	4,332.0
1995	5,755.5	113.3	6.8	5,875.6

**Table 24**  
**APPROPRIATED FUNDS vs FEES\* COLLECTED**



\* Excludes disgorgements from fraud actions.

**Table 25**  
**BUDGET ESTIMATES AND APPROPRIATIONS**  
**\$'000'**

Friends excluded from bill due to an absence of an enacted authorization

**Pending the possible enactment of legislation amending the Investment Advisers Act of 1940, Nasdaq's 1993 proposal included authorization to collect and spend an additional \$16 million in new fees for the direct costs of registration, inspection, and periodic reporting.**

**AV** Holdings Such registration was not passed in 1993  
**AV** Holdings reduced to \$7.865 million based on an assumption that fee language would be after quote@n permanent to provide SEC an additional \$197,500 million in offsetting collections, thereby funding the SEC (in full) at \$259.56 million

...the first time I ever saw a glistering diamond, I was struck with admiration. I have since seen many more, but I have never seen one which I could call beautiful.

# U.S. Securities and Exchange Commission

