

time that a public offering is contemplated or in process may violate the Securities Act. The decision depends upon whether the publicity can be considered part of the selling effort:

In the normal conduct of its business a corporation may continue to advertise its products and services without interruption, it may send out its customary quarterly, annual, and other periodical reports to security holders, and it may publish its proxy statements, send out its dividend notices and make routine announcements to the press. This flow of normal corporate news, unrelated to a selling effort for an issue of securities, is natural, desirable, and entirely consistent with the objective of disclosure to the public which underlies the Federal securities laws * * *.

Difficult and close questions of fact may arise as to whether a particular item of publicity by an issuer is part of a selling effort or whether it is an item of legitimate disclosure to investors unrelated to such an effort.¹⁶⁰

This limited regulation of corporate publicity is basically designed to prevent evasion of the registration and prospectus requirements of the Securities Act.¹⁶¹ A civil remedy is provided against any person who sells a security in violation of those requirements.

The securities acts' provisions against manipulation and fraud reflect their primary concern with such gross abuses as "pools," false information in filings required by the statute, or false statements by persons actually offering, selling, or buying securities. While the provisions appear to have been successful in their aim, they seem to be of little utility in many of the problems that have developed in recent years. Whereas the evils at which the statutes were primarily aimed were the manipulative and fraudulent activities of professionals in the securities markets, today much of the false or misleading information is disseminated to the investing public by issuers of securities or their publicity agents. In addition, much of the inaccurate publicity of recent years, although clearly harmful in its impact on securities markets, was not distributed for motives which could be characterized as manipulative under the specific wording of existing securities laws.

The dissemination of false information concerning issuers and their securities is a hoary technique of manipulation and fraud.¹⁶² The congressional hearings of the early 1930's which led directly to the enactment of the securities acts elicited much testimony concerning manipulation by "pools."¹⁶³ A pool was an agreement among several

¹⁶⁰ *In the Matter of Carl M. Loeb, Rhoades & Co., and Dominick & Dominick*, 38 S.E.C. 843, 853 (1959).

¹⁶¹ See Securities Act release No. 3844 (Oct. 8, 1957) in which the Commission set forth its views on the legality under the Securities Act of the publication of information prior to or after the effective date of a registration statement. This release contained descriptions of 10 situations exemplifying some of the more common problems which have arisen in this connection.

¹⁶² The first reported English manipulation case involved the spreading of false rumors of Napoleon's death in 1814, for the purpose of increasing the price of British Government securities (*Rea v. DeBerenger*, 3 Maule & S. 67, 105 Eng. Rep. 536 (K.B. 1814); 3 Loss, Securities Regulation, 1531-1532 (2d ed., 1961).

¹⁶³ The Senate report on the bill which eventually became the Exchange Act had this to say:

"Other devices commonly resorted to in the past, and banned by the bill are the dissemination of false information and tipster sheets. The record shows that it was not uncommon for market operators to employ a publicity agent to tout a stock in which they were momentarily interested. In one instance a financial writer on a great New York newspaper was discovered to have been a regular participant in the profits of a free-lance trader, without obligation except to publicize the stocks of the trader. Another witness admitted that his business was 'financial publicity,' and that his articles were published for the purpose of interesting the public in the stock in which he and those who employed him were interested, thereby causing the market value of the stock to increase; and for this work he was paid by calls and options.

"Still other cases were observed where persons were employed to broadcast over the radio, ostensibly as economists tendering gratuitous advice, but in reality as publicity agents of stock-exchange firms" (S. Rept. 792, 73d Cong., 2d sess., p. 8 (1934)).

See also hearings on S. Res. 84, "Stock Exchange Practices," before the Senate Committee on Banking and Currency, 72d Cong., 1st sess., pp. 445-464, 601-620, 672-712 (1932).

persons to trade actively in a single security in order to raise its price by concerted activity, thereby enabling them to unload their holdings on the public, at a profit. The dissemination of information favorable to the security was an important factor in the successful completion of a pool operation, and was frequently effected by employing publicity agents, or sometimes by bribing financial writers.¹⁶⁴

The provision most clearly aimed at ending the operations of pools in listed issues is section 9 of the Exchange Act. The subsection¹⁶⁵ which might benefit the investor who purchased or sold a security on the basis of false information is that making it unlawful for—

a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

Section 9(e) specifies that—

Any person who willfully participates in any act or transaction in violation of * * * this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction [for] the damages sustained as a result of any such act or transaction. * * *

It is to be noted that this provision is limited to statements made in connection with sales and purchases.¹⁶⁶ Moreover, the injured investor suing under this section is burdened both by the need to show that the price at which he bought or sold “was affected by such act or transaction,” and by the need to establish, and the restriction of his recovery to the amount of, “the damages sustained as a result” of the manipulation.¹⁶⁷

Seven reported cases have been brought under section 9(e); none has resulted in a favorable adjudication for the investor.¹⁶⁸ The facts of these cases, however, make them somewhat inconclusive.

A broad antifraud provision, section 12(2) of the Securities Act, applies to any offer or sale of any security, whether or not exempt from the registration requirement (except for government and bank securities), by means of a written or oral communication that includes a false statement or misleading omission.¹⁶⁹ Only the seller or a person controlling the seller¹⁷⁰ is liable, and only to the person

¹⁶⁴ S. Rept. 1455, 73d Cong., 2d sess., pp. 44-45 (1934).

¹⁶⁵ Sec. 9(a) (4).

¹⁶⁶ Although the statute by its terms applies only to listed securities, the Commission has taken the view that the general antifraud sections of the Exchange Act “affords to the over-the-counter market at least as great a protection against manipulation * * * as is afforded to the exchange market by sec. 9(a)” (*Barrett & Co.*, 9 S.E.C. 319, 328 (1941)).

¹⁶⁷ In *Rosenberg v. Hano*, 121 F. 2d 818 (3d Cir. 1941), the court in denying recovery, read sec. 9(e) as requiring the plaintiff to prove some change in price, because of the prohibited acts. As the court put it: “[The plaintiff] must either have entered a false market or paid a false price to enter a genuine market. The plaintiff * * * here has done neither. He paid the regular list price for stock which he does not claim has yet been affected by the illegal act.”

¹⁶⁸ In addition to the *Rosenberg* case, see *Geismar v. Bond & Goodwin, Inc.*, 40 F. Supp. 876 (S.D.N.Y. 1941); *Stella v. Kaiser*, 82 F. Supp. 301 (S.D.N.Y. 1948); *Bach v. Quigan*, 5 F.R.D. 34 (E.D.N.Y. 1945); *Fischman v. Raytheon Mfg. Co.*, 188 F. 2d 783 (2d Cir. 1951); *Acker v. Schulte*, 74 F. Supp. 683 (S.D.N.Y. 1947); and *Brittin v. Schweickardt*, CCH Fed. Sec. L. Rep. 91,029 (S.D.N.Y. 1961). The reported decisions are discussed in 3 *Loss, Securities Regulation 1747-1751* (2d ed., 1961, supplement 1962).

¹⁶⁹ The section has been held applicable to listed securities, whether or not the transaction was executed on an exchange, as well as to over-the-counter securities (*Wilko v. Swan*, 127 F. Supp. 55 (S.D.N.Y. 1955)).

¹⁷⁰ Under sec. 15, any person who controls the seller “through stockownership, agency, or otherwise” is also liable to the purchaser. Thus, if a corporation is the seller, members of the board of directors who participate in the preparation or dissemination of the false information may be liable (*Zachman v. Erwin*, 186 F. Supp. 691 (S.D. Tex. 1960); *Errion v. Connell*, 236 F. 2d 447 (9th Cir. 1956). And see *Texas Continental Life Insurance Company v. Bankers Bond Company, Inc.*, 187 F. Supp. 14 (W.D. Ky. 1960), *rev'd on other grounds sub nom. Texas Continental Life Ins. Co. v. Dunne*, 307 F. 2d 242 (6th Cir. 1962).

buying from that seller. Therefore, the section applies to fraudulent public relations only when the seller or, presumably, one of his agents, disseminates the publicity, and it benefits only the investors who bought directly from that seller.

More far-reaching and thus more important for the problems discussed above is Exchange Act rule 10b-5,¹⁷¹ which makes it unlawful for any person, directly or indirectly—

to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading * * * in connection with the purchase or sale of any security.

“Any security” means that the rule applies to unlisted securities as well as securities listed on an exchange.¹⁷²

Although section 10(b) and the rule merely state that the conduct is “unlawful,” the courts have almost uniformly held that they create a private right of action.¹⁷³ A body of case law has developed which indicates that rule 10b-5 may provide a remedy to investors who buy or sell securities on the basis of false information disseminated by corporate officials or their publicity agents. Nevertheless, although privity of contract between the plaintiff and defendant does not appear to be required for recovery under rule 10b-5,¹⁷⁴ the limiting words “in connection with a purchase or sale” may reduce the usefulness of the rule.¹⁷⁵ Questions have also arisen as to the extent of liability for unintentional misrepresentations;¹⁷⁶ and the degree of necessity for reliance on the misrepresentations by the plaintiff.¹⁷⁷ Although rule 10b-5 is an important weapon against fraud its effectiveness against the dissemination of misleading corporate publicity is reduced by these uncertainties.

The dissemination of false or misleading corporate publicity is prohibited by antifraud laws of some States.¹⁷⁸ For example, in New York the Martin Act contains provisions broader than those of the Federal securities acts. Section 352-c provides:

1. It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent of employee thereof, to use or employ any of the following acts or practices:

- (a) Any fraud, deception, concealment, suppression, false pretense, or fictitious or pretended purchase or sale;
- (b) Any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (c) Any representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with

¹⁷¹ This is promulgated under sec. 10(b) of the Exchange Act and follows it closely. It is also patterned on sec. 17(a) of the Securities Act, making it unlawful for any person, in the offer or sale of any securities by use of the mails or interstate facilities, “to obtain money or property” by means of any false statement or misleading omission.

¹⁷² *Fratt v. Robinson*, 203 F. 2d 627 (9th Cir. 1953); *Speed v. Transamerica Corporation*, 71 F. Supp. 457 (D. Del. 1947), 99 F. Supp. 808 (D. Del. 1951), aff'd 235 F. 2d 369 (3d Cir. 1956); *Osborne v. Mallory*, 86 F. Supp. 869 (S.D.N.Y. 1949).

¹⁷³ Sec. 17(a) of the Securities Act has also been held to create a private right of action (*Fischman v. Raytheon Mfg. Co.*), note 168, above, at 787, note 2.

¹⁷⁴ *Cochran v. Channing Corp.*, CCH Fed. Sec. L. Rep. 91,190 (S.D.N.Y. 1962); *Texas Continental Life Insurance Co. v. Bankers Bond Co.*, note 170, above. See also *Thiele v. Shields*, 131 F. Supp. 416 (S.D.N.Y. 1955).

¹⁷⁵ See *Birnbaum v. Newport Steel Corp.*, 193 F. 2d 461 (2d Cir. 1952); *Joseph v. Farnsworth Radio & Television Corp.*, 99 F. Supp. 701 (S.D.N.Y. 1951), aff'd per curiam, 198 F. 2d 883 (2d Cir. 1952). See 3 Loss, Securities Regulation 1767-1771 (2d ed. 1961).

¹⁷⁶ See *Texas Continental Life Insurance Co. v. Bankers Bond Co.*, note 168, above; *Kohler v. Kohler Co.*, 208 F. Supp. 808 (E.D. Wis. 1962); 3 Loss, Securities Regulation 1866 (2d ed. 1961).

¹⁷⁷ See *Kohler v. Kohler Co.*, note 1, above; *Joseph v. Farnsworth Radio & Television Corp.*, note 175, above.

¹⁷⁸ 1 Loss, Securities Regulation 35-43 (2d ed. 1961).

reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made; where engaged in to induce or promote the issuance, distribution exchange, sale, negotiation or purchase within or from this State of any securities * * *; regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted.¹⁷⁹

This statute, adopted in 1955, was in effect during the recent bull market. In the only reported case under the statute, a civil action, the court limited its application to purchases through the misrepresenting party.¹⁸⁰

The New York penal law also makes unlawful the circulation of false statements for the purpose of affecting the market price of securities,¹⁸¹ but in the one significant reported case the court gave the statute a strict reading: In a criminal proceeding against a company's principal officers, statements advertising so-called guaranteed mortgage certificates and stating that the selling company's "entire capital, surplus, and profits are pledged as security," were regarded as mere puffing.¹⁸²

Section 17(b) of the Securities Act is aimed at touting for an undisclosed consideration and thus at commercial bribery of financial writers and publishers:

It shall be unlawful for any person * * * to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

The provision was enacted "to meet the evils of the 'tipster' sheet as well as articles in newspapers and periodicals that purport to give an unbiased opinion but which opinions in reality are bought and paid for."¹⁸³ It does not appear, however, to have greatly reduced the evils it is designed to end. This may be due to difficulties of proof or to inherent unrealism in expecting writers who take bribes to disclose their unethical conduct to the world, even under the threat of criminal prosecution. There have been only four reported cases under section 17(b) since its enactment.¹⁸⁴

The Exchange Act, as implemented by rules of the Commission, requires all issuers of listed securities and some issuers of unlisted securities to file periodic and current reports. It requires issuers, of listed securities only, to make further disclosures in connection with proxy solicitations. These provisions, as already noted, do not directly affect "unofficial" publicity but they obviously tend to serve as an inhibiting or restraining factor. They, in turn, are supplemented by rules and policies of the stock exchanges and the NASD, requiring the

¹⁷⁹ New York General Business Law, sec. 352-c, added by Laws 1955, ch. 553, sec. 2. See also California Penal Code, secs. 395 and 532a.

¹⁸⁰ *Herdegen v. Paine, Webber, Jackson & Curtis*, 31 Misc. 2d 104, 105, 220 N.Y.S. 2d 459, 460 (1961).

¹⁸¹ New York penal law, secs. 926, 952.

¹⁸² *People v. Watson*, 154 Misc. 667, 278 N.Y.S. 659, aff'd mem., 245 App. Div. 838, 282 N.Y.S. 235 (1935).

¹⁸³ H. Rept. 85, 73d Cong., 1st sess., p. 24 (1933).

¹⁸⁴ See 3 Loss, Securities Regulation, 1518-1519 (2d ed., 1961).

It does not appear that State commercial bribery statutes, which are generally aimed at the corruption by sellers of agents of purchasers, are applicable to the bribery of journalists in order to induce them to write favorable material about a company. See note, "Control of Nongovernmental Corruption by Criminal Legislation," 108 U. Pa. I. Rev. 848, (1960).

filing and publishing of annual and semiannual or quarterly financial statements.¹⁸⁵

The New York Stock Exchange requires listed companies to make prompt disclosure of any developments "which might affect security values or influence investment decisions of stockholders or the investing public";¹⁸⁶ the American Stock Exchange has a similar policy.¹⁸⁷ The purpose of this policy is to prevent corporate insiders or others from obtaining the benefit of information before it is available to the public. One effect is that no listed company may give a release concerning any important corporate matter to the press on a "hold for release" basis. The policy has been criticized on the ground that it does not allow financial journalists any time to make an independent investigation for the purpose of writing a complete and unbiased story, but limits editors to "blue penciling" releases written by public relations men. Whatever the merits of this criticism, there can be little doubt of the value of the "prompt disclosure" policy as a measure to prevent fraud.¹⁸⁸

The New York Stock Exchange policy is implemented by its department of stock list. If it appears from the stock watching program of the exchange or from other sources that there is unusual market activity in a security as the result of rumors concerning a corporate development not yet released to the public, the exchange may urge the company to make immediate public disclosure putting the development in its proper light. Sometimes corporate officials seek guidance from the exchange with respect to the proper handling of an item of corporate news. The exchange takes the position that a matter still in the planning or developmental state, such as a prospective merger or new product, should be announced as soon as it appears likely that a sizable number of persons will hear of it. For example, the exchange urges listed companies to announce merger plans when their boards of directors take some affirmative action, even though there may be no certainty at that time that the merger will be consummated: once the board has acted, auditors enter to examine the company's books and, inevitably, many other persons soon know of the plans from one source or another.

The exchange actively encourages listed companies to "tell their corporate story" by means of reports to stockholders and employees, institutional advertising, window displays in offices of member firms, appearances before groups of analysts, and other public relations techniques. In this way it seeks to use public relations departments and firms hired by listed companies as an extension of its own public relations program, aimed at persuading the public to "own your share in American business." The exchange makes only a limited attempt, however, to control the substantive content of publicity disseminated by listed companies. Its view is that it is normally unable to determine the accuracy of corporate publicity at the time it is

¹⁸⁵ For a discussion of the reporting requirements of the Exchange Act and of the self-regulatory agencies, see pt. B of this chapter.

¹⁸⁶ New York Stock Exchange, Company Manual, pp. A20-A22.

¹⁸⁷ Letters from president of the American Stock Exchange to the presidents of corporations with securities traded on the exchange, dated Dec. 28, 1960, and Jan. 24, 1963.

¹⁸⁸ The listing agreements of both exchanges require prompt disclosure of dividend declarations or omissions. The New York Stock Exchange has included this provision in its listing agreement since 1914. For a discussion of the origin of the rule, see Westwood & Howard, "Self-Government in the Securities Business," 17 Law & Contemp. Prob. 518, 522-524 (1952).

issued, and to attempt to do so at a later time would be "second-guessing" the company.

The New York and American Stock Exchanges also exercise some supervision over the relations that members and member firms have with the press and investment advisers. Both exchanges prohibit members from giving any "compensation or gratuity" to any employee of "any publisher of any newspaper, news service, or statistics or information in regard to securities," without first obtaining the written consent of the employer and filing notice of such consent with the exchange.¹⁸⁹ In addition, the American Stock Exchange forbids its members to employ representatives of the press "for the purpose of obtaining advance confidential information."¹⁹⁰

Two regional exchanges, the Midwest and the Pacific Coast, were queried by the study concerning regulatory controls over the dissemination of corporate news. Under the listing agreements of both exchanges, issuers must make prompt disclosure of dividend news, but neither has any formal policy concerning distribution of other corporate news by listed companies, or any rule prohibiting members from giving gratuities to financial writers. It was the policy, however, of both of these regional exchanges, in the event of unusual and unexplained activity in a stock, to make inquiry of the company and, if warranted, to request the company to disclose any corporate news causing the activity. In the case of dually listed companies, the regional exchanges generally follow the lead of the primary market.

The National Association of Securities Dealers imposes certain requirements on companies whose securities are traded over the counter, for the privilege of being listed in the national and regional retail quotation lists which are published in the press.¹⁹¹ Such "OTC-listed" companies have been required since 1962 to make prompt disclosure to the press of corporate developments "which may affect the value of the company's securities or influence investors' decisions."

The Public Relations Society of America purports to exercise a degree of self-regulation over the public relations industry. This organization has a membership of approximately 4,400 practitioners, including many of the leading financial publicists. Its "Code of Professional Standards for the Practice of Public Relations" covers, in a very general way, the principal abuses of the public relations function. It includes, for example, the following prohibitions:

A member shall not engage in any practice which tends to corrupt the integrity of channels of public communication.

A member shall not intentional disseminate false or misleading information and is obligated to use ordinary care to avoid dissemination of false or misleading information.

Within the past 2 years, the society has established machinery for the disciplining of its members. The only cases which have been heard thus far, however, have involved disputes between public relations men over fees or clients.

7. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Planned publicity or "public relations" is a conspicuous feature of the American scene and, not surprisingly, its protagonists include

¹⁸⁹ New York Stock Exchange, rule 350; American Stock Exchange, rule 345.

¹⁹⁰ Rule 344.

¹⁹¹ See ch. VII, above.

many publicly held companies. The Special Study has concerned itself only with its impact on the securities markets and public investors.

Public relations activities can act as a valuable supplement to the disclosures required by the securities acts, for presumably the highest form of full disclosure—"truth in securities"—is that which not only reaches but is understood by the widest public. During recent years, more and more corporations have begun to provide their stockholders with adequate periodic financial reports and to make prompt public disclosure of important corporate developments. But at the other end of the spectrum, where publicity perverts the concept of full disclosure, where the purpose or effect is manipulative, the impact of public relations becomes a matter of concern.

Although many companies and their financial public relations firms—publicists who specialize in communicating between issuers on the one hand and the financial press, the investment community and stockholders on the other—conduct their activities with restraint and propriety, nevertheless a segment of this industry has been involved in the dissemination of inaccurate and misleading information. Even for companies subject to full reporting requirements, there are opportunities for fanciful publicity in the intervals between official reports, or by drowning out low-decibel reports through modern high-decibel publicity techniques. For companies outside the reach of official reporting requirements, uncontrolled publicity may be the only source of information or misinformation available to public investors and the investment advisers and broker-dealers upon whom they rely, and the opportunities and dangers are particularly great.

The intensive examination by the Special Study of the public relations activities of a few publicly held corporations demonstrates the potential impact of corporate publicity. Given a generally bullish market or existing public interest in a particular company or industry, a well-planned, publicity campaign can have an immediate and dramatic effect on the price of a security. Examples were found in which a single carefully "placed" article had the effect, within a few days, of trebling the price of a stock with a thin floating supply. The business editor of a national publication for several years made a practice of purchasing the stock of small companies which the publication was about to write up, and selling his holdings shortly after the article appeared, usually at a considerable profit.

The purposes of issuers or their public relations men in disseminating corporate publicity vary considerably, ranging from purposes seemingly unconnected with security prices, such as product promotion or creating a favorable corporate "image," to seeking an "equitable evaluation" of the company's stock in the market in order to be able to obtain financing or make acquisitions more advantageously. Publicity may also be distributed for the personal gain of company officials or to the personal advantage of public relations men who acquire securities of their clients either as part of their fee or otherwise. The Special Study found instances of persons in these categories selling substantial amounts of stock shortly after the public announcement of favorable corporate developments.

The effectiveness of planned publicity—and, in the worst forms, its insidiousness—lies in its snowballing potential. The well-planned story gains momentum and scope as it travels from management to

publicist to analyst to financial writer (or sometimes writer to analyst) to adviser to salesman to investor. The techniques of the publicist are often designed to produce exactly this result; they include the placement of articles favorable to the client in the columns of the financial press, the use of "contacts" and personal influence with persons with brokerage firms and investment advisory services, and the entertainment of financial writers and security analysts. The financial press too often permits propaganda to pass as news. Financial analysts too often depend upon public relations material rather than official disclosures or independent research as the basis for the investment advice which they give the public. Not only may these practices and others described in this report seriously mislead stockholders and potential investors; they also tend to corrupt the media of communication upon which the investing public must rely for its information.

The publicity material reviewed by the Special Study had a broad range of accuracy—from straightforward reporting to material that appeared to be deliberately misleading. Most of the inaccurate publicity, however, appeared to have some basis in fact but erred in being overoptimistic. One issuer, over a period of several months, repeatedly announced plans to expand its business—plans which never came to fruition, if indeed they were ever seriously contemplated. Other companies announced earnings projections which were without basis and were not fulfilled, descriptions of new products which were still in the experimental stage, and announcements of mergers or acquisitions which were only vague possibilities. Related to the premature disclosure of corporate "news" were the problems of withholding information that should have been published and the generation or encouragement of optimistic rumors, thus giving "insiders" an unfair advantage over members of the public.

Controls over corporate publicity are relatively limited. Publicity distributed in connection with a registered offering of securities is subject to the restrictions on offers and sales of the Securities Act. Material disseminated in proxy contests is controlled by regulations under the Exchange Act. In other situations than these, the only Federal restraints on corporate publicity are the antifraud and anti-manipulative provisions of the securities laws. These provisions—particularly rule 10b-5 under the Exchange Act—have proved to be of some value against the dissemination of false and misleading publicity. The policy of the exchanges and the NASD in favor of prompt disclosure by issuers of corporate news that may affect security prices is a strong weapon against fraud, but these self-regulatory bodies have thus far done little to improve the accuracy of corporate publicity or to control unethical practices in this field.

Undoubtedly, the most effective restraint on irresponsible publicity is the regular reporting and wide dissemination of reliable data—see part B of this chapter—but the worst abuses would still call for more direct measures. To some extent, the abuses can be corrected or controlled by direct prohibitions and penalties.¹⁹² Just as the Exchange Act now provides both civil liability [sec. 18(a)] as well as criminal sanctions [sec. 32(a)] in respect of falsity of officially filed informa-

¹⁹² The English Prevention of Fraud (Investments) Act, 1958, attempts just such a solution. Sec. 13 imposes a penalty for fraudulently inducing persons to invest money, in terms broad enough to reach the fraudulent or irresponsible conduct of issuers and their publicity agents, of the type herein discussed.

tion, a statute designed to prevent misuse of channels of publicity should provide for both civil and criminal sanctions. Such a statute would eliminate the uncertainties and problems surrounding the existing antifraud and antimanipulative provisions of the securities acts and the rules thereunder, and its provisions relating to civil liability could simplify problems of proof under the existing law.

Moreover, payment of publicists in clients' securities (including options) would seem to be an appropriate and important area for disclosure on a regulated basis. The Commission's forms and regulations for annual and current reports, or for proxy statements, should require such disclosure.

Nevertheless, there are limits to what can and should be accomplished by direct regulation in this area. The volume of corporate publicity, the paramount aim of full and prompt disclosure, the difficulty of making judgments concerning specific items of publicity, and the proximity of this field to the constitutionally protected right of freedom of expression—all combine to make legal control a relatively clumsy instrument. It remains for the self-regulatory groups, official and unofficial, the business and financial communities, and the press itself to exercise their powers and responsibilities. The privilege of having securities listed on an exchange or publicly quoted under NASD sponsorship should carry corresponding responsibilities, and the exchanges and even the NASD are in a position to impose needed restraints on issuers as well as their own members. An organization such as the Public Relations Society of America can be of value not only in regulating its members but also by raising professional standards through educational and informational activities. Not least, the news media and press and public relations associations could be far more effective than they have been in imposing standards designed to separate corporate propaganda from news, and to control conflicts of interest on the part of writers of financial news.

The Special Study concludes and recommends:

1. The stock exchanges in respect of listed securities and the NASD in respect of securities enjoying the privilege of NASD-sponsored newspaper quotations should establish high standards for the dissemination of corporate publicity to which the respective issuers would be expected to conform. These might appropriately take the form of statements of policy and should cover both positive and negative aspects; i.e., types of disclosure and publicity that are required or expected and types that are discouraged or excluded in specified circumstances.

2. Consideration should be given to the enactment of a statute providing criminal sanctions and civil liability for intentional or reckless dissemination by issuers or their agents, of false and misleading statements, including forecasts unwarranted by existing circumstances, which may reasonably be expected to affect investment decisions, loans, or other transactions involving the issuer's securities.

3. The Commission's rules with respect to registration statements, offering circulars, proxy statements and reports should be revised to require disclosure of material facts concerning compensation paid or payable to any public relations counselor or firm in the form of any equity security of the issuer, including options, warrants or rights to subscribe to any such security.

TABLES

TABLE IX-1.—Sample of issuers of over-the-counter stock classified by number of shareholders and percent of stock held by broker-dealers and banks, Dec. 31, 1961¹

[Number of issuers]

Number of shareholders	All issuers	Percent of stock held by broker-dealers and banks ²				
		1 to 9	10 to 19	20 to 29	30 to 49	50 and over
Total.....	3 984	446	298	108	98	34
1 to 24.....	5	1			2	2
25 to 99.....	39	17	9	5	2	6
100 to 199.....	60	28	13	6	6	7
200 to 299.....	63	37	14	6	5	1
300 to 499.....	165	82	52	8	18	5
500 to 749.....	144	65	49	12	11	7
750 to 999.....	113	52	32	13	14	2
1,000 to 1,999.....	166	80	54	18	13	1
2,000 to 2,999.....	96	41	30	15	9	1
3,000 to 4,999.....	73	31	18	18	6	
5,000 and over.....	60	12	27	7	12	2

¹ In a small number of instances the information shown is as of a date close to Dec. 31, 1961.

² Limited to holdings which are registered in street names of broker-dealers or nominees of banks.

³ Excludes 634 issuers who did not report shareholders and/or broker-dealer bank holdings; it was not possible to distinguish issuers who did not report from those who had no holdings to report.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962). Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

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TABLE IX-2.—Sample of issuers of over-the-counter stock classified by number of shareholders and number of issuers making public offerings, 1960-61

Number of shareholders ²	All issuers	Issuers with no public offerings		Issuers with public offerings ¹	
		Number	Percent of all issuers	Number	Percent of all issuers
Total.....	3 1,610	1,205	74.8	405	25.2
1 to 24.....	51	44	86.3	7	13.7
25 to 99.....	228	212	93.0	16	7.0
100 to 199.....	193	177	91.7	16	8.3
200 to 299.....	133	101	75.9	32	24.1
300 to 499.....	234	148	63.2	86	36.8
500 to 749.....	179	106	59.2	73	40.8
750 to 999.....	129	80	62.0	49	38.0
1,000 to 1,999.....	199	147	73.9	52	26.1
2,000 to 2,999.....	108	79	73.1	29	26.8
3,000 to 4,999.....	82	58	70.7	24	29.3
5,000 and over.....	74	53	71.6	21	28.4

¹ Denotes those issuers who in questionnaire form OTC-4 replied that they had either a primary or secondary public offering of shares of any class of stock during the period from Jan. 1, 1960, to Dec. 31, 1961. In 400 of the 405 offerings, the offering was of the class of stock with the largest number of shareholders.

² The number of shareholders is shown as of Dec. 31, 1961; in a small number of instances the information shown is as of a date close to Dec. 31, 1961. Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

³ Excludes 8 issuers who did not report shareholders.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962).

TABLE IX-3.—Cumulative number of sample of issuers of over-the-counter stock classified by number of shareholders of record and number of stock transfers, 1961

Number of shareholders ²	Number of stock transfers ¹							
	1 and over	25 and over	50 and over	100 and over	200 and over	500 and over	1,000 and over	2,000 and over
Cumulative number of issuers								
Total.....	³ 1,489	1,060	933	811	693	515	341	184
25 and over.....	1,467	1,059	932	810	692	515	341	184
100 and over.....	1,278	1,044	928	808	691	514	341	184
200 and over.....	1,090	987	903	793	687	513	341	184
300 and over.....	964	910	852	763	667	504	336	184
500 and over.....	738	717	694	643	576	452	324	183
750 and over.....	562	551	543	520	487	386	288	175
1,000 and over.....	438	430	426	412	393	325	252	162
2,000 and over.....	249	247	247	242	238	204	170	121
3,000 and over.....	149	148	148	145	141	128	117	89
5,000 and over.....	69	69	69	68	66	62	58	47
Cumulative percent of issuers in each transfer category falling in each shareholder category								
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
25 and over.....	98.5	99.9	99.9	99.9	99.9	100.0	100.0	100.0
100 and over.....	85.8	98.5	99.5	99.6	99.7	99.8	100.0	100.0
200 and over.....	73.2	93.1	96.8	97.8	99.1	99.6	100.0	100.0
300 and over.....	64.7	85.8	91.3	94.1	96.2	97.9	98.5	100.0
500 and over.....	49.6	67.6	74.4	79.3	83.1	87.8	95.0	99.5
750 and over.....	37.7	52.0	58.2	64.1	70.3	75.0	84.5	95.1
1,000 and over.....	29.4	40.6	45.7	50.8	56.7	63.1	73.9	88.0
2,000 and over.....	16.7	23.3	26.5	29.8	34.3	39.6	49.9	65.8
3,000 and over.....	10.0	14.0	15.9	17.9	20.3	24.9	34.3	48.4
5,000 and over.....	4.6	6.5	7.4	8.4	9.5	12.0	17.0	25.5
Cumulative percent of issuers in each shareholder category falling in each transfer category								
Total.....	100.0	71.2	62.7	54.5	46.5	34.6	22.9	12.4
25 and over.....	100.0	72.2	63.5	55.2	45.2	35.1	23.2	12.5
100 and over.....	100.0	81.7	72.6	63.2	54.1	40.2	26.7	14.4
200 and over.....	100.0	90.6	82.8	72.8	63.0	47.1	31.3	16.9
300 and over.....	100.0	94.4	88.4	79.1	69.2	52.3	34.9	19.1
500 and over.....	100.0	97.2	94.0	87.1	78.0	61.2	43.9	24.8
750 and over.....	100.0	98.0	96.6	92.5	86.7	68.7	51.2	31.1
1,000 and over.....	100.0	98.2	97.3	94.1	89.7	74.2	57.5	37.0
2,000 and over.....	100.0	99.2	99.2	97.2	95.6	81.9	68.3	48.6
3,000 and over.....	100.0	99.3	99.3	97.3	94.6	85.9	78.5	59.7
5,000 and over.....	100.0	100.0	100.0	98.6	95.7	89.9	84.1	68.1

¹ The number of stock transfers covers the period from Jan. 1, 1961 to Dec. 31, 1961, except in a small number of instances. Excludes transactions not involving changes of ownership: e.g., in mergers, consolidations, recapitalizations, stock dividends, stock splits, etc.

² The number of shareholders is shown as of Dec. 31, 1961; in a small number of instances the information shown is as of a date close to Dec. 31, 1961.

³ Excludes 129 issuers who did not report shareholders and/or stock transfers.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962). Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

TABLE IX-4.—Cumulative number of sample of issuers of over-the-counter stock classified by number of shareholders of record and number of broker-dealers "entering quotations," Oct. 1 to Dec. 31, 1961

Number of shareholders ²	All issuers	Number of broker-dealers "entering quotations" ¹				
		None	1 and over	2 and over	5 and over	10 and over
Cumulative number of issuers						
Total.....	³ 1,610	712	898	731	457	184
25 and over.....	1,559	666	893	727	453	180
100 and over.....	1,331	462	869	716	447	176
200 and over.....	1,138	312	826	700	445	176
300 and over.....	1,005	230	775	670	435	173
500 and over.....	771	142	629	563	383	158
750 and over.....	592	77	515	468	331	146
1,000 and over.....	463	47	416	383	277	126
2,000 and over.....	264	17	247	229	176	95
3,000 and over.....	156	11	145	134	113	72
5,000 and over.....	74	7	67	63	55	37
Cumulative percent of issuers in each quotation category falling in each shareholder category						
Total.....		100.0	100.0	100.0	100.0	100.0
25 and over.....		93.5	99.4	99.5	99.1	97.8
100 and over.....		64.9	96.8	97.9	97.8	95.7
200 and over.....		43.8	92.0	95.8	97.4	95.7
300 and over.....		32.3	86.3	91.7	95.2	94.0
500 and over.....		19.9	70.0	77.0	83.8	85.9
750 and over.....		10.8	57.3	64.0	72.4	79.3
1,000 and over.....		6.6	46.3	52.4	60.6	68.5
2,000 and over.....		2.4	27.5	31.3	38.5	51.6
3,000 and over.....		1.5	16.1	18.3	24.7	39.1
5,000 and over.....		1.0	7.5	8.6	12.0	20.1
Cumulative percent of issuers in each shareholder category falling in each quotation category						
Total.....	100.0	44.2	55.8	45.4	28.4	11.4
25 and over.....	100.0	42.7	57.3	46.6	29.1	11.5
100 and over.....	100.0	34.7	65.3	53.8	33.6	13.2
200 and over.....	100.0	27.4	72.6	61.5	39.1	15.5
300 and over.....	100.0	22.9	77.1	66.7	43.3	17.2
500 and over.....	100.0	18.4	81.6	73.0	49.7	20.5
750 and over.....	100.0	13.0	87.0	79.1	55.9	24.7
1,000 and over.....	100.0	10.2	89.8	82.7	59.8	27.2
2,000 and over.....	100.0	6.4	93.6	86.7	66.7	36.0
3,000 and over.....	100.0	7.1	92.9	85.9	72.4	46.2
5,000 and over.....	100.0	9.5	90.5	85.1	74.3	50.0

¹ Limited to broker-dealers who entered both a "bid" and "offer" in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962).

² In a small number of instances the number of shareholders shown is as of a date close to Dec. 31, 1961.

³ Excludes 8 issuers who did not report shareholders.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962). Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

TABLE IX-5.—Cumulative number of issuers of over-the-counter stock classified by number of shareholders of record and size of assets, Dec. 31, 1961¹

Number of shareholders ²	Assets									
	\$1,000 and over	\$250,000 and over	\$500,000 and over	\$750,000 and over	\$1,000,000 and over	\$2,000,000 and over	\$3,000,000 and over	\$5,000,000 and over	\$10,000,000 and over	\$20,000,000 and over
Total.....	1,601	1,497	1,387	1,285	1,227	1,040	902	747	502	340
25 and over.....	1,550	1,455	1,350	1,253	1,197	1,019	888	738	498	339
100 and over.....	1,323	1,247	1,159	1,074	1,028	887	783	661	465	322
200 and over.....	1,130	1,063	987	916	881	768	683	584	417	301
300 and over.....	998	944	873	813	781	680	609	520	375	278
500 and over.....	766	732	692	659	637	555	505	437	318	238
750 and over.....	587	566	547	527	513	458	424	370	269	201
1,000 and over.....	459	442	432	417	411	375	348	310	237	181
2,000 and over.....	262	257	255	246	246	233	221	203	168	135
3,000 and over.....	156	154	154	148	148	140	134	126	105	90
5,000 and over.....	74	73	73	71	71	67	66	62	55	49
Cumulative number of issuers										
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
25 and over.....	96.8	97.2	97.3	97.5	97.6	98.0	98.4	98.8	99.2	99.7
100 and over.....	82.6	83.3	83.6	83.6	83.8	85.3	86.8	88.5	92.6	94.7
200 and over.....	70.6	71.0	71.2	71.3	71.8	73.8	75.7	78.2	83.1	88.5
300 and over.....	62.3	63.1	62.9	63.3	63.7	65.4	67.5	69.6	74.7	81.8
500 and over.....	47.8	48.9	49.9	51.3	51.9	53.4	56.0	58.5	63.3	70.0
750 and over.....	36.7	37.8	39.4	41.0	41.8	44.0	47.0	49.5	53.6	59.1
1,000 and over.....	28.7	29.5	31.1	32.5	33.5	36.1	38.6	41.5	47.2	53.2
2,000 and over.....	16.4	17.2	18.4	19.1	20.0	22.4	24.5	27.2	33.5	39.7
3,000 and over.....	9.7	10.3	11.1	11.5	12.1	13.5	14.9	16.9	20.9	26.5
5,000 and over.....	4.6	4.9	5.3	5.5	5.8	6.4	7.3	8.3	11.0	14.4
Cumulative percent of issuers in each asset category falling in each shareholder category										
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
25 and over.....	96.8	97.2	97.3	97.5	97.6	98.0	98.4	98.8	99.2	99.7
100 and over.....	82.6	83.3	83.6	83.6	83.8	85.3	86.8	88.5	92.6	94.7
200 and over.....	70.6	71.0	71.2	71.3	71.8	73.8	75.7	78.2	83.1	88.5
300 and over.....	62.3	63.1	62.9	63.3	63.7	65.4	67.5	69.6	74.7	81.8
500 and over.....	47.8	48.9	49.9	51.3	51.9	53.4	56.0	58.5	63.3	70.0
750 and over.....	36.7	37.8	39.4	41.0	41.8	44.0	47.0	49.5	53.6	59.1
1,000 and over.....	28.7	29.5	31.1	32.5	33.5	36.1	38.6	41.5	47.2	53.2
2,000 and over.....	16.4	17.2	18.4	19.1	20.0	22.4	24.5	27.2	33.5	39.7
3,000 and over.....	9.7	10.3	11.1	11.5	12.1	13.5	14.9	16.9	20.9	26.5
5,000 and over.....	4.6	4.9	5.3	5.5	5.8	6.4	7.3	8.3	11.0	14.4

Cumulative percent of issuers in each shareholder category falling in each asset category

Total.....	100.0	93.5	86.6	80.2	76.6	64.9	56.3	46.6	31.3	21.2
25 and over.....	100.0	93.9	87.1	80.8	77.2	65.7	57.3	47.6	32.1	21.9
100 and over.....	100.0	94.3	87.6	81.2	77.7	67.0	59.2	50.0	35.1	24.3
200 and over.....	100.0	94.1	87.3	81.1	78.0	68.0	60.4	51.7	36.9	26.6
300 and over.....	100.0	94.6	87.5	81.5	78.3	68.1	61.0	52.1	37.6	27.9
500 and over.....	100.0	95.6	90.3	86.0	83.2	72.5	65.9	57.0	41.5	31.1
750 and over.....	100.0	96.4	93.2	89.8	87.4	78.0	72.2	63.0	45.8	34.2
1,000 and over.....	100.0	96.3	94.1	90.8	89.5	81.7	75.8	67.5	51.6	39.4
2,000 and over.....	100.0	98.1	97.3	93.9	93.9	88.9	84.4	77.5	64.1	51.5
3,000 and over.....	100.0	98.7	98.7	94.9	94.9	89.7	85.9	80.8	67.3	57.7
5,000 and over.....	100.0	98.6	98.6	95.9	95.9	90.5	89.2	83.8	74.3	66.2

¹ In a small number of instances the information shown is as of a date close to Dec. 31, 1961.

² Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

³ Excludes 17 issuers who did not report assets and/or shareholders.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962).

TABLE IX-6.—Characteristics of sample of issuers of over-the-counter stock with director-market makers and/or director-sponsors

Assets, Dec. 31, 1961 ¹			Number of record transfers ³		
	Number of issuers	Percent of total		Number of issuers	Percent of total
Total ²	351	100.0	Total ²	326	100.0
\$1,000 to \$249,999.....	22	6.3	1 to 24.....	24	7.4
\$250,000 to \$499,999.....	24	6.8	25 to 49.....	14	4.3
\$500,000 to \$749,999.....	26	7.4	50 to 99.....	14	4.3
\$750,000 to \$999,999.....	18	5.1	100 to 199.....	25	7.6
\$1,000,000 to \$1,999,999.....	48	13.7	200 to 499.....	47	14.4
\$2,000,000 to \$2,999,999.....	35	10.0	500 to 999.....	56	17.2
\$3,000,000 to \$4,999,999.....	37	10.5	1,000 and over.....	146	44.8
\$5,000,000 to \$9,999,999.....	56	16.0	Number of broker-dealers "entering quotations," ⁴ Oct. 1 to Dec. 31, 1961		
\$10,000,000 to \$19,999,999.....	37	10.5	Total.....	352	100.0
\$20,000,000 and over.....	48	13.7	None.....	52	14.8
Number of shareholders of record, Dec. 31, 1961 ¹			1.....	38	10.8
Total ²	351	100.0	2 to 3.....	48	13.6
1 to 24.....	1	.3	4.....	24	6.8
25 to 99.....	9	2.6	5 to 9.....	112	31.8
100 to 199.....	17	4.8	10 and over.....	78	22.2
200 to 299.....	25	7.1	Percent of stock held by 10 largest record holders, ⁵ Dec. 31, 1961 ¹		
300 to 499.....	61	17.4	Total ²	349	100.0
500 to 749.....	48	13.7	1 to 29.....	75	21.5
750 to 999.....	50	14.2	30 to 39.....	45	12.9
1,000 to 1,999.....	67	19.1	40 to 49.....	41	11.7
2,000 to 2,999.....	30	8.5	50 and over.....	188	53.9
3,000 to 4,999.....	27	7.7			
5,000 and over.....	16	4.6			

¹ In a small number of instances the information shown is as of a date close to Dec. 31, 1961.

² Excludes from the 352 issuers with director-market makers and/or director-sponsors the number of issuers that did not report the data indicated.

³ The number of stock transfers covers the period from Jan. 1 to Dec. 31, 1961, except in a small number of instances. Excludes transactions not involving changes of ownership; e.g., in mergers, consolidations, recapitalizations, stock dividends, stock splits, etc.

⁴ Limited to broker-dealers who entered both a "bid" and "offer" in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962).

⁵ Includes holdings in street name and in names of bank nominees. The figures, therefore, may be an overstatement of the amount of concentration of holdings.

NOTE.—Sample includes approximately 1 out of 5 issuers listed in the National Quotation Bureau, Inc., the National Monthly Stock Summary (Jan. 1, 1962). Where an issuer had several classes of stock, the one selected refers to that with the largest number of shareholders.

fund,⁴⁵ the statute exempts from this provision open-end investment companies which comply with certain conditions.⁴⁶ Among the conditions are the requirements that no sales load be charged on the shares issued by it, than any issuance and redemption charges not exceed 2 percent of the aggregate net asset value involved, and that no sales or promotion expenses be charged to the fund. Some 30 no-load funds complying with these requirements are in existence, of which some were organized by investment counseling firms for the benefit of persons desiring their advice in investing amounts too small to justify the expenses involved in the management of an investment account on an individual basis,⁴⁷ and others were organized by broker-dealer firms. Most of these funds charge neither an issuance nor a redemption fee, although some of them charge a redemption fee of 1 percent, which they retain.

No-load companies are, like mutual funds which charge a sales load, engaged in a continuous public offering of their redeemable shares. However, lacking the resources to finance the sales and promotion efforts in which sales charges enable the selling organizations of other funds to engage, these funds are not so well known to the public. A number of their investment advisers place advertisements in magazines and newspapers, but, except for a statement that no load is charged, they are limited by the securities laws to the formal "tombstone" ad.⁴⁸ As a result, the largest no-load funds are smaller than many medium-sized funds sold with a sales charge, and, with few exceptions, their aggregate assets are less than \$50 million. It may be noted that from the point of view of performance there is no substantial evidence to indicate that no-load funds as a class have been superior or inferior to mutual funds distributed with a sales charge.⁴⁹ It is occasionally suggested that no-load funds may operate at a disadvantage during periods of market distress, in that without a sales organization their redemptions might exceed sales and force liquidation of portfolio securities to meet redemptions at a time when such liquidations would not be desirable. Whatever the theoretical validity of this hypothesis, it is not supported by available evidence concerning the sales and redemptions of mutual shares with and without a sales charge following the sharp market decline in May 1962.⁵⁰

Although the Special Study did not concern itself generally with closed-end investment companies, a review of selling charges for mutual fund shares would be incomplete without comparison with the cost of investing in shares of closed-end companies, which, like mutual funds, also often offer the investor the opportunities of diversification of investment and professional management, although not engaging in continuous offerings of redeemable shares. Since their shares are not continuously offered, they are available only on an exchange or in the over-the-counter market, and since they are not redeemable they must similarly be disposed of in those markets. The price at which they are available therefore depends upon the forces of supply and

⁴⁵ Investment Company Act, sec. 10(a).

⁴⁶ *Ibid.*, sec. 10(d).

⁴⁷ Minimum fees for private investment counseling services usually are such as to discourage or prevent the opening of accounts of less than \$100,000.

⁴⁸ Securities Act of 1933, sec. 2(10)(b), and rule 134.

⁴⁹ The Wharton School Report concluded that there was "no relationship * * * between performance and * * * the amount of the sales charge." P. xi.

⁵⁰ See pt. A.1., p. 97, note 11, of this chapter.

APPENDIXES

APPENDIX IX-A

QUESTIONNAIRE OTC-4 TO ISSUERS OF OVER-THE-COUNTER SECURITIES



SPECIAL STUDY OF
SECURITIES MARKETS

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D.C.

April 27, 1962

TO: Selected Companies with Securities Traded in the
Over-The-Counter Market

Gentlemen:

Pursuant to the provisions of Public Law 87-196, we are engaged in a broad study of the securities markets and rules and practices relating thereto. This letter and accompanying Questionnaire are being sent to a large sample (selected at random) of companies having one or more stock issues traded in the over-the-counter market. The fact that you have received this Questionnaire should not be interpreted as a reflection upon the operations or practices of your company or upon the trading activity in its securities.

The questions are designed to obtain a few items of basic factual information concerning your company. If the conclusions of the study are to be sound ones, it is essential that every company receiving the Questionnaire supply the information requested. Your cooperation in providing full and complete answers to all the questions will be appreciated.

The completed Questionnaire should be returned not later than May 21, 1962, to Special Study of Securities Markets, Securities and Exchange Commission, Washington 25, D. C. Any inquiries concerning this Questionnaire should be directed to either Mr. Robert L. Knauss (202 - WOrth 3-5705) or Mr. Allan S. Mostoff (202 - WOrth 3-3403) at the above address.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Milton H. Cohen".

Milton H. Cohen
Director

Enclosure: OTC-4
IX-AA-1

Form OTC-4

Budget Bureau
Approval No. 71-6210

SPECIAL STUDY OF SECURITIES MARKETS

Securities and Exchange Commission
Washington 25, D. C.

QUESTIONNAIRE

Name of Company _____

Address _____

INSTRUCTIONS

Every question in this questionnaire should be completed in full. If there is no information to report or if the question is not applicable, you should answer "none" or "not applicable". If the space provided for any answer herein is insufficient, the complete answer should be prepared on a separate sheet to be attached to the questionnaire and identified as "Answer to Question ____". Please fill in the name of your firm in the space provided at the top of each page of the questionnaire.

The completed questionnaire should be returned not later than May 21, 1962, to Special Study of Securities Markets, Securities and Exchange Commission, Washington 25, D. C. Any inquiries concerning this questionnaire should be directed to either Mr. Robert L. Knauss (202 - WOrth 3-5705) or Mr. Allan S. Mostoff (202 - WOrth 3-3403) at the above address.

1. State the total assets of your company as of December 31, 1961 (if not available, use the most recent balance sheet and specify the date thereof).

\$ _____

_____ Date (if other than 12/31/61)

(Name of Company)

2. If there has been either a primary or secondary public offering of shares of any class of stock of your company during the period from January 1, 1960 to December 31, 1961, state the class of stock offered, the number of shares offered, and date of commencement of the offering.

<u>CLASS OF STOCK OFFERED</u>	<u>NUMBER OF SHARES OFFERED</u>	<u>DATE OF COMMENCEMENT OF THE OFFERING</u>
-----------------------------------	-------------------------------------	---

3. Identify each officer or director of your company who was, during the period from January 1, 1961 to December 31, 1961, an officer, partner, director, or employee of a broker-dealer firm which, to your knowledge, "made a market" in your company's stock (i.e., entered listings in the daily "sheets" of the National Quotation Bureau and/or stood ready to buy or sell your company's stock in limited quantities). Give the name of the broker-dealer firm involved.

<u>NAME OF OFFICER OR DIRECTOR</u>	<u>BROKER-DEALER FIRM</u>
------------------------------------	---------------------------

(Name of Company)

4. For each outstanding class of stock of your company, supply the following information:

	<u>CLASS OF STOCK</u> (Designate)		
(a) Number of shares outstanding on December 31, 1961	_____	_____	_____
(b) Number of stockholders of record on December 31, 1961	_____	_____	_____
* (c) Number of broker-dealers and banks included in (b) above	_____	_____	_____
* (d) Number of shares held by such broker-dealers and banks	_____	_____	_____
(e) Number of shares held by 10 largest holders of record on December 31, 1961	_____	_____	_____
* (f) Number of shares held by broker-dealers and banks included in (e) above	_____	_____	_____
** (g) Number of record transfers January 1, 1961 to December 31, 1961	_____	_____	_____
*** (h) Number of shares involved in transfers shown in (g) above	_____	_____	_____

* In (c), (d), and (f) above, include all holdings which are registered in street names of broker-dealers or nominees of banks.

** Do not report as transfers, transactions not involving changes of ownership: e.g., in mergers, consolidations, recapitalizations, stock dividends, stock splits, etc.

*** Show aggregate shares involved in all transfers, whether or not involving the same shares; e.g., if the same 100 shares were transferred three times, this should be counted as 300 shares. If there has been a stock split or other recapitalization, the number of shares transferred prior thereto should be appropriately adjusted to reflect such transaction.

(Name of Company)

5. For all debt securities of your company outstanding on December 31, 1961 (other than issues held entirely by insurance companies, banks, and other financial institutions), state:

(a) The total face amount outstanding

(1) in registered form \$ _____

(2) in bearer form \$ _____

TOTAL \$ _____

(b) (1) the number of registered holders _____

(2) your best estimate of the number of holders of bearer certificates _____

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TOTAL _____

(Name of Company)

6. Enclose copies of all reports containing financial data which were distributed to stockholders during the period January 1, 1961 to December 31, 1961. If no reports were distributed to stockholders, so state.
7. Enclose copies of all notices of meetings, proxy forms, proxy statements, and all other proxy soliciting materials submitted to stockholders during the period January 1, 1961, to December 31, 1961. If no materials were submitted to stockholders, so state.

Authorized Company Signature

By _____

This is to certify that
the information contained
herein is true and correct.

Title _____

Date: _____

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APPENDIX IX-B

LETTER TO ISSUERS CONCERNING FINANCIAL PUBLIC RELATIONS
ACTIVITIESSPECIAL STUDY OF
SECURITIES MARKETSSECURITIES AND EXCHANGE COMMISSION
WASHINGTON 25, D.C.Budget Bureau
Approval No. 71-6202

March , 1962

Gentlemen:

This Commission is currently conducting a study and investigation of the securities markets and related rules and practices, pursuant to special authorization from Congress. As part of this study, we are writing to a limited group of companies whose securities are traded publicly in order to ascertain the nature and extent of their financial public relations activities during the past few years. The fact that your company is included in this group should not be regarded as any reflection upon your company or anyone connected with it, or upon any public relations firm or consultant which may have been retained by your company. Nor should any question about a particular action or course of conduct be construed to mean that it either is, or is not, deemed by this Commission to have been a lawful, proper, or otherwise desirable one.

Your co-operation is requested in fully and carefully answering the following questions and returning your reply before April , 1962:

1. Since January 1, 19 , has your company retained any public relations firm or consultant? If so, state the name and address of each such firm or consultant and the period or periods during which such firm or consultant was retained.
2. State the circumstances under which, and the purposes for which, each such public relations firm or consultant was retained, and the name and business connection of each person who recommended such firm or consultant to your company.
3. Describe all contractual arrangements between your company and each such public relations firm or consultant. (If your company has had a written contract with any such public relations firm or consultant since January 1, 19 , a copy may be supplied in lieu of such description.)

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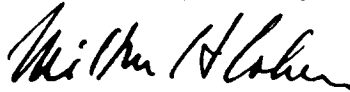
4. Since January 1, 19 , has your company or any officer, director, or beneficial owner of more than ten percent of any class of the voting securities of your company, directly or indirectly sold or disposed of any security (including options and warrants) to any public relations firm or consultant, or to any person connected therewith, or to any member of the immediate family of such person? If so, give details, including amount and description of securities, name of the recipient, consideration paid or services performed for such securities, and date of the transaction.
5. Since January 1, 19 , has any employee or group of employees of your company performed duties relating to public relations, publicity or promotion, other than those performed exclusively for the purpose of advertising and selling products or services to customers? If so, state the name of each such employee or identify each such group and describe the services performed.
6. Supply a sample copy of each annual report and any other report sent to stockholders of your company since January 1, 19 , and of all press releases, circulars, brochures and other similar material distributed since January 1, 19 by or on behalf of your company to any of the following categories of persons or institutions: financial journalists; investment and financial magazines; business and trade magazines; investment advisory services; broker-dealer firms; security analysts; and statistical services. State the date of distribution of each item (including reports to stockholders), the categories of persons or institutions to whom distributed, and the number of copies distributed.
7. Does your company, or any public relations firm or consultant retained by your company maintain a file of published articles or other items concerning your company? If so, give the location of such file and the name and address of the person who has custody of it.
8. Since January 1, 19 , has any officer, director, employee, or beneficial owner of more than ten percent of any class of voting securities of your company
 - (a) given any speech to, or held any press conference with, any group composed primarily of financial journalists, securities analysts, broker-dealers, or other persons connected with the securities business, concerning the affairs of your company, or
 - (b) held any interview with any financial journalist or securities analyst concerning the affairs of your company?

If so, identify such officer, director, employee, or stockholder; state the date, place, and subject matter of the speech, press conference, or interview; state the names of the persons present, or give a description of the group; state the name of the person who arranged the speech, press conference, or interview; and supply copies of any such speeches that are available, and articles or other items that were published as a result of any such speech, press conference, or interview.

9. Since January 1, 19 , has your company or any person on behalf of your company, invited any financial journalists, securities analysts, broker-dealers or other persons connected with the securities business to any exhibition, party, tour, excursion, or other event? If so, give details of each such event, including the date, place, purpose, number of persons who attended, name of the person who arranged it, and cost to your company.
10. Describe all services performed on behalf of your company since January 1, 19 by all public relations firms or consultants retained by your company which are not covered by your answers to questions 6, 7, 8, or 9. (If any such services were exclusively for the purpose of advertising or selling products or services to customers, it will be sufficient to so state.)

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Sincerely yours,



Milton H. Cohen
Director

APPENDIX IX-C

LETTER TO CUSTOMERS CONCERNING FINANCIAL PUBLIC RELATIONS



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON 25, D.C.

SPECIAL STUDY OF
SECURITIES MARKETS

Budget Bureau
Approval No. 71-6212

Subject:

Dear

Your assistance and cooperation are requested in connection with the Commission's study and investigation of the securities markets authorized under the provisions of Public Law 87-196, approved by the President on September 5, 1961.

In an effort to obtain complete data regarding transactions in the above security we would appreciate your assistance in answering the following questions as carefully as possible. To facilitate your reply we are enclosing a self-addressed envelope which requires no postage.

It is to be emphasized that this request for information is not intended as a reflection on yourself, the merits of the security, or on any firm from which you purchased the security. Your name was chosen at random from the purchasers of the security.

1. Have you ever purchased any shares of the above security?

Yes [] No []

If your answer is "no," do not answer the remaining questions, but return this letter in the enclosed envelope.

If your answer is "yes," please answer all of the following questions and return the letter in the enclosed envelope.

2. Please give the following information for each purchase (whether or not you have sold any shares). If more than one purchase was made, supply the information for each.

Name of Broker Date of Purchase Number of Shares Price per Share

3. Please indicate below the manner in which your attention was first directed to the above security.

Check one

- (a) ^IPublished articles about the security or the company []
- (b) Published articles about the industry in which the company is engaged []
- (c) A market letter or written report distributed by a broker or investment advisory service []
- (d) Oral recommendation by a broker []
- (e) Recommendation by a friend, relative, or business associate []
- (f) Written material received by mail []
- (g) Some other way (specify) _____ []

4. If you were attracted to the stock by a market letter, investment advisory report, published article, or other written material, please identify such material and, to the best of your recollection, describe the particular statements which attracted your attention.

5. If the stock was recommended by a broker, please state the name of the firm and the name of the salesman or representative with whom you talked and, in as much detail as possible, the substance of the recommendation given.

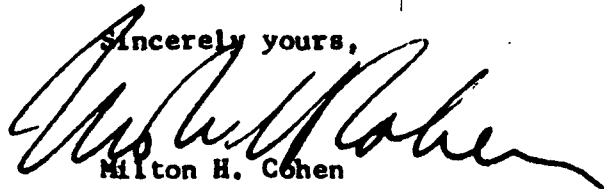
6. If you have since sold the stock, please give the following information for each sale. If more than one sale was made, supply the information for each.

Name of Broker Date of Sale Number of Shares Price per Share

7. If you wish to make any comments on your transactions in the above security, please set them forth below.

Your cooperation in completing your answers and returning this letter at your earliest convenience will be appreciated,

Sincerely yours,



Milton H. Cohen
Director

Your name

Present address

Occupation

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