1999 Annual Report

United States
Securities and Exchange Commission

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

The Honorable Albert Gore, Jr.
Vice President of the United States
and President of the Senate
Washington, D.C. 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Gentlemen:

I am pleased to send you the Annual Report of the Securities and Exchange Commission (SEC or Commission) for fiscal year 1999. The activities and accomplishments identified in the Annual Report continue the Commission's long tradition of effective enforcement in and regulation of our nation's capital markets. I have highlighted some of the Commission's achievements below.

Enhancing Investor Protections

The Commission remains vigilant in pursuing its law enforcement responsibilities. This past year, the Commission sanctioned a clearing firm $5 million for facilitating widespread fraudulent activity at a broker-dealer. The Commission determined the clearing firm sought to avoid losses by charging unauthorized trades to the broker-dealer's customers, repeatedly requesting and obtaining credit extensions without any inquiry sufficient to establish good faith,

liquidating property in customer accounts to pay for unauthorized trades, refusing to return customer property that had been liquidated to pay for unauthorized trades, and disregarding customer instructions. These actions forestalled the collapse of the broker-dealer and allowed it to continue to hide its continuing capital deficiency. The Commission's action makes it clear that a clearing firm, or any market participant, that engages in conduct enabling fraudulent activity is fully responsible for its actions.

We also kept up our focus of coordinating examinations with foreign, federal, and state regulators and self-regulatory organizations to enhance cooperation. During the year, Commission staff conducted examinations with the Hong Kong Securities and Futures Commission, the United Kingdom's Financial Services Authority acting as the Investment Management Regulatory Organization, and the Ontario Securities Commission.

The Commission adopted amendments to the rule that governs personal trading by mutual fund portfolio managers and other employees. The amendments tighten the rule by requiring greater board oversight of personal trading practices, more complete reporting of securities trading by employees, and pre-clearance of employee purchases of securities sold in initial public offerings and private placement transactions. These amendments will help ensure that the personal trading of mutual fund insiders does not compromise the interest of mutual fund shareholders.

The Commission continued its strong emphasis on investor education through town meetings, seminars, brochures, and the Internet. We launched a new investor education page on our website at www.sec.gov/invkhome.htm. The new page features interactive quizzes and calculators, information about online investing, and a special section for students and teachers.

The Commission also brought and settled charges against a major accounting firm for engaging in improper professional conduct by violating auditor independence rules. The firm agreed to be censured and to establish a $2.5 million auditor independence education fund.

Disclosure Developments

The Commission adopted comprehensive revisions to the rules and regulations applicable to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). The revised rules permit increased communications with security holders and the markets. The amendments also:

- balance the treatment of cash and stock tender offers;
- simplify and centralize the disclosure requirements; and
- eliminate regulatory inconsistencies in mergers and tender offers.

In addition, we updated the tender offer rules. We believe these revisions are leading to a more well-informed and efficient market.

We also adopted rule changes that will reduce the barriers foreign companies face when raising capital or listing their securities in more than one country. The new provisions bring SEC disclosure requirements for foreign companies closer to the international standards endorsed late last year by the International Organization of Securities Commissions, the global association of securities regulators.

During the year, most mutual funds revised their prospectuses to comply with amendments to the Commission's mutual fund registration form, and the plain English initiative adopted by the Commission in 1998. The revisions are intended to help investors make more informed investment decisions and minimize prospectus disclosure common to all funds. At the same time, we proposed rule amendments that would require funds to provide enhanced disclosure relating to their directors.

Technology

We continued to focus on automation and the many technological challenges facing the industry. This past year, our Compliance Inspections and Examination staff conducted numerous reviews of registrants' programs for dealing with the Year 2000 computer problem. These included both for cause reviews in which the staff followed-up on red flags suggesting the firm needed to enhance its preventative efforts, and general oversight reviews. The staff, in collaboration with the National Association of Securities Dealers and New York Stock Exchange, reviewed developments at the 38 largest broker-dealers.

In late 1998, we adopted a new regulatory framework for alternative trading systems (ATSs). The new framework allows ATSs to choose to register as exchanges or broker-dealers. Additional requirements of the rule are specifically designed to address their unique role in the market. It also better integrates alternative trading systems into the regulatory framework for markets, and is flexible enough to accommodate the business objectives of, and the benefits provided by, alternative trading systems. Most of the rule amendments and new rules became effective on April 21, 1999, and the remainder became effective on August 30, 1999.

In addition, we modernized the uniform broker-dealer registration form to support electronic filing in the new, Internet-based Central Registration Depository system. This computer system, which is operated by the National Association of Securities Dealers, Inc., maintains registration information regarding broker-dealers and their registered personnel.

International Listings

We continued our efforts to widen the range of choices available to U.S. investors by promoting the internationalization of our markets. In 1990, 434 foreign companies were reporting in the U.S.; today, there are over 1,200 foreign companies from 57 countries. Public offerings filed by foreign countries in 1999 totaled over $244 billion—a new record for an amount registered in a single year. We will continue to do all we can to encourage more companies to list here to afford U.S. investors the protections of U.S. securities laws.

Accounting

An area of continued concern to the Commission is inappropriate earnings management. Abusive earnings management involves the use of various forms of gimmickry to distort a company's true financial performance in order to achieve a desired result. Staff Accounting Bulletin 99 reemphasizes that the exclusive reliance on any percentage or numerical threshold in assessing materiality for financial reporting has no basis in the accounting literature or in the law. The staff also issued two other bulletins to provide guidance on the criteria necessary to recognize restructuring liabilities and asset impairments and the conditions prerequisite to recognizing revenue.

Glass-Steagall Reform

This past year, we played a significant role in negotiations leading to the enactment of the landmark Gramm-Leach-Bliley Act. The law allows securities firms, banks, and insurance companies to affiliate with one another, and requires increased coordination of activities among all the financial regulators. Even more so than in the past, Commission staff will work side-by-side with their counterparts from the banking regulatory agencies, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

Change has always been the hallmark of our markets. In recent years, the pace of change has accelerated dramatically. To be effective, the SEC must identify changes in the market and tailor regulatory activities to accomplish the dual goals of promoting capital formation and protecting investors. Towards this end, I have every confidence that the Commission will continue to perform its responsibilities with professionalism and dedication.

Sincerely,

Arthur Levitt Chairman

Commission Members and Principal Staff Officers

(As of November 5, 1999)

Commissioners	**Term Expires**
Arthur Levitt, *Chairman*	2003
Norman S. Johnson, *Commissioner*	1999
Isaac C. Hunt, Jr., *Commissioner*	2000
Paul R. Carey, *Commissioner*	2002
Laura S. Linger, *Commissioner*	2001

Principal Staff Officers

Jennifer Scardino, *Chief of Staff*

Brian J. Lane, *Director, Division of Corporation Finance* [Brian Lane resigned from the Commission in 1999. David B.H. Martin was appointed Division Director on November 29, 1999.]

Michael R. McAlevey, *Deputy Director*
Martin Dunn, *Senior Associate Director*
Vacant, *Senior Associate Director*
Robert A. Bayless, *Associate Director*
Mauri Osheroff, *Associate Director*
Shelly E. Parratt, *Associate Director*
David A. Sirignano, AssociateDirector
Vacant, *Associate Director*

Vacant, *Associate Director*

Richard Walker, *Director, Division of Enforcement*
Stephen Cutler, *Deputy Director*
William Baker, *Associate Director*
Paul V. Gerlach, Associate Director
Thomas C. Newkirk, *Associate Director*
Joan E. McKown, *Chief Counsel*
Christian J. Mixter, *Chief Litigation Counsel*
Stephen J. Crimmins, *Deputy Chief Litigation Counsel*
Walter P. Schuetze, *Chief Accountant*
James A. Clarkson, III, *Director of Regional Office Operations*

Paul F. Roye, *Director, Division of Investment Management*
Kenneth J. Berman*, Associate Director*
Barry D. Miller, *Associate Director*
Robert Plaze, *Associate Director*
Douglas Scheldt, *Associate Director*

Annette Nazareth, *Director, Division of Market Regulation*
Robert L.D. Colby, *Deputy Director*
Larry E. Bergmann, *Associate Director*
Belinda Blaine, *Associate Director*
Michael A. Macchiaroli, *Associate Director*
Catherine McGuire, *Associate Director/Chief Counsel*

Harvey Goldschmid, *General Counsel, Office of General Counsel*
[Harvey Goldschmid resigned from the Commission in 1999. David Becker was appointed General Counsel on December 7, 1999.]
David Becker, *Deputy General Counsel*
Meyer Eisenberg, *Deputy General Counsel*
Jacob H. Stillman,Solicitor
Karen Burgess, *Associate General Counsel*

Anne E. *Chafer, Associate General Counsel*
Richard M. Humes, *Associate General Counsel*
Diane Sanger, *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*

Lynn E. Turner, *Chief Accountant, Office of the Chief Accountant*

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

Vacant, *Chief Economist, Office of Economic Analysis*

Deborah Balducchi, *Director, Office of Equal Employment Opportunity*

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

Michael Bartell, *Associate Executive Director*
Margaret Carpenter, *Associate Executive Director*
Kenneth Fogash, *Associate Executive Director*
Jayne Seidman, *Associate Executive Director*

Marisa Lago, *Director, Office of International Affairs*

Vacant, *Director, Office of Investor Education and Assistance* [Susan Ochs resigned from the Commission in 1999. Tracey Aronson was

appointed Director of the Office of Congressional and Intergovernmental Affairs on March 7, 2000.]

Vacant, *Director, Office of Legislative Affairs* [Susan Ochs resigned from the Commission in 1999. Tracey Aronson was appointed Director of the Office of Congressional and Intergovernmental Affairs on March 7, 2000.]

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

Christopher Ullman, *Director, Office of Public Affairs, Policy Evaluation and Research*

Jonathan G. Katz, *Secretary of the Commission*

Biographies of Commission Members

Arthur Levitt, *Chairman*

Arthur Levitt is the 25th Chairman of the United States Securities and Exchange Commission. First appointed by President Clinton in July 1993, the President reappointed Chairman Levitt to a second five-year term in May 1998. On September 9, 1999, he became the longest serving Chairman of the Commission. His term expires on June 5, 2003.

As SEC Chairman, Arthur Levitt's top priority is investor protection, which is reflected by the key successes of his first term: reforming the debt markets; improving broker sales and pay practices; promoting the use of plain English in investment literature as well as in SEC communications with the public; preserving the independence of the private sector standard setting process; ensuring the independence of accountants; and encouraging foreign companies to list on U.S. markets.

Chairman Levitt created the Office of Investor Education and Assistance and has held a series of investor town meetings to educate investors about how to safely and confidently participate in the securities markets. Under Chairman Levitt's leadership the Commission created a Web site (www.sec.gov), which allows the public free and easy access to corporate filings, and an 800 number (800-SEC-0330) that enables the public to report problems and request educational documents.

Chairman Levitt has also worked to sever ties between political campaign contributions and the municipal underwriting business, as well as improving the disclosure and transparency of the municipal

bond market. Chairman Levitt has sought to raise the industry's sales practice standards and eliminate the conflicts of interest in how brokers are compensated. In partnership with the securities industry, Chairman Levitt developed the “Fund Profile” and other plain English guidelines for investment products to make disclosure documents easier to understand while maintaining the value of the information provided to investors.

In his second term, Chairman Levitt has maintained his focus on investor protection by: combating securities fraud; fighting Internet fraud; analyzing market structure issues; maintaining auditor independence and quality accounting standards; harmonizing international accounting standards; and creating a regulatory framework that embraces new technology. Chairman Levitt has also made a priority of working with Congress and the Administration to see that SEC employees are compensated equitably with other financial regulatory agencies.

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

Norman S. Johnson, *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 has 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 has 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 to Carol Johnson, Commissioner Johnson has three grown daughters, Kelly, Catherine and Lisa, all whom reside in Utah.

Isaac C. Hunt, Jr., *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.

Paul R. Carey, *Commissioner*

Paul R. Carey was nominated to the Securities and Exchange Commission by President Bill Clinton and confirmed by the Senate on October 21, 1997 for a term which expires June 5, 2002.

Prior to being nominated to the Commission, Mr. Carey served as Special Assistant to the President for Legislative Affairs at the White

House, where he had been since February of 1993. Mr. Carey was the liaison to the United States Senate for the President, handling banking, financial services, housing, securities, and other related issues. Prior to joining the Administration, Mr. Carey worked in the securities industry, focusing on equity investments for institutional clients.

Mr. Carey received his B.A. in Economics from Colgate University. Mr. Carey was born in Brooklyn, New York on October 18, 1962.

Laura S. Unger, *Commissioner*

Laura S. Unger was sworn in on November 5, 1997 as the fifth member of the Securities and Exchange Commission, for a term expiring June 2001.

Soon after arriving at the Commission, Ms. Linger conducted a top-to-bottom review of the Commission's Enforcement Division. The review generated a series of recommendations that have significantly enhanced the Division's ability to carry out the Commission's agenda.

Ms. Linger played a key role in the Commission's efforts to deal with the Year 2000 problem. Ms. Linger worked to improve the disclosure of Year 2000 remediation efforts by both public reporting companies and Commission-regulated entities. Ms. Linger also increased awareness about the Year 2000 problem through congressional testimony and speeches to industry groups.

As Commissioner, Ms. Unger's primary focus is on the Commission's response to the impact of technological change on the securities industry. Ms. Linger is conducting an ongoing evaluation of whether the Commission's regulatory scheme enables market participants to optimize the benefits of technology, consistent with the Commission's

obligation to protect investors. As part of this effort, in November 1999, Ms. Linger submitted a report outlining her findings and recommendations to the Commission: “Online Brokerage: Keeping Apace of Cyberspace.”

Before being appointed to the Commission, Ms. Linger served as Securities Counsel to the United States Senate Committee on Banking, Housing and Urban Affairs where she advised the Chairman, Senator Alfonse M. D'Amato (R-NY).

Before coming to work on Capital Hill, Ms. Linger was an attorney with the Enforcement Division of the Securities and Exhange Commission in Washington, D.C.

Ms. Linger received a B.A. in Rhetoric from the University of California at Berkeley in 1983, and a J.D. from New York Law School.

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Enforcement

The SEC's enforcement program seeks to promote the public interest by protecting investors and preserving the integrity and efficiency of the securities markets.

What We Did

- Obtained orders in SEC judicial and administrative proceedings requiring securities law violators to disgorge illegal profits of approximately $650 million. Civil penalties ordered in SEC proceedings totaled more than $191 million.

In SEC-related criminal proceedings, authorities obtained 64 indictments or informations and 62 convictions.

Granted access to SEC files to domestic and foreign prosecutors in 294 instances.

Significant Enforcement Actions

Most of the SEC's enforcement actions were resolved by settlement with the defendants or respondents, who generally consented to the entry of judicial or administrative orders without admitting or denying the allegations made against them. The following is a sampling of the year's significant actions.

Offering Cases

Internet Cases

SEC v. The Future Superstock, et al.[1] An Internet newsletter called The Future Superstock, written by Jeffrey C. Bruss, recommended to more than 100,000 subscribers and to visitors to the newsletter's web site the purchase of approximately 25 microcap stocks predicted to double or triple in the months following dissemination of the recommendations. In making these recommendations, the publication: (1) failed adequately to disclose more than $1.6 million of compensation, in cash and stock, from profiled issuers; (2) failed to disclose that it had sold stock in many of the issuers shortly after dissemination of recommendations caused the prices of those stocks to rise; (3) stated that it performed independent research and analysis in evaluating the issuers profiled by the newsletter when it had conducted little, if any, research; and (4) lied about the success of certain prior stock picks. This case was pending at the end of the fiscal year.

SEC v. Stockstowatch.com Inc., et al.[2] Steven A. King ran an Internet stock touting service called Stockstowatch that claimed at one time to have more than 200,000 subscribers. Stockstowatch and King conducted the scheme from October 1997 until at least July 1998, fraudulently touting the stocks of at least five publicly-traded microcap companies in e-mails sent to subscribers and in profiles posted on the Stockstowatch Internet web site. With respect to almost every stock touted on Stockstowatch, the price and/or volume of the profiled company's stock sharply increased shortly after the Stockstowatch buy recommendation. Stockstowatch and King took advantage by selling shares to reap more than a $1 million profit. This case was pending at the end of the fiscal year.

Microcap Cases

SEC v. Lawrence J. Penna, et al.[3] The Commission charged the former owners of Investors Associates, Inc. and the former co-owner

of its most active branch with obtaining illegal profits totaling over $33 million between 1995 and 1997 by underwriting fraudulent public offerings of securities of five companies and manipulating the market prices of those securities. The scheme involved the securities of issuers eligible for a NASDAQ SmallCap listing. The defendants consented to the entry of injunctions and to orders requiring the payment of a total of $43.3 million as disgorgement.

SEC v. Gilbert A. Zwetsch, et al.[4] On six occasions between 1989 and 1994, Gilbert A. Zwetsch, a former stockbroker, formed shell companies with no appreciable assets, and had family members and acquaintances serve as nominee officers and directors. The shells filed materially false and misleading registration statements with the SEC and then conducted sham initial public offerings (IPOs) as a result of which the shells appeared to have freely trading shares.

Zwetsch's proceeds from the sale of three of the shells, and from his efforts to register a fourth shell, totaled $341,475. Zwetsch and James H. Ridinger, the president and CEO of Market America, Inc., also engaged in a shell manipulation of Market America. Both defendants consented to the entry of injunctions and orders requiring them to pay a total of more than $2 million in disgorgement, interest, and civil penalties. Both also agreed to orders prohibiting them from participating in any future offering of penny stock.

SEC v. Hartley T. Bernstein.[5] Hartley T. Bernstein, an attorney, obtained over $500,000 by selling securities shortly after the IPOs of five companies for which the defendant's law firm acted as counsel. Bernstein acquired unregistered securities of four companies whose IPOs were being underwritten by Sterling Foster & Co., Inc., and of an additional company whose IPO was co-underwritten by VTR Capital, Inc. and Investors Associates, Inc. Bernstein consented to the entry of an injunction and to an order requiring him to pay a civil

penalty of $40,000. In a parallel criminal proceeding, he agreed to pay an additional $850,000 in restitution for his role in the fraud.

Financial Disclosure Cases

In the Matter of PricewaterhouseCoopers, LLP.[6] Duri ng 1996 to 1998, PricewaterhouseCoopers engaged in improper professional conduct, in that: (1) in four instances, certain of its professionals owned securities of publicly-held clients for which they provided professional services; (2) in 31 instances, individual partners and managers owned securities of publicly-held audit clients for which they did not provide professional services; and (3) in 45 instances, the retirement fund for one of PricewaterhouseCoopers's predecessors owned securities of publicly-held audit clients. PricewaterhouseCoopers consented to the entry of an order by which it was censured, and agreed to establish a fund of $2.5 million for programs to further awareness and education among accountants about independence requirements.

SEC v. Garth H. Drabinsky, et al..;[7]*In the Matter of Livent Inc.*[Q] Senior officers, directors and members of the accounting staff of Livent, Inc. engaged in a financial fraud between 1990 and 1998. The Commission's action against these employees alleged that Livent, a theatrical producer, made at least 17 false filings with the SEC in which the company materially overstated the results of its operations and its financial condition. In addition, the Commission's complaint alleged that five of the Livent employees engaged in insider trading of Livent securities while in possession of material, nonpublic information about the fraud. Four of the defendants consented to the entry of injunctions; the civil action was pending as to the other defendants at the end of the fiscal year. In a related administrative proceeding, Livent consented to the entry of a cease and desist order.

In the Matter of W. R. Grace & Co.[9] Former senior management of W.R. Grace & Co. and its main health care subsidiary, National Medical Care, Inc., falsely reported results of operations and made false and misleading statements in press releases and at teleconferences with analysts. The managers deferred reporting income, by improperly increasing or establishing reserves, to bring reported earnings into line with targeted earnings. Grace consented to the entry of a cease and desist order, and agreed to establish a $1 million fund for programs to further awareness and education about financial statements and generally accepted accounting principles.

Insider Trading Cases

SEC v. Brett S. Henderson, et al.[10] Brett S. Henderson, a 24-year old former analyst for Morgan Stanley Dean Witter & Co., and Richard F. Randall, a 27-year old school teacher, engaged in an insider trading scheme between September 1998 and July 1999, in which Henderson repeatedly tipped material, nonpublic information about Morgan Stanley clients to Randall. The defendants generated illegal profits of approximately $54,000 by trading through Randall's online brokerage account in the stock or options on stock of Broadcom Corp., Netscape Communications Corp., 12 Technologies, Inc., Manugistics Group, Inc., Xylan Corp., Broadcast.com Inc., Abacus Direct Corporation, Sequent Computer Systems, Inc., and Egghead.com, Inc. This case was pending at the end of the fiscal year.

SECv. Cassano, et al.[11] The complaint alleging insider trading violations by 25 individuals in advance of the IBM takeover of Lotus Development Corporation named the largest single group of insider traders in the SEC's history. After an initial tip by Lorraine K. Cassano, a former IBM secretary, to her husband, material, nonpublic

information about the proposed takeover spread rapidly through a network or relatives, friends, co-workers and business associates. Illegal trading by the defendants generated profits of more than $1.3 million. Five of the defendants consented to the entry of injunctions and orders requiring the payment of disgorgement and civil penalties. This case was pending as to the other defendants at the end of the fiscal year.

SEC v. Samson Hui, et al.[12] Hong Kong resident Samson Hui and a company of which he is part owner were charged by the Commission with insider trading in the stock of Omnipoint Corporation. The defendants purchased 121,000 shares of Omnipoint stock during the two-day period prior to the public announcement that Omnipoint would be acquired by VoiceStream Wireless Corporation. The defendants consented to the entry of injunctions and orders requiring them to pay $1 million representing disgorgement of trading profits and $1 million as a civil penalty.

Municipal Securities

In the Matter of Kidder, Pea body & Co. Incorporated.™ Kidder, Peabody & Co., a broker-dealer, proposed a reinvestment agreement to the city of Tampa, Florida, that would ostensibly have permitted the city to realize a higher rate of return on certain escrowed bond proceeds, without generating yields in excess of those permitted by federal tax laws. Because tax regulations required a minimum of three bidders to carry out the agreement, Kidder and another broker-dealer arranged for the submission of two artificially low bids. This permitted Kidder to obtain the agreement for $1.3 million, some $3 million less than its actual value. The less than fair value payment had the effect of artificially lowering the yield from the city's bonds (a form of “yield burning”). Kidder made false representations to Tampa about the bidding process and the value of the agreement. In

addition, in subsequent purchases and sales of securities under the agreement, Kidder and the other broker-dealer realized profits of nearly $3.5 million. Kidder consented to the entry of a cease and desist order by which it was required to disgorge $1,676,673.08 plus prejudgment interest.

In the Matter of the City of Miami, Florida, et al..™ The Commission instituted proceedings against Miami, Cesar Odio, Miami's former city manager, and Manohar Surana, its former director of finance and assistant city manager. The Commission alleged that the respondents committed fraud in the offer and sale of approximately $126 million in municipal bonds. The case involved three separate offerings in 1995. Official statements distributed to investors in the offerings failed to disclose Miami's true financial condition, including a substantial decline in cash flow that raised the possibility that the city would be unable to meet its operating expenses and debt service in 1995. Miami's Comprehensive Annual Financial Report for fiscal year 1994, distributed to broad segments of the investment community, also failed to disclose the city's deteriorating financial condition. This case was pending at the end of the fiscal year.

Self-Regulatory Organizations

In the Matter of the New York Stock Exchange, Inc.[15] The NYSE failed to uncover and halt illegal schemes in which groups of independent floor brokers effected and initiated trades from the NYSE floor in exchange for a share of the trading profits and losses. This activity, which took place between 1993 and 1998, violated rules designed to prevent floor brokers from exploiting their advantageous position on the NYSE floor for personal gain to the detriment of the investing public. The NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers, and suspended its independent floor

broker surveillance for extensive periods. The NYSE consented to the entry of the Commission's order requiring compliance with its undertakings to implement remedial measures.

Broker-Dealer Cases

In the Matter of A. S. Goldmen & Co., Inc., et al.[16] A.S. Goldmen & Co, a broker-dealer, engaged in five interrelated schemes between 1994 and 1998. These schemes involved an unregistered securities offering, and deceptive, high pressure sales practices. They also involved a manipulation that used cross-trading, nominee accounts, and baseless price predictions, unauthorized and unsuitable trades and an undisclosed, no net-selling practice. Goldmen's financial and operations principal concealed sales practice abuses and other violative conduct by instructing employees to falsify, hide or destroy various books and records. This case was pending at the end of the fiscal year.

In the Matter of Certain Market Making Activities on Nasdaq.[17] In administrative proceedings against 28 Nasdaq market making firms and 51 individuals associated with those firms, the Commission found that the firms had engaged primarily in one or more of the following types of conduct: (i) the coordination of quotations and transactions by traders making markets in Nasdaq stocks, the intentional delay of trade reports or other manipulative activity, (ii) failure to honor quoted prices, (iii) failure to provide customer orders with best execution, (iv) trading as principal with advisory clients or discretionary customers without disclosure and consent, (v) failure to comply with the books and records requirements of the federal securities laws, and (vi) failure to supervise. The respondents consented to the entry of orders imposing civil penalties totaling $26,302,500, disgorgement of $791,525, suspensions or bars, cease and desist orders and other sanctions.

In the Matter of Bear, Steams Securities Corp.[18] Bear, Stearns Securities Corp. was the clearing broker for A. R. Baron & Co., Inc., during 1995 and 1996. Baron, which conducted a boiler-room operation, was in a precarious financial situation during this period, and ultimately had to be liquidated by the Securities Investor Protection Corporation. Bear, Stearns, as a substantial creditor of Baron's, sought to avoid losses by charging unauthorized trades to Baron customers, repeatedly requesting and obtaining credit extensions without any inquiry sufficient to establish good faith, liquidating property in customer accounts to pay for unauthorized trades, refusing to return customer property that had been liquidated to pay for unauthorized trades and disregarding customer instructions. These actions forestalled Baron's collapse and allowed Baron to continue operations while in continual violation of the net capital requirements. Bear, Stearns consented to the entry of a cease and desist order requiring it to pay a civil penalty of $5 million and to comply with its undertaking to pay $30 million into a fund for the benefit of customers.

Investment Adviser and Investment Company Cases

In the Matter of Fleet Investment Advisors Inc.[19] Shawmut Investment Advisers, Inc., the predecessor of Fleet Investment Advisors, Inc., failed to disclose its use of approximately $1.9 million of advisory client commissions and mark-ups and mark-downs to compensate broker-dealers for client referrals. Shawmut told its clients that commissions were directed to brokers based on the research the brokers provided. In fact, some brokers were selected by a Shawmut salesman based on their ability to refer clients, a fact that was not disclosed. Fleet Advisors consented to the entry of a cease and desist order requiring it to pay $1,918,646 to clients.

In the Matter of Van Kampen Investment Advisory Corp., et al.[20] Van Kampen Investment Advisory Corp., the adviser to the Van Kampen Growth Fund, and Alan Sachtleben, Van Kampen's former chief investment officer, failed to disclose material facts about the effect of hot IPOs on the Growth Fund's 1996 performance. During 1996, the Growth Fund was an “incubator fund” whose shares were not generally available to the public, and had net assets of $200,000 to $380,000. From February 3 through March 14, 1997, when the Growth Fund was open to the public and grew to $109 million, Van Kampen publicly advertised that the Growth Fund achieved a 61.99 percent return and was the #1 fund in its category during 1996. What was not disclosed was that more than 50% of the Growth Fund's 1996 return was attributable to its investments in hot IPOs. The respondents consented to the entry of a cease and desist order, by which Van Kampen was required to pay a civil penalty of $100,000, and Sachtleben was required to pay a civil penalty of $25,000.

International Affairs

The SEC operates in a global marketplace. The international affairs staff promotes investor protection by encouraging the adoption of high regulatory standards worldwide, encouraging international regulatory and enforcement cooperation, including through information sharing arrangements, and conducting technical assistance programs.

What We Did

- Promoted global initiatives to develop high quality disclosure and transparency.

- Participated in initiatives that promote international financial stability, with particular focus on highly leveraged institutions, non-cooperative jurisdictions, and implementation of high quality international standards.

- Provided enforcement assistance so that the SEC and foreign authorities can continue to combat cross border fraud.

Transparency and Disclosure

International Disclosure Standards

Issuers wishing to access capital markets in more than one country may have to comply with requirements that differ in many respects, including accounting principles to be used in the preparation of financial statements.

In 1999, the SEC amended its non-financial disclosure statement requirements for offerings by foreign issuers to conform to international disclosure standards adopted by the International Organization of Securities Commissions (IOSCO—the predominant forum for collaboration in the international securities regulatory community). Adoption of these standards is designed to allow issuers to prepare a single disclosure document that can serve as an "international passport" to accessing capital markets. The SEC believes use of these IOSCO standards provides investors with a comparable amount and quality of information as normally provided under U.S. standards.

International Accounting Standards

The SEC chairs lOSCO's working party on multinational disclosure and accounting. The SEC and IOSCO have been assessing a set of completed standards prepared by the International Accounting Standards Committee (IASC) to determine whether they should be endorsed for cross-border listings and offerings of securities.

In addition, the IASC, which will set and administer the standards, is restructuring. Consistent with the approach in the U.S., membership in the restructured IASC will be determined by technical competence and dedication to the public interest.

International Monetary Fund Code

The IMF developed a Code of Good Practices on Transparency in Monetary and Financial Policies. The code identifies best practices in transparency to be used by central banks and financial agencies in setting policy. SEC staff consulted with the IMF on the development of the code and submitted a comprehensive survey response that is being used by others as a model.

Corporate Governance

Organization of Economic Cooperation and Development (OECD)

The SEC provided technical advice in the development of the OECD's corporate governance guidelines. The guidelines address the role of corporate governance in:

- protecting the rights of shareholders;
- ensuring the equitable treatment of all shareholders;
- recognizing the role of stakeholders established by law;
- providing for the timely and accurate disclosure of all material matters regarding the corporation; and
- defining the responsibilities of the board of directors and ensuring the board's accountability to the company and shareholders.

Council of Securities Regulators of the America (COSRA)

COSRA is a regional organization whose membership includes the SEC as well as securities regulators from 25 nations in North, Central and South America, and the Caribbean. In 1999, COSRAs key initiatives included a project on the implementation of the OECD's corporate governance guidelines. The SEC, as well as other COSRA members, prepared survey responses detailing corporate governance practices in their jurisdictions.

Highly Leveraged Institutions

International Organization of Securities Commissions

Highly leveraged institutions (HLIs) have come under review due to their impact on financial stability. IOSCO identified two primary concerns stemming from the operation of HLIs: systemic risk, where failure of one or more firms can spread to endanger the larger financial system; and market instability, where the actions of one or more firms may destabilize markets. The SEC provided input to lOSCO's study of HLIs, which recommended improved risk management and increased transparency for HLIs' activities.

Financial Stability Forum Working Group on Highly Leveraged Institutions

The FSF is made up of finance ministries, central banks, securities regulators, and international financial institutions such as the World Bank. The FSF reviewed the recommendations of other groups relating to HLI activities, including those of IOSCO and the Basel Committee on Banking Supervision, to identify common ground and unresolved issues. The FSF expects to make further recommendations on improving risk management practices

and enhancing disclosure and transparency in connection with HLI activities, which is consistent with the approach taken in the U.S. by the President's Working Group on Financial Markets in its report on *Hedge Funds, Leverage and the Users of Long-Term Capital Management.*

Non-cooperative Jurisdictions

Financial Stability Forum Offshore Financial Center Working Group

The FSF identified that offshore jurisdictions with weak regulatory systems and a poor ability to cooperate can pose a threat to international financial stability. The FSF established a working group to assess offshore financial centers' compliance with international standards and recommend incentives to improve compliance.

Financial Action Task Force Work on Non-cooperative Jurisdictions

Because of the particular problems posed by non-cooperative jurisdictions (NCJs) in the fight against money laundering, the Financial Action Task Force (FATF) is assessing their compliance with relevant international standards. The FATF is an international body whose purpose is the development and promotion of anti-money laundering policies. The SEC staff advises the U.S. Department of Treasury, the U.S. representative to FATF, with regard to seeking assistance from NCJs.

Implementing International Standards

International Organization of Securities Commission's Core Principles

In 1998, IOSCO adopted the “Objectives and Principles of Securities Regulation” (the Core Principles), which represent consensus on sound practices for regulating securities markets. To promote international implementation of the Core Principles, the SEC and other IOSCO members are assessing their own compliance with the Core Principles, as well as cooperating with international financial institutions on the use of the Core Principles in their reform and restructuring work.

Financial Stability Forum Implementation Task Force

The FSF initiated a task force to explore issues related to promoting the implementation of international standards relevant to strengthening financial systems. The task force will consider an implementation strategy, including identifying a compendium of standards and ways to enhance compliance, such as incentives and technical assistance.

Enforcement Cooperation

The SEC needs assistance from foreign authorities to protect U.S. investors from cross-border fraud. We have entered into over 30 formal information-sharing arrangements with foreign counterparts.

The following cases illustrate the effectiveness and importance of the SEC's international enforcement program.

SEC v. Goran Heden, et al.. Based on information provided by Swedish authorities, the SEC was able to identify the Swedish purchasers and the tipper in connection with this insider trading case. The purchasers traded on information about a Swedish company's takeover of a U.S. company. After the U.S. court issued an asset freeze and ruled that the SEC would likely succeed on the merits at trial, all the Swedish defendants agreed to settle, disgorging $172,736 in trading profits and paying $115,835 in civil penalties. The action against the U.S. tipper is still pending.

SEC v. Futures Strategies Srl. The SEC obtained a U.S. federal district court order and preliminary injunction against Future Strategies, an Italian entity, for allegedly promoting over the Internet a fraudulent pyramid scheme. Futures Strategies obtained investments from more than 400 investors throughout the U.S. from its website.

SEC v. Barlow, et al. The SEC traced funds in this prime bank case to accounts held at a bank in Switzerland. The SEC obtained an emergency order from U.S. federal district court to freeze defendants' accounts, and with the assistance of the Swiss authorities, was able to freeze approximately $1.7 million held by defendants at a Swiss bank.

In the Matter of Cronos Group. The SEC was alerted to this financial fraud case upon the resignation of the defendant's auditors following the filing of a Section 10A report with the SEC. With information obtained from authorities in the United Kingdom, Switzerland and Austria, the SEC brought an action alleging that the defendant had violated the antifraud, reporting and recordkeeping provisions of the U.S. federal securities laws. The defendant agreed to settle the SEC's charges.

SEC v. Princeton Economics International Ltd., et al. The SEC obtained a preliminary injunction against Martin A. Armstrong, Princeton Economics International, Ltd. and Princeton Global Management, Ltd., for the alleged fraudulent sale of billions of dollars of promissory notes to Japanese investors, in violation of federal securities laws. In selling the notes, the defendants made misrepresentations to investors about the segregation and use of the proceeds from the notes' sales. In fact, it appears that investor funds were commingled with those of the defendants and that millions of dollars were lost through undisclosed risky trading.

Technical Assistance

The SEC's technical assistance program helps emerging securities markets develop regulatory structures that promote investor confidence. The program is multifaceted and includes training,

reviewing foreign securities laws, and responding to detailed requests for assistance.

The cornerstone of the SEC's technical assistance program is the International Institute for Securities Market Development, a two-week management level training program covering the development and oversight of securities markets. In addition, the SEC conducts a weeklong International Institute for Securities Enforcement and Market Oversight.

Our staff participated in a range of training initiatives including a capital markets program for regulators from nine Latin American countries, and corporate governance and clearance and settlement programs in Moscow.

Investor Education and Assistance

Our investor education and assistance staff serves investors who complain to the SEC about investment fraud or the mishandling of their investments by securities professionals. The staff responds to a broad range of investor inquiries, produces and distributes educational materials, and organizes town meetings and seminars.

What We Did

- Received 72,173 complaints and inquiries, up 41 percent from last year.
- Referred over 2,600 complaints for follow-up inspection.
- Participated in four investors' town meetings.
- Organized 16 educational seminars.
- Released two new interactive tools and five new publications for investors.

Investor Complaints and Inquiries

Dramatic Increase in Investor Contacts

The SEC's investor assistance specialists received a record 72,173 complaints and inquiries, up 41 percent from 1998. The volume of investor contacts agency-wide has increased more than 85 percent since 1994—from 38,839 to 72,173. About 20 percent of the investor complaints and inquiries were received by the SEC through e-mail.

Approximately 55 percent of the SEC's complaint and inquiries were handled by phone. We installed a new automated phone system to accommodate the increase in volume and provide better service to investors.

Complaint Trends

Our investor assistance specialists received 25,159 investor complaints. Of these, 56 percent involved operational problems (such as account transfers and the processing of orders), 33 percent involved sales practice abuses, and 11 percent involved other securities-related concerns. Operational complaints increased during 1999 primarily because of an increase in online trading activity. The ten most common complaints we received during the year follow.

1. Delays in transfer of accounts or transfer problems

2. Misrepresentation

3. Failure to process or delays in executing an investor's order

4. Failure to follow an investor's instructions

5. Unauthorized transactions

6. Concerns about the way a corporation conducts its business

7. Problems concerning 401 (k) plans or pension plans

8. Use of false or misleading advertising materials

9. Difficulty in accessing an account

10. Errors in processing an investor's order

Referrals

When a complaint contains allegations of serious misconduct or suggests a pattern of widespread abuses, our investor assistance staff refers the complaint to the Division of Enforcement, the Office of Compliance Inspections and Examinations, other offices within the SEC, or other regulatory agencies. In 1999, we referred over 2,600

complaints to SEC divisions and offices or to other regulatory agencies. In addition, we referred approximately 700 inquiries of regulatory significance for further review by SEC staff or other regulatory agencies.

Educating Investors

New Investor Education Page on Website

In conjunction with the Facts on Saving and Investing Campaign, we launched a new investor education page on the SEC's website at www.sec.gov/invkhome.htm. The new page features interactive quizzes and calculators, information about online investing, and a special section for students and teachers.

Investors can also use the “Search Key Topics” databank to find quick answers to common questions about investing. During 1999, more than 415,000 users from around the world visited our investor education page.

New Publications and Interactive Tools

We published the following free publications and interactive tools that are available on our website.

Mutual Fund Cost Calculator

An interactive tool that helps investors estimate and compare the costs of different mutual funds.

(Note: The calculator received more than 30,000 hits during the first week of its release.)

Test Your Money Smarts Quiz
An interactive quiz that tests ten basic financial literacy concepts.

Day Trading: Your Dollars at Risk

The risks and how difficult it is to profit from day trading.

Tips for Online Investing: What You Need to Know About Trading in Fast-Moving Markets

How to limit your losses in fast-moving markets.

International Investing

The basics of investing in foreign companies and the ways investing abroad can differ from investing in U.S. companies.

Internet Fraud: How to Avoid Online Investment Scams

How to spot different types of Internet fraud, what the SEC is doing to fight online investment scams, and how to use the Internet to invest wisely.

Microcap Stock: A Guide for Investors

What is a microcap stock, how to find information about companies, what “red flags” to consider, and where to turn for help.

We also worked with the Securities Industry Association, the National Association of Securities Dealers, Inc., and the Investment Company Institute to develop and distribute a *Year 2000 Investor Kit.* The kit included information about the Year 2000 date change, provided answers to frequently asked questions, and featured a checklist to help investors prepare for the Year 2000.

Investors' Town Meetings and Seminars

We participated in investors' town meetings in Los Angeles, California; Miami, Florida; Seattle, Washington; and Portland, Oregon. In coordination with the securities industry and consumer groups, we held 16 educational seminars as part of the town meeting program.

Facts on Saving and Investing Campaign

The Facts on Saving and Investing Campaign is an ongoing education effort to motivate individuals throughout the Western Hemisphere to get the facts about saving and investing. During the week of April 25 to May 1, 1999, securities regulators in 15 countries throughout the Americas participated in the campaign. In the United States, campaign partners—including federal agencies, 46 states, consumer organizations, and financial industry associations—held educational events and distributed information. Key campaign events during the year included:

- **School Visits.** Securities regulators in 24 states, SEC officials, and other campaign partners visited schools across the country to speak with students about saving, investing, and avoiding financial fraud.

- **Workplace Seminars.** Securities regulators and other campaign partners visited workplaces to speak with employees about such topics as credit management, planning a personal budget, personal financial management, and saving and investing wisely.

Toll-free Information Service

Our toll-free information service (800-SEC-0330) provides investor protection information and allows investors to order educational materials. During the year, we received approximately 63,000 calls to this service.

Regulation of Securities Markets

The Division of Market Regulation oversees the operations of the nation's securities markets and market participants. In 1999, the SEC supervised approximately 8,300 registered broker-dealers with over 80,035 branch offices and over 620,000 registered representatives. In addition, the SEC oversaw 8 active registered securities exchanges, the National Association of Securities Dealers and the over-the-counter securities market, 13 registered clearing agencies, 1,050 transfer agents, the Municipal Securities Rulemaking Board, and the Securities Investor Protection Corporation.

Broker-dealers filing FOCUS reports with the Commission had approximately $2.4 trillion in total assets and $161 billion in total capital for fiscal year 1999. In addition, average daily trading volume reach 799 million shares on the New York Stock Exchange and over 1.02 billion shares on the Nasdaq Stock Market in calendar year 1999.

What We Did

- Monitored industry progress in preparing for Year 2000 and worked with the self-regulatory organizations (SROs) and industry groups on a range of year 2000 issues, including testing and contingency planning.

- Reviewed over 6,900 broker-dealer and non-bank transfer agent reports on their Year 2000 preparations.

- Adopted a streamlined procedure to allow SROs to quickly begin trading new derivative securities products.

- Approved rule changes relating to the integration of the Depository Trust Company and the National Securities Clearing Corporation.

Securities Markets, Trading, and Significant Regulatory Issues

Alternative Trading Systems

In December 1998, the Commission adopted a new regulatory framework for alternative trading systems (ATSs).[21] The new framework allows ATSs to choose to register as exchanges or broker-dealers and comply with additional requirements specifically designed to address their unique role in the market. Most of the rule amendments and new rules composing this framework became effective on April 21, 1999, and the remainder became effective on August 30, 1999.

We also proposed allowing registered exchanges to be for-profit and proposed certain deregulatory measures to provide registered exchanges, and other markets operated by SROs, with opportunities to better compete. These measures were adopted in December 1998.[22] Specifically, we adopted a streamlined procedure to allow SROs to quickly begin trading new derivative securities products.

In addition, SROs may operate pilot trading systems for up to two years without filing for approval of the system by the Commission. During this trial two-year period, the pilot

trading system is subject to strict volume limitations. Finally, we made clear that we will work to accommodate, within the existing requirements for exchange registration, exchanges wishing to operate under a proprietary structure.

Automation Initiatives

Regulation ATS under the Exchange Act establishes recordkeeping and reporting requirements for ATSs that choose to register as broker-dealers. In 1999, our staff reviewed 42 initial operation reports, 33 notices of proposed material change, 50 quarterly activity reports, and 1 report of cessation of operations under Regulation ATS.

Order Handling Rules

The staff renewed, through March 3, 2000, nine no-action letters to electronic communications networks (ECNs) regarding the ECN Display Alternative provisions adopted as part of the Order Handling Rules. In 1999, letters were issued to Instinet Real-Time Trading Service, the Island ECN, Bloomberg Tradebook, Archipelago, the Routing and Execution DOT Interface Electronic Communications Network, the ATTAIN System, BRUT, the Strike System, and NEXTrade.[23]

Matching Services

On May 7, 1999, the Commission approved an application filed by Thomson Financial Services Technology, Inc. for an exemption from registration as a clearing agency to provide an electronic trade confirmation service and a central matching service subject to certain conditions.[24]

Integration of The Depository Trust Company and the National Securities Clearing Corporation

The Commission approved proposed rule changes relating to the integration of The Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC).[25] The integration is intended to harmonize the clearance and settlement of the institutional and broker-dealer sides of trades domestically, and to provide a centralized point of entrance into the U.S. clearance and settlement infrastructure internationally. The integration should facilitate shortened settlement cycles, improved risk management, and more efficient and less costly processing. Under the terms of the integration, DTC's participants and NSCC's members elected uniform boards of directors. Subsequently, DTC and NSCC formed a holding company, The Depository Trust and Clearing Corporation (DTCC). Certain functions of both entities will be moved to DTCC, but DTC and NSCC will continue operating as separate clearing agencies.

Year 2000

The Commission monitored industry progress in preparing for Year 2000 and worked with the SROs and industry groups on a range of Year 2000 issues, including testing and contingency planning. Industry-wide Year 2000 testing was conducted in March and April 1999, and was an overwhelming success. The test showed that more than 97 percent of the almost 260,000 expected results were successfully achieved, with only 4 actual Year 2000 errors.

Pursuant to rules 17a-5 and 17Ad-18, broker-dealers and non-bank transfer agents filed their final Year 2000 readiness status reports by April 30, 1999. The largest broker-dealer and non-bank transfer agents also filed reports prepared by independent public accountants assessing their Year 2000 preparations.

In July 1999, the Commission adopted rules 15b7-3T and 17Ad-21T under the Exchange Act requiring broker-dealers and non-bank

transfer agents to achieve Year 2000 compliance for their mission-critical systems no later than August 31,1999. Any firm that failed to meet this deadline but wished to remain in business was required to notify the SEC and certify and demonstrate how it would achieve compliance by November 15, 1999.

Toward the latter part of 1999, the SEC worked closely with the SROs and the industry to develop a comprehensive information sharing strategy that would enable them to discover and address in real-time any Year 2000 problems that might have occurred during the millennium transition.

Broker-Dealer and Transfer Agent Year 2000 Reporting Requirements

In July 1998, we amended rule 17a-5 under the Exchange Act to require certain broker-dealers to file new Form BD-Y2K with the Commission and with their designated examining authority.[26] We also adopted new rule 17Ad-18 under the Exchange Act to require non-bank transfer agents to file new Form TA-Y2K with the Commission.[27] The first forms were filed on August 31, 1998, reflecting broker-dealer and non-bank transfer agents' Year 2000 efforts as of July 15, 1998. The second and final forms were filed on April 30, 1999, reflecting the broker-dealers' and the non-bank transfer agents' efforts to prepare for the Year 2000 as of March 15, 1999. In addition, in October 1998, we amended rule 17a-5 and rule 17Ad-18 to require certain broker-dealers and certain non-bank transfer agents to file with their second Y2K form a report prepared by an independent public accountant regarding their processes for preparing for the Year 2000.[28] In 1998, we received 476 TA-Y2K forms and 5,850 BD-Y2K forms. In 1999, we received 529 TA-Y2K forms and 6,215 BD-Y2K forms.

In August 1999, we adopted temporary rules 15b7-3T, 17Ad-21T and 17a-9T.[29] Rules 15b7-3T and 17Ad-21T required broker-dealers and non-bank transfer agents to ensure that their mission-critical computer systems were Year 2000 compliant by August 31,1999, or to certify that any material Year 2000 problems in mission-critical systems would be fixed by November 15, 1999. Rule 17a-9T required certain broker-dealers to make and preserve a separate trade blotter and securities record or ledger for the last three business days of 1999. Rule 17Ad-21T required non-bank transfer agents to make and preserve a backup copy of all their master security holder files so that the records can be reconstructed if necessary. These temporary rules were adopted to reduce the risk to investors and the securities markets posed by broker-dealers and non-bank transfer agents that have not adequately prepared their computer systems for the millennium transition.

International Securities Exchange

On February 2, 1999, the International Securities Exchange (ISE) filed with the Commission its application for exchange registration. Notice of the application was published in the *Federal Register* on June 1, 1999.[30] The Commission received 21 comment letters on the application. In response to a Commission request, on September 27, 1999, the ISE filed an amendment to its application, which was published for notice and comment on October 26, 1999.[31] The Commission received eight comments on the amendment and is considering the application.

Day Trading

The Commission published for comment a proposed rule change by the NASD that would require firms promoting a day trading strategy to: (a) approve a customer's account for day trading by making a

determination that day trading is appropriate for the customer; or (b) obtain from the customer a written agreement that the account will not be used for day trading.[32] In addition, the proposal would require firms to furnish a risk disclosure statement to allow new non-institutional customers prior to opening an account.

On August 20, 1999, the Commission approved an amendment to the Philadelphia Stock Exchange's rules, to require successful completion of the NASD Series 7 Exam by associated persons of broker-dealers who trade off the floor of the PHLX.[33] This rule is designed to address concerns that certain brokerage firms registered only with PHLX were including day trader clients as associated persons without requiring them to pass the Series 7 Exam. On September 17, 1999, the Commission approved a similar rule for the Pacific Stock Exchange (PCX).[34] The Boston Exchange also plans to propose a similar requirement.

After-Hours Trading

In June 1999, the Commission, in conjunction with the New York Stock Exchange (NYSE) and the NASD, hosted a meeting in New York to launch an industry-wide, comprehensive examination of issues that may develop as the major securities markets move towards full-scale after-hours trading. Approximately 40 representatives from all facets of the securities industry attended the summit, during which Chairman Levitt announced the formation of four working groups: Investor Protection and Education, Clearance and Settlement and Operations Issues, Trading Conventions, and Options Markets. The working groups met periodically throughout the summer to analyze issues and offer solutions, and presented final reports to the NYSE and NASD in the fall. These reports are available at www.nyse.com and www.nasd.com.

Additionally, the Commission approved two proposed rule changes dealing with after-hours trading. SR-NASD-99-57[35] implemented a pilot program extending the availability of Nasdaq's trade reporting and quotation dissemination facilities until 6:30 p.m. EST, and SR-CHX-99-16[36] implemented an after-hours trading session from 4:30 p.m. until 6:30 p.m. EST at the Chicago Stock Exchange.

Decimal Pricing

In 1999, the Commission staff held extensive discussions with the securities industry to coordinate the move to decimal pricing in 2000. On September 8, 1999, the Commission ordered the options exchanges and members of the securities industry to participate in a study conducted by SRI Consulting, which would assess the impact on message traffic of current developments in the options industry, including decimal pricing.[37] The order also directed the options exchanges to formulate strategies to mitigate message traffic.

Derivatives

The Commission approved several new derivatives products designed to aid investors in risk management while strengthening market stability and integrity. These included trust issued receipts, and specifically, the HOLDRs product. Trust issued receipts are negotiable receipts issued by a trust that represent securities of issuers that have been deposited and are held on behalf of the holders of the receipts. HOLDRs, a type of trust issued receipt, are baskets of approximately 20 securities (but in varying proportions) of very highly capitalized issuers that the holder is deemed to beneficially own.

In December 1998, the Commission approved rule 19b-4(e), which provides for an expedited procedure for the trading of new derivative

products. Under the rule, an SRO can start trading a new derivative product without receiving Commission approval in advance, as long as adequate trading rules, procedures, surveillance programs and listing standards that pertain to the class of securities covering the new product are in place. As of September 1999, one Amex

product had been submitted under the rule. The Commission also is working with several of the exchanges to bring up future series of HOLDRs under rule 19b-4(e).

Foreign Debt Obligations

Rule 3a12-8 permits the sale of futures on the national debt obligations of specified foreign countries. During the past year, the rule was amended to add Belgium[38] and Sweden.[39] The Commission also proposed an amendment to add Portugal to the list of exempted countries.[40]

Hedge Funds

The President's Working Group on Financial Markets issued a report, *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.* Commission staff assisted in preparation of the report. Among other things, the report recommended:

- enhanced SEC risk assessment authority, including expanded reporting, record keeping, and examination authority for significant unregulated affiliates of broker-dealers;

- improvements in risk management systems of securities firms and banks;

- increased disclosure by public companies of their direct material exposures to highly leveraged financial institutions; and

- public disclosure by hedge funds of comprehensive measures of market risk.

Options Market Reform

The Commission continued to work with the options exchanges to encourage the multiple trading of options and the further integration of options into the National Market System. Our staff held extensive discussions with the options exchanges regarding the need to develop communication system linkages between markets. Also, on October 19, 1999, the Commission ordered the options exchanges to develop and submit for Commission approval an inter-market linkage plan for multiply-traded options 90 days after the date the order was issued.[41]

NYSE Rule 500

In July 1999, the Commission issued an order approving changes to the NYSE's rule 500, which set forth the procedures a NYSE-listed company must follow in order to voluntarily withdraw its securities from listing on the NYSE.[42] The approved changes provide that, among other things, a proposed voluntary withdrawal from listing no longer requires a supermajority of the company's shareholders but instead a majority of the company's audit committee and board of directors, as such majority is defined under applicable state law.

Filing Requirements and WEB CRD

In June 1999, the Commission approved changes proposed by NASD Regulation, Inc. to Form U-4, “The Uniform Application for Securities Industry Registration or Transfer,” and to Form U-5, “The Uniform Termination Notice for Securities Industry Registration,” in conjunction with the implementation of the World Wide Web-based Central Registration Depository (CRD) system.[43]

The CRD system, which is operated and maintained by the NASD, is used by the Commission, SROs, and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. On August 16, 1999, the old “legacy” CRD system was replaced by Web-CRD. The ability to file electronically through Web CRD is expected to further streamline and lower the costs associated with the one-stop registration process for broker-dealers and their associated persons. In connection with this transition, the Commission adopted technical amendments to the uniform forms for broker-dealer registration and withdrawal from registration, and related rules under the Exchange Act.[44]

OptiMark System

On September 30, 1999, the Commission approved NASD rule changes that would establish the Nasdaq Application of the OptiMark System.[45] The Application is a computerized, screen-based trading service intended for use by NASD members and non-members. For securities listed on Nasdaq, the Application would enable its users to anonymously represent their trading interest across a full spectrum of prices and sizes by entering indications of trading interest into the OptiMark System to be compared and matched with indications of trading interest entered by other users.

Trading Practice Developments

Rule 14e-5 *Regulation M-A*

On October 19, 1999, the Commission adopted Regulation M-A revising the rules governing tender offers. As part of that rulemaking, rule 10b-13 (prohibiting purchases outside a tender offer) was updated, revised and redesignated as rule 14e-5. As part of the revisions, prior exemptions were codified and new exceptions were added.[46]

Cross *Border Release*

The Commission amended its rules governing cross-border tender offers. As part of that rulemaking, the Commission adopted exceptions to rule 14e-5 to permit tender and exchange offers for the securities of foreign private issuers to be made in accordance with such issuers' home country's regulations when U.S. persons hold 10 percenter less of the class of securities sought in the offer.[47]

Rule 10a-1 *Concept Release*

The Commission issued a concept release seeking comment on possible revisions to rule 10a-1 under the Exchange Act (Short Sale Rule). This release discusses several proposals including: suspending the uptick rule in rising markets and/ or with respect to highly liquid securities; applying the rule only in certain market situations; exempting “economically neutral” hedging transactions; extending the short sale regulation to non-exchange listed securities; and eliminating the rule altogether.[48]

On March 24, 1999, the PHLX received an exemption from rule 10a-1 the Short Sale Rule and interpretive guidance under the Exchange Act of rule 11a2-2(T) of the Exchange Act in connection with transactions executed through the VWAP Trading System (VTS). The

exemption from rule 10a-1 will allow short sales through the VTS without complying with the “tick” provisions of the rule, subject to the conditions that: (1) persons relying on the exemption may not enter pre-arranged matching sale and purchase orders in the VTS and (2) transactions effected on the VTS shall not be made for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security. Rule 11a2-2(T) permits an exchange member to effect transactions for “covered accounts” (i.e., the member's own account, the account of an associated person, and the account over which either the member or its associated person has investment discretion) if among other things the member actually uses an independent floor broker to execute the transaction on the exchange floor. The PHLX received interpretive guidance discussing how the rule would apply to trades executed electronically through its VWAP trading system.[49]

Rule 10b-18

To improve liquidity during severe market downturns, the Commission recently adopted an amendment to rule 10b-18 to suspend the rule's timing condition after a market-wide trading suspension. Rule 10b-18's safe harbor is now available to an issuer that bids for or purchases its common stock at the opening of trading and during the last half hour of trading in the trading session immediately following a market-wide trading suspension. The amendment requires that the issuer continue to comply with rule 10b-18's manner, price and volume conditions.[50]

Rule15c2-11

In February 1999, the Commission proposed a narrower version of amendments to rule 15c2-11. The reproposal is part of the Commission's continuing regulatory, inspection, enforcement, and

investor education efforts that are key to deterring microcap fraud. The reproposal would: (1) increase the information that broker-dealers must review before publishing quotations for non-reporting issuers' securities, (2) ease the rule's recordkeeping requirements when broker-dealers have electronic access to information about reporting issuers, and (3) give guidance to broker-dealers on the scope of the review required by the rule and provide examples of “red flags” that they should look for when reviewing issuer information.[51]

Rule 13e-4

The Division granted no-action relief from rule 13e-4 and exemptive relief from rule 10b-13 to the Manufacturers Life Insurance Company, in connection with purchase and sale programs conducted pursuant to demutualization plans. The relief is subject to several conditions, including that the consideration to be paid to each eligible shareholder who sells shares through the program will be determined by a uniformly applied formula based upon the market price of the subject security.[52]

Regulation M

Rule 101—Activities by Distribution Participants

The Division granted exemptive and no-action relief from rule 101 and 102 of Regulation M, as well as rules 10a-1, 10b-10, 10b-13, 10b-17, 11d1-2, 15c1-5, 15c1-6, and section 11(d)(1) of the Exchange Act in connection with secondary market transactions in Nasdaq-100 Shares and the creation and redemption of Creation Units of Nasdaq-100 Shares. The Nasdaq-100 Trust is a unit investment trust whose objective is to provide investment results that generally correspond to the price and yield performance of the common stocks of the Nasdaq 100 Index.[53]

Rule 104—Stabilization and Other Syndicate Activities *Class Exemption for Stabilization Activities in Japan*

The Division granted a class exemption from rule 104 of Regulation M to permit underwriters to effect stabilization transactions, in Japanese markets, in connection with global offerings of Japanese equity securities at a level permitted by Japanese Stabilization Regulations, during the Japanese subscription period. The relief is subject to several conditions, including that the Japanese subscription period will begin only after the distribution in the U.S. is completed within the meaning of rule 100 of Regulation M.[54]

Broker-Dealer Issues

OTC Derivatives Dealers

President's Working Group Report on Over-the-Counter (OTC) Derivatives Markets and the Commodity Exchange Act

The President's Working Group on Financial Markets, which includes Chairman Levitt, issued recommendations on the treatment of OTC derivative products under the Commodity Exchange Act. The recommendations are intended to provide a framework for legislative action to increase legal certainty associated with such products.

In July 1999, the Division issued an order, pursuant to delegated authority, approving the request of Goldman Sachs Financial Markets, L.P. (GSFM) to operate under an alternative regulatory structure for a class of registered dealers that are active in OTC derivatives markets.[55] The alternative rules, which were adopted by the Commission on October 23, 1998, tailor market risk, credit risk, margin, and other broker-dealer regulations to the specific business

of OTC derivatives dealers. Under the alternative rules, broker-dealers that have received Division approval may use value-at-risk models to calculate market risk capital charges on proprietary positions, rather than the “haircut” structure under rule 15c3-1(c)(2)(vi). GSFM is the first OTC derivatives dealer to receive such approval.

Finder's Exception from Broker-Dealer Registration

The staff denied a no-action request seeking a so-called “finder's exception” from broker-dealer registration where the writer proposed to solicit investments in real estate limited partnership interests through their accountants and commercial real estate brokers and would receive a fee if any referred investors purchased those securities.[56]

Insurance Company Demutualizations

The staff addressed broker-dealer registration issues in connection with several recent insurance company demutualizations. Among these issues were: (1)what efforts an issuer may undertake to inform policyholders of the demutualization proposal and encourage eligible policyholders to vote for the plan, and (2) what restrictions should be placed on post-demutualization odd-lot round-up and sale plans and similar purchase and sale plans.[57]

Municipal Securities Issues

In response to questions presented by the Municipal Securities Rulemaking Board, the staff issued a letter stating that: (1) at least some interests in local government pools and higher education trusts may be “municipal securities” for purposes of the Exchange Act, and (2) a dealer participating in the sale of these interests would be

participating in a “primary offering” and thus would be subject to the requirements of rule 15c2-12 under the Exchange Act.[58] In addition, the staff continued to consider no-action requests relating to state-sponsored tuition savings plans. For instance, on July 28, 1999, the staff issued a no-action letter to the Finance Authority of Maine in connection with the distribution of interests in the Maine College Savings Fund.[59]

Exemptions from Exchange Act Section 11(d)(1)

The Commission issued several orders exempting broker-dealers from the prohibition on extending credit set forth in Exchange Act section 11(d)(1). One order permitted a broker-dealer to arrange for the extension of credit by margining mutual fund shares acquired by a customer in exchange for shares the customer had owned for more than 30 days when all fund shares are offered through a broker-sponsored program.[60] Other orders exempted certain international securities offerings sold on an installment basis.[61]

Rule 10b-10 Issues

The staff declined to reconsider its prior interpretative advice[62] on what constitutes an “offsetting contemporaneous transaction” under rule 10b-10(a)(2)(ii)(A). In the staff's view, a transaction will not generally be considered a riskless principal transaction for purposes of rule 10b-10 where the transaction that restored the firm's original position—the covering transaction—is effected on the next trading day.[63]

The staff granted conditional exemptions from the requirements of rule 10b-10 to broker-dealer sponsors of wrap fee programs.[64] Under these exemptions, broker-dealers may confirm transactions in wrap fee programs, as well as mutual fund asset allocation programs and

other individually managed account programs for which the broker-dealers provide discretionary investment advisory services, through quarterly statements rather than through separate, immediate trade confirmations for each transaction. One exemption also conditionally relieves those broker-dealers sponsoring wrap fee programs from disclosing certain information in the quarterly statements.[65]

Section 3(a)(41)—Mortgage-Related Securities

The staff provided interpretive guidance on how defeasance provisions contained in many commercial mortgage loans used to securitize commercial mortgage-backed securities (CMBSs) affect the status of those securities under the Exchange Act. In the staff's view, a CMBS would be considered a “mortgage related security” as defined in section 3(a)(41) of the Exchange Act even if those defeasance provisions were exercised.[66]

Arbitration Discovery Guide

The Commission approved the use of a new Discovery Guide in NASD-sponsored customer arbitrations. The Discovery Guide provides guidance on which documents should be exchanged without arbitrator or NASDR staff intervention and which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations.[67]

Anti-Money Laundering Issues

In September 1999, the Departments of Treasury and Justice issued *The National Money Laundering Strategy for 1999.* The Strategy is the first of five efforts called for by the Money Laundering and Financial Crimes Strategy Act of 1998. The Commission's staff has been working closely with other government agencies in the National

Money Laundering Strategy Working Group to implement the Strategy. Projects arising out of the Strategy are designed to coordinate the efforts of the various agencies working to combat money laundering throughout the United States financial system and the world.

Net Capital

In a no-action letter to the Securities Industry Association, Commission staff stated that broker-dealers may, when computing net capital, treat certain single-rated asset-backed debt securities the same as double-rated asset-backed debt securities. To receive this favorable treatment, the single-rated securities must be rated in one of the two highest rating categories of a Nationally Recognized Statistical Rating Organization (NRSRO). They should also have an original issue par value of $100 million or greater, and trade at spreads against U.S. Treasury securities that are substantially consistent with spreads for similar type securities rated in one of the two highest categories by at least two NRSROs. Finally, they must meet all other provisions of paragraph (c)(2)(vi)(F) of rule 15c3-1.[68]

Additionally, our staff issued a no-action letter to the Chicago Board Options Exchange eliminating a four percent net capital charge on short futures options positions carried in the accounts of certain market makers or specialists. The relief is limited to a broker-dealer that: (1) is a member of the Options Clearing Corporation, (2) cross-margins customer accounts, and (3) calculates its “haircuts” on listed options positions using the theoretical Internet Margining System in accordance with subparagraph (c)(2)(x) and Appendix A of rule 15c3-1.[69]

Nationally Recognized Statistical Rating System

The Commission's staff issued a no-action letter permitting broker-dealers, when computing net capital under subparagraphs (c)(2)(vi)(E), (F), and (H) of rule 15c3-1, to consider Thompson BankWatch, Inc. to be a Nationally Recognized Statistical Rating Organization (NRSRO).[70] Previously, Thompson BankWatch was considered an NRSRO for only limited types of securities.

Lost and Stolen Securities

As of December 31,1998, 25,444 institutions were registered in the program, a 1 percent increase of 1997.

The number of securities certificates reported as lost, stolen, missing or counterfeit decreased 39 percent from 2,007,611 in 1997 to 1,228,824 in 1998. The aggregate dollar value of these reported certificates increased 82 percent from $11,809,945,634 in 1997 to $21,470,024,012 in 1998. The total number of lost and stolen recovery reports received increased 5 percent from 192,586 in 1997 to 202,535 in 1998. The dollar value of recovery reports received decreased 22 percent from $19,468,888,875 in 1997 to $15,133,548,003 in 1998. The total number of certificates inquired about by institutions participating in the program decreased 7 percent from 8,565,639 in 1997 to 7,979,695 in 1998. In 1998, the dollar value of certificate inquiries that matched previous reports of lost, stolen, missing, or counterfeit securities certificates decreased 2 percent from $4,961,362,068 to $4,857,754,946.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 1999, 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, PHLX, and PCX. During 1999, the Commission granted 176 exchange applications to delist equity issues and 55 applications by issuers seeking withdrawal of their issues from registration and listing on exchanges. The exchanges submitted 328 proposed rule changes during 1999. We approved 226 pending and new proposals. Seventeen were withdrawn, and 3 were rejected.

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. The NASD owns and operates the Nasdaq Stock Market as a wholly-owned subsidiary. The NASD submitted 78 proposed rule changes to the SEC during the year. We approved 53, including some pending from the previous year. Five were withdrawn.

SRO Corporate Governance

The Commission approved two SRO proposals enhancing non-industry participation in the SRO governing process. Non-industry directors include representatives from large and small companies who are not directly involved in the securities business and may also include public representatives, such as senators, representatives, professors, and distinguished individuals who have no connection with the securities industry. Specifically, we approved a CBOE proposal increasing the number of non-industry directors on the Exchange's governing board as well as the Exchange's nominating committee. In addition, the Commission approved a PCX proposal to increase non-industry representation on the Exchange's governing board to at least 50 percent.

Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board (MSRB) is the primary rulemaking authority for municipal securities dealers. In 1999, we received 11 new proposed rule changes from the MSRB. A total of 10 new and pending proposed rule changes were approved, including interpretations of rules concerning activities of financial advisers, the definition of consultants, responsibilities of managing underwriters for new issues, scheduling of examinations of municipal broker-dealers, and the development of a plan to disseminate “real-time” transaction reports in the municipal securities market.[71]

Tradepoint

In March 1999, we granted Tradepoint's application for exemption from registration as a national securities exchange under section 6 of the Exchange Act.[72] Tradepoint, a Recognized Investment Exchange under the U.K. Financial Services Act of 1986, is a screen-based electronic market for the trading of securities listed on the London Stock Exchange. Under the terms of the our order Tradepoint will make its system available in the United States, primarily to institutional investors.

Clearing Agencies

At the end of 1999, 13 clearing agencies were registered with the Commission, and these clearing agencies had been granted exemptions from clearing agency registration. Registered clearing agencies submitted 86 proposed rule changes to us, and we processed 103 new and pending proposed rule changes.

Applications for Re-entry

Rule 19h-1 under the Exchange Act prescribes how the Commission reviews SRO proposals to allow persons subject to a statutory disqualification to become or remain associated with member firms. In 1999, we received 40 proposals: 29 from the NASD, 10 from the NYSE, none from the AMEX, and one from CBOE. Five filings were withdrawn.

Investment Management Regulation

Our Investment Management Division 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. The Division's goal is to minimize financial risks to investors from fraud, self-dealing, and misleading or incomplete disclosure.

What We Did

- Completed implementation of improvements to the mutual fund disclosure form that the Commission adopted in 1998 as part of its continuing efforts to help investors make more informed investment decisions and to minimize prospectus disclosure common to all funds.

- Tightened the rule governing personal trading by investment company personnel and continued the Commission's commitment to improve investors' confidence in the market by addressing the appearance of conflicts of interest and self-dealing.

- Proposed a set of rule amendments designed to enhance the independence and effectiveness of fund boards.

- Continued implementing provisions of the National Securities Markets Improvement Act of 1996 (NSMIA) and issued no-action and interpretative letters addressing numerous changes in the investment company and investment advisory industries.

Significant Investment Company Act Developments

Rulemaking

Independent Directors

The Commission proposed new rules and rule amendments designed to enhance the independence and effectiveness of investment company (fund) directors. The rule proposals are intended to strengthen independent director's hands in dealing with fund management, reinforce their independence, and reaffirm the important role that they play in protecting fund investors and providing greater information about their actions and independence. The proposed rule amendments would, for funds relying on any of ten commonly used exemptive rules, require that: (1) independent directors constitute at least a majority of the board of directors; (2) independent directors select and nominate other independent directors; and (3) any legal counsel for the independent directors be an independent legal counsel. In addition, the proposals would exempt

funds with independent audit committees from the requirement that shareholders ratify a fund's auditor.

The Commission also proposed rule amendments that would require funds to provide enhanced disclosure relating to their directors. Under the proposal, funds would be required to disclose basic information about: (1) the identity and business experience of each director; (2) the aggregate dollar amount of a director's holdings in the fund complex; (3) directors' potential conflicts of interest; and (4) information relating to the board's role in governing fund operations.

Personal Securities Activities of Fund Personnel

The Commission adopted amendments to rule 17J-1 under the Investment Company Act.[73] Rule 17J-1 addresses conflicts of interest that arise from personal trading activities of fund personnel. The amendments: (1) increase fund board oversight of the codes of ethics of funds, their investment advisers and principal underwriters; (2) improve the way in which fund personnel report personal securities holdings; and (3) require certain fund personnel (including portfolio managers) to obtain prior approval for investments in initial public offerings and certain limited offerings. Related amendments require funds to provide information in their registration statements about the policies of the fund, its investment adviser, and principal underwriter concerning personal investment activities.

Offers and Sales of Securities to Canadian Retirement Accounts

The Commission proposed two new rules and amendments to an existing rule that are designed to enable Canadian investors who reside or are temporarily present in the United States to hold and manage their investments in certain Canadian tax-deferred retirement accounts.[74] Proposed rule 237 under the Securities Act of 1933, proposed rule 7d-2under the Investment Company Act, and proposed amendments to rule 12g3-2 under the Securities Exchange Act of 1934 together would permit securities of foreign investment companies and other foreign issuers to be offered and sold to those Canadian accounts without the securities or the investment companies being registered under U.S. securities laws. The rules would not, however, affect the applicability of the anti-fraud provisions of U.S. securities laws.

Foreign Custody Arrangements

The Commission proposed new rule 17f-7 under the Investment Company Act and amendments to rule 17f-5 concerning the foreign custody of investment company assets.[75] The proposals are designed to provide a workable framework under which an investment company can protect its assets while maintaining them with a foreign securities depository.

Repurchase Agreements

The Commission proposed new rule 5b-3 to codify and update staff positions that have permitted investment companies to "look through" certain repurchase agreements to the securities collateralizing those agreements for various purposes under the Investment Company Act.[76] The proposed rule would provide similar "look through" treatment for investments in municipal bonds, the repayment of which is fully funded by escrowed U.S. government securities. In addition, the Commission proposed amendments to rule 12d3-1, the rule that provides an exemption from the prohibition in section 12(d)(3) of the Investment Company Act on acquiring an interest in a broker-dealer or a bank engaged in a securities-related business. The proposed amendments would make rule 12d3-1 available for repurchase agreements that do not meet the conditions for "look through" treatment. Finally, the Commission proposed certain conforming amendments to rule 2a-7, the rule governing money market funds.

Deregistration of Certain Registered Funds

The Commission proposed and adopted amendments to Form N-8F and rule 8f-1, the form and rule that govern the deregistration of certain investment companies.[77] The amendments simplify and reorganize Form N-8F and expand the circumstances in which investment companies may use the form. The Commission also amended Regulation S-T to require that investment companies file

Form N-8F on the SEC's Electronic Data Gathering, Analysis and Retrieval system (EDGAR). In 1999, the SEC began receiving applications from investment companies to deregister on EDGAR, and almost 80 percent of all applicants that received deregistration orders filed their applications on EDGAR.

Exemptive Orders

The Commission issued 269 exemptive orders to investment companies (other than insurance company separate accounts) seeking relief from various provisions of the Investment Company Act. Approximately 10 percent of these exemptive orders concerned mergers involving investment advisory firms or funds. The Commission also issued 60 exemptive orders to investment companies that are insurance company separate accounts.

Some of the significant developments with regard to exemptive orders in 1999 are discussed below.

Unaffiliated Funds of Funds

NSMIA expressly authorized the Commission to exempt fund of funds arrangements from the restrictions of the Investment Company Act to the extent the exemption is consistent with the public interest and the protection of investors. The Commission issued an order permitting a fund of funds arrangement involving fund investments in unaffiliated funds, subject to conditions designed to address investor protection concerns.[78]

Equity-Based Compensation for Closed-End Fund Managers

The Commission issued an order permitting a closed-end fund to provide its employees and the employees of its wholly-owned

investment adviser with equity-based compensation such as stock options and stock appreciation rights.[79] The order contained conditions designed to address investor protection concerns, including the dilution of shareholder interests.

Status Issues under the Investment Company Act

The Commission issued several orders addressing the status of various types of companies under the Investment Company Act.[80] The orders generally provide relief from regulation as an investment company under the Investment Company Act.

Interpretive and No-Action Letters and Interpretive Releases

The Division's Office of Chief Counsel, which handles most requests for guidance directed to the Investment Management Division, responded to 956 formal and informal requests for guidance during 1999. In addition, other offices in the Division provided formal and informal guidance during 1999. Some of the most significant interpretive and no-action letters and interpretive releases are discussed below.

Independent Directors

The Commission issued an interpretive release expressing its views on:

- relationships that might disqualify a fund director from serving as an independent director of the fund;

- whether actions taken by fund directors in their capacities as directors would be “joint transactions” that require prior Commission approval;

- the circumstances in which funds may advance legal fees to directors; and

- the circumstances in which funds may compensate their directors with fund shares.[81]

The release also provides the Commission's views on its role in disputes between independent directors and fund management.

Private Investment Companies

The staff addressed various issues relating to private investment companies under sections 2(a)(51)(A), 3(c)(1), and 3(c)(7) of the Investment Company Act, and rules 2a51-1, 2a51-3, 3c-5 and 3c-6 thereunder, including:

- who may qualify as a “knowledgeable employee”;

- the treatment of trusts and individual retirement accounts under certain of these provisions; and

- involuntary transfers of securities issued by private investment companies.[82]

Depositary Receipts Programs

The staff stated that it would not recommend enforcement action under section 7 of the Investment Company Act if a depositary receipts program is implemented without registering the underlying trust as an investment company under the Investment Company Act, subject to a number of representations. The depositary receipts program is intended to allow an investor to:

- hold a single, exchange-listed receipt representing the investor's beneficial ownership of certain securities held by the trust in a depositary capacity;

- maintain an ownership interest in each of the deposited securities represented by the receipt;

- exchange that receipt for each of the deposited securities; and

- trade the receipt at a lower cost than the cost of trading each of the deposited securities separately.[83]

Reorganization of Investment Advisers

The staff concluded that a trust formed to allow stockholders to retain the economic benefits of stock ownership, while transferring their voting rights to the trustee, would qualify as a “voting trust” for purposes of section 3(c)(12) of the Investment Company Act. The staff also agreed that a reorganization that results in a voting trust owning more than 25 percent of the voting securities of the parent of an investment adviser would not result in an assignment of an advisory contract when neither the trust nor its trustee would have beneficial ownership of, or voting discretion over, the

shares held in the trust. The staff declined to address whether the ability of the board of the adviser's parent company to instruct the trustee how to vote the shares on certain matters would result in an actual change in control or management of the adviser.[84]

Records Substantiating Adviser Advertised Performance

The staff confirmed that copies of published materials listing the net asset values of an offshore fund could form the basis for performance information under section 204 of the Investment Advisers Act and rule 204-2(a)(16) thereunder, provided that the net asset values were accumulated contemporaneously with the management of the fund.[85] In addition, the staff confirmed that worksheets generated by an entity other than an adviser, subsequent to the management of the account, could demonstrate the calculation of performance information under the rule, provided that the worksheets were supported, in turn, by records that form the basis of the performance information.

Concentration Policies

The staff agreed that a fund may implement a concentration policy, consistent with Section 8(b)(1) of the Investment Company Act, that would permit it to invest more than 25 percent of its total assets in the securities of an industry when, among other things:

- the fund's principal objective is to invest primarily in equity securities of companies included in an independent and widely recognized index;

- the industry must represent more than 20 percent of that index before the fund may invest more than 25 percent of its total assets in the industry; and
-

- the fund invests no more than 35 percent of its total assets in the industry.[86]

Past Specific Recommendations

The staff stated that it would not recommend enforcement action under section 206(4) of the Investment Advisers Act and rule 206(4)-1(a)(2) thereunder if an investment adviser distributed reports to existing and prospective advisory clients that discuss some, but not all, of the adviser's investment decisions for the preceding quarter. In taking this position, the staff relied particularly on the adviser's representations that:

- it would use objective, non-performance based criteria to select the securities discussed;

- it would use the same criteria for each quarter for each category of investments;

- the reports would not discuss the profits or losses on any of the securities; and

- the adviser would keep certain enumerated records.[87]

Termination Fees

The staff provided interpretive guidance under section 206 of the Investment Advisers Act concerning an investment adviser's proposal to require its client to pay a fee upon termination of the advisory relationship for services previously rendered to the client. The staff concluded that the adviser could assess the fee upon the termination of the advisory contract consistent with section 206 as long as adequate disclosure is provided.[88]

Margin Credit and Short Sales

The staff agreed that an investment adviser that extends margin credit and facilitates short sales of securities in connection with

providing clients with prime brokerage services would not be engaged in the purchase or sale of securities within the meaning of section 206(3) of the Investment Advisers Act.[89]

Board Role in Fund Investments in Repurchase Agreements

The staff stated that it would not recommend enforcement action under section 12(d)(3) of the Investment Company Act if a fund engages in repurchase agreements with a bank or broker-dealer and the fund's investment adviser, rather than the fund's board, assumes primary responsibility for monitoring and evaluating the fund's use of repurchase agreements. The staff also clarified that a fund, or its custodian, may maintain fund assets with the fund's transfer agent or a bank in the manner described in previous no-action letters under section 17(f) of the Investment Company Act without obtaining annual board review of the depository arrangements, provided that the board has approved each arrangement initially and approves any subsequent changes thereto.[90]

Disclosure

Implementation of Mutual Fund Disclosure Initiatives

In 1999, most mutual funds revised their prospectuses to comply with the revisions to Form N-1 A, the mutual fund registration form, and the plain English initiative adopted by the Commission in 1998. Mutual funds filed post-effective amendments for 13,352 portfolios in 1999.[91] The staff reviewed 97 percent of these filings.

The staff reviewed 87 percent of the 2,256 new portfolios filed with the SEC, including 95 percent of the newly filed

open-end (mutual fund) and closed-end portfolios. The staff also reviewed 93 percent of the 778 proxy statements filed, 63 percent of the 305 profiles filed, and 100 percent of the 234 insurance contract filings.

Section 13(1)(1) Reports

Institutional investment managers file Forms 13F to report certain equity holdings of accounts over which they exercise investment discretion (accounts with a fair market value of at least $100 million). The Commission estimates that approximately 2,000 managers are subject to this filing requirement. The information contained in the filings is used by the Commission, investors, and issuers in determining institutional investor holdings of an issuer.

Because of public interest in these filings, the Commission adopted rule amendments to require electronic filing of these reports on EDGAR.[92] The Commission's action affords these reports the same degree of public availability as other electronic filings made with the SEC.

Significant Investment Advisers Act Developments

Rulemaking

Political Contributions by Investment Advisers

The Commission proposed new rule 206(4)-5, and related amendments to rule 204-2, to address pay-to-play in the investment adviser industry. The new rule would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser, any of its partners, executive

officers, solicitors or any political action committee controlled by the adviser, makes a political contribution to certain elected officials or

candidates. The prohibition would apply to all investment advisers that are not prohibited from SEC registration, but would not apply to certain *de minimis* contributions of $250 or less. The proposed rule also prohibits advisers and their executives, partners, and solicitors from soliciting contributions for an official of a government client to which the adviser is providing advisory services. SEC registered advisers that have government clients would be required to maintain certain records of political contributions under the proposed rule.[93]

Ohio Investment Advisers

The Commission adopted new rule 203A-6 under the Investment Advisers Act to provide a transition process for investment advisers subject to a new Ohio investment adviser statute. Under the rule, new Ohio advisers ineligible for SEC registration would register with the Ohio Division of Securities. Smaller Ohio advisers registered with the SEC will switch over to registration with the Ohio Division of Securities during the transition period. These advisers must withdraw their SEC registration by March 30, 2000.[94]

Delegation of Authority to Cancel Registration of Certain Investment Advisers

The Commission amended its rules to delegate to the Director of the Division of Investment Management authority to cancel the registration of any investment adviser that is not eligible for SEC registration.[95] This amendment updates the staff's delegated authority to reflect recent amendments to the Investment Advisers Act, and is intended to conserve SEC resources by permitting the staff to cancel,

when appropriate, the registration of investment advisers that are not eligible to be registered with the SEC.

Significant Public Utility Holding Company Act Developments

Developments in Holding Company Regulation

As a result of the ongoing trend toward consolidation, the Commission considered a number of proposed utility combinations. Registered holding companies also continued to demonstrate an interest in nonutility activities, both in the United States and abroad. The complexity of applications and requests for interpretive advice continued to increase. The Commission expects these trends to continue in 2000, as the restructuring of the industry continues.

Registered Holding Companies

As of September 30, 1999, there were 19 public holding companies registered under the Holding Company Act. The registered systems were comprised of 107 public utility subsidiaries, 70 exempt wholesale generators, 216 foreign utility companies, 606 nonutility subsidiaries, and 110 inactive subsidiaries, for a total of 1,128 companies and systems with utility operations in 31 states. These holding company systems had aggregate assets of approximately $197 billion, and operating revenues of approximately $77 billion for the period ended September 30, 1999.

Financing Authorizations

The Commission authorized registered holding company systems to issue approximately $13.3 billion of securities, a decrease of approximately 32 percent from last year. The decrease is largely due

to the Commission's policy of approving comprehensive system finance plans for longer periods of time. The total financing authorizations included $6.6 billion for investments in exempt wholesale generators and foreign utility companies.

Examinations

The staff conducted examinations of three service companies, three parent holding companies, and nine special purpose corporations. The examinations focused on the methods of allocating costs of services and goods shared by associate companies, internal controls, cost determination procedures, accounting and billing policies, and quarterly and annual reports of the registered holding company systems. By identifying misallocated expenses and inefficiencies through the examination process, the SEC's activities resulted in savings to consumers of approximately $18.4 million.

Applications and Interpretations

The Commission issued various orders under the Holding Company Act. Some of the more significant orders are described below.

NIPSCO Industries, Inc.

The Commission authorized NIPSCO Industries, Inc. (NIPSCO), an Indiana intrastate exempt electric and gas public utility holding company, to acquire Bay State Gas Company (Bay State), a Massachusetts gas public utility holding company exempt from registration under section 3(a)(2).[96] Bay State and its gas utility subsidiary, Northern Utilities, Inc., provide gas utility services in several New England states. In approving the acquisition, the Commission found that the NIPSCO and Bay State electric and gas operations constituted a single integrated utility system because,

among other things, the merger of the gas departments of NIPSCO and the Bay State system would permit coordination of gas supply. In granting the exemption, the Commission determined that, taking into account Bay State's out-of-state operations, NIPSCO's utility operations would continue to be predominantly intrastate in character.

AES Corporation

The Commission granted AES Corporation (AES), a Virginia-based electric power generation and energy distribution company not previously subject to the Holding Company Act, an exemption under section 3(a)(5) following its acquisition of CILCORP, Inc. (CILCORP), an Illinois intrastate exempt electric and gas public utility holding company.[97] AES operates primarily in foreign markets, but also has significant domestic operations not subject to the Act. In granting the exemption, the Commission determined that the utility operations that AES would acquire were small in both a relative sense *(i.e.,* not material) and an absolute sense. The Commission further determined that it was no longer necessary to limit the section 3(a)(5) exemption to U.S. holding companies whose operations are essentially foreign to achieve the policy objectives of the Act. The Commission found that granting the exemption to AES was consistent with the underlying rationale of the exemption and the Act's legislative history, including subsequent amendments to the Act.

Sempra Energy

The Commission authorized Sempra Energy (Sempra), a California electric and gas public utility holding company exempt from registration under section 3(a)(1) of the Holding Company Act, to acquire a 90.1 percent interest in Frontier Energy, LLC (Frontier), a North Carolina partnership organized to construct, own and operate a gas utility distribution system in North Carolina.[98] The Commission

found that Frontier's gas operations would be integrated with those of Sempra because, among other things, Frontier would realize substantial economies as a result of its access to a nonutility subsidiary of Sempra that would provide certain gas portfolio management services to Frontier. The Commission determined that Sempra and Frontier would be confined in their operations “to a single area or region,” because they would “deriv[e] natural gas from a common source of supply.”

Entergy Corporation

Entergy Corporation (Entergy), a registered holding company, and its utility and nonutility subsidiary companies were authorized to amend their service agreements to modify the pricing of services provided by the regulated utility companies to their nonutility associates.” The Commission approved a pricing provision that included the fully allocated cost of the service, including labor and overhead, plus 5 percent. The variations in pricing were necessary in order to implement certain provisions of settlement agreements between Entergy and its state regulators. The settlement agreements were designed to protect consumers from the risks of Entergy's nonutility activities.

Compliance Inspections and Examinations

The Office of Compliance Inspections and Examinations manages the SEC's examination program. 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, clearing agencies, investment companies, and investment advisers.

What We Did

- Inspected 261 investment company complexes, 1,418 investment advisers, 23 insurance company complexes, 681 broker-dealers, 30 SRO's, 223 transfer agents, and 3 clearing agencies.

- Continued to improve coordination among SEC examiners responsible for different types of regulated entities to increase effectiveness and productivity and enhance investor protection.

- Enhanced cooperation with foreign, federal, and state regulators, as well as with self-regulatory organizations (SROs).

- Conducted numerous reviews of registrants' programs for dealing with the Year 2000 computer problem. These included for cause reviews, in which the staff followed-up on red flags suggesting the firm needed to enhance its preventative efforts, and general oversight reviews.

- Reviewed registrants' plans and procedures for dealing with potential Year 2000 problems, including remediation, testing, and contingency planning.

Investment Company and Investment Adviser Inspections

Investment Companies

We inspected 261 investment company complexes, including inspections of 12 fund administrators. This number included 209 regular inspections, which fulfilled our goal of an average frequency of inspections of once every five years for the 1,075 investment company complexes. The complexes inspected manage $1.5 trillion in 2,747 portfolios, approximately 36 percent of the 7,647 mutual and closed-end fund portfolios in existence at the beginning of 1999. The complexes inspected represented a mix of large and small 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.

We referred 19 examinations, 7 percent, to the Division of Enforcement for further investigation. The most common problems resulting in referrals involved fraud, the role of the fund's board of directors, conflicts of interests, and books and records.

This year, many of our investment company examinations focused on the role of the fund's board of directors in reviewing and approving the advisory contract and the fund's distribution plan. We also focused on personal trading, allocation of portfolio securities, and the fund's use of brokerage and valuation procedures for illiquid securities.

Investment Advisers

We completed 1,418 inspections of investment advisers. This number also includes 1,189 regular inspections which fulfilled our goal of an average frequency of inspections of once every five years for the 6,360 registered investment advisers. The non-investment company assets managed by the advisers inspected totaled $2.1 trillion. The staff inspected 82 of these investment advisers for cause.

We referred 56 examinations, 4 percent, to the Division of Enforcement for further investigation. The most common problems resulting in referrals involved fraud, Form ADV or brochure disclosure or delivery, books and records, conflicts of interest, and performance advertising.

Many investment adviser examinations also focused on adviser performance advertising, personal trading, and the allocation of portfolio securities among accounts. We also initiated a review of how advisers fulfill their duty of best execution in executing client securities transactions.

Mutual Fund Administrators

Many mutual fund complexes use third party administrators to perform their accounting and administrative functions. During 1999, examiners inspected 12 fund administrators. One of the examinations resulted in an enforcement referral.

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 teams conducted examinations in this area. These teams identified and examined variable life and annuity contract

separate accounts. Special emphasis was placed on examining branch offices of broker-dealers selling these products to determine whether there appeared to be patterns of sales practice abuses. A total of 23 insurance company complexes were examined, representing approximately 20 percent of all the insurance sponsors as of the beginning of 1999. This maintains a five-year inspection cycle for insurance sponsors. One of these examinations resulted in an enforcement referral.

Broker-Dealer and Transfer Agent Examinations

Broker-Dealers

In 1999, we conducted 338 oversight and 343 cause and surveillance examinations of broker-dealers, government securities broker-dealers, and municipal securities dealers. These examinations included 109 branch office examinations. Serious problems were discovered in 131, or 19 percent, of the examinations and were referred to the Division of Enforcement for further investigation. An additional 71 examination findings were referred to SROs for appropriate action. The most common deficiencies found were recordkeeping deficiencies, net capital computation errors, unsuitable recommendations to customers, and inadequate supervisory practices.

The broker-dealer program focused on internal controls at several large broker-dealers, and retail selling of low priced, speculative securities, frequently referred to as “microcaps.”

In addition, many of the branch office examinations focused on independent contractors operating franchise branch offices. The office also organized and conducted extensive examination reviews of both on-line trading firms and day trading firms to assess the

impact of changes and developments in this segment of the securities industry.

In addition, we spearheaded a review of broker-dealers' compliance with their best execution obligations and focused on the adequacy of firm procedures to control access to confidential information. We also focused on problems that can arise when entities merge their financial and accounting systems. We plan on continuing to emphasize all of these areas in the next year.

We also enhanced cooperation with foreign, federal, and state regulators, as well as with self-regulatory organizations (SROs). We conducted coordinated examinations with staff from the Hong Kong Securities and Futures Commission, the United Kingdom's Financial Services Authority acting as the Investment Management Regulatory Organization, and the Ontario Securities Commission.

Transfer Agents

In 1999, we conducted 223 examinations of registered transfer agents, including 67 federally regulated banks. This number of examinations constituted a significant increase over the number of examinations performed in the prior fiscal year. The program resulted in 169 deficiency letters, 48 cancellations or withdrawals of registrations, 15 referrals to the Division of Enforcement, 62 referrals to bank regulators, and one staff conference with a registrant. In addition, the staff completed three routine inspections of clearing agencies.

Self-Regulatory Organizations Inspections

In 1999, we inspected at least one program at the following SROs: American Stock Exchange, Boston Stock Exchange, Chicago Board

Options Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange. The SRO inspections focused on:

- arbitration programs;
- listing and maintenance programs;
- financial and operational examination programs;
- market surveillance, investigatory, and disciplinary programs;
- customer communication review programs;
- programs for detecting and sanctioning sales practice abuses; and/or
- ethics and conflicts of interest.

The inspections resulted in numerous recommendations to the SRO's that they improve their programs' effectiveness and efficiency. One inspection resulted in a referral to the Division of Enforcement.

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

SRO Final Disciplinary Actions

Section 19(d)(1) of the Securities Exchange Act of 1934 and Rule 19d-1 require all SROs to file reports with the SEC of all final disciplinary actions. In 1999, a total of 1,313 reports were filed with the SEC, as reflected in the following table.

SRO Reports of Final Disciplinary Action

American Stock Exchange	9
Boston Stock Exchange	0
Chicago Board Options Exchange	70
Chicago Stock Exchange	5
Cincinnati Stock Exchange	0
National Association of Securities Dealers	1,065
National Securities Clearing Corporation	0
New York Stock Exchange	146
Options Clearing Corporation	0
Philadelphia Stock Exchange	14
Pacific Exchange	4
Total Reports	**1,313**

Full Disclosure System

The full disclosure system's goals are to:

- *foster investor confidence by providing investors with material information on public companies;*
- *contribute to the maintenance of fair and orderly markets;*
- *reduce the costs of capital raising; and*
- *inhibit fraud in the public offering, trading, voting, and tendering of securities.*

The Division of Corporation Finance achieves these goals by reviewing the business disclosure and financial statements in periodic reports and transactional filings by corporate issuers and by making rules that facilitate and enhance disclosure in capital formation.

What We Did

- Reviewed the year-end financial statements of 2,550 reporting issuers and 1,690 new issuers.
- Published rule proposals that would modernize the regulation of capital formation under the Securities Act.
- Adopted a new regulatory scheme for business combination transactions and security holder communications.
- Added exemptions that made it easier for U.S. holders to participate in tender and exchange offers, business

combinations, and rights offerings for the securities of foreign companies.

Registration Statements Filed

Companies filed registration statements covering $2.1 trillion in proposed securities offerings, a 17 percent decrease from the record $2.5 trillion in 1998. Offerings filed by first time registrants (IPOs) were approximately $118 billion, 54 percent less than the $257 billion filed in 1998.

Review of Filings

The following table summarizes the principal filings reviewed during the last five years. Because the staff reviews all new

issuer filings (including IPOs), third party tender offers, contested solicitations, and going private transactions, the number of these filings that are reviewed reflects the increases and decreases in the number of filings received.

The increase in Exchange Act new issuer registration statement reviews is attributable to a NASD rule change that (subjects) companies listed on the over-the-counter bulletin board to the reporting requirements of the Exchange Act. Many of the new registration statements were filed by small businesses seeking to retain their current bulletin board listing. Substantial staff time was devoted to assisting these companies in complying with the federal disclosure requirements.

International Activities

Foreign companies' participation in the U.S. public markets continued to grow in 1999. During the year, approximately 120 foreign companies from 26 countries entered our markets for the first time. At year-end, there were over 1,200 foreign companies from 57 countries filing reports with us. Public offerings filed by foreign companies in 1999 totaled over $244 billion—a new record for an amount registered in a single year.

Recent Rulemaking, Interpretive, and Related Matters

Rulemaking is undertaken to protect investors, facilitate capital formation, improve and simplify disclosure, establish uniform requirements, and eliminate unnecessary regulation. The objective in rulemaking is to define regulatory requirements on a cost-effective basis. General interpretive and accounting advice is provided through our interpretive releases, staff legal bulletins, staff accounting bulletins, no-action and interpretive letters, and responses to telephone inquiries.

Reformation of the Offering Process under the Securities Act

For the past several years, we have been reevaluating the current securities registration system and offering process. In November 1998, we published proposals that would modernize the regulation of capital formation under the Securities Act, allow greater use of emerging communication technologies, and provide for more timely information being available to the marketplace under the Exchange Act. The proposals also would:

- provide more information to investors on a more timely and fair basis;

- allow companies and underwriters to communicate with investors more freely; and

- enhance companies' ability to adapt offerings to changing market conditions.

The comment period on these proposals ended in June 1999. We have received numerous comment letters about the proposals and our work in this area is ongoing.

Regulation of Takeovers and Security Holder Communications

In October 1999, we adopted a new regulatory scheme for business combination transactions and security holder communications.[100] The new rules and amendments are effective January 24, 2000. The amendments significantly update the existing regulations to meet the realities of today's markets while maintaining important investor protections. Specifically, the amendments:

- reduce restrictions on communications;

- balance the regulatory treatment of cash and stock tender offers; and

- update, simplify, and harmonize disclosure requirements in connection with business combination transactions.

Cross-Border Tender Offers, Rights Offers, and Business Combinations

In October 1999, we adopted exemptive provisions under the Securities Act and the Williams Act to make it easier for U.S. holders

to participate in tender and exchange offers, business combinations, and rights offerings for the securities of foreign companies.[101]

International Disclosure Standards

In September 1999, we adopted changes to our non-financial statement disclosure requirements for foreign private issuers.[102] The new provisions conform those requirements more closely to the International Disclosure Standards endorsed by IOSCO in September 1998. The changes are intended to harmonize disclosure requirements on fundamental topics among the securities regulations of various countries. The revisions should facilitate cross-border capital-raising and listings.

Small Business Rulemaking

In February 1999, we adopted amendments to rule 504 under the Securities Act to address concerns that the rule may have been used to facilitate fraudulent securities transactions by microcap companies.[103] Rule 504 permitted private companies to offer and sell up to $1 million of securities a year to an unlimited number of persons, without regard to their sophistication or experience and without delivery of any specified information. The amendments prohibit general solicitation and advertising and restrict the resale of rule 504 securities, unless the company ensures delivery of disclosure to investors or sells only to accredited investors.

We also adopted amendments to rule 701 under the Securities Act to raise the amount of securities that could be sold under the rule and provide greater flexibility to those relying on it.[104] Rule 701 allows private companies to sell securities to their employees under compensation arrangements without filing a registration statement. The amendments replaced the existing limits on the total amount of

securities that could be offered so that a private company may sell in a year up to the greater of (1) $1 million; (2) 15 percent of the issuer's total assets; or (3) 15 percent of the outstanding securities of the class.

EDGAR Modernization and Related Rule Amendments

In 1998, the Commission awarded a three-year contract for the modernization of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The new system is expected to reduce costs and efforts of preparing and submitting electronic filings, as well as permit more attractive and readable documents. In May 1999, we adopted new rules and amendments in connection with the first stage of EDGAR modernization.[105]

Segment Disclosure

In January 1999, we adopted technical amendments to conform our rules to the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 131.[106] The amendments harmonize the narrative disclosure rules with recently revised Generally Accepted Accounting Principles financial reporting standards by requiring disclosure of a business enterprise's “operating segments,” rather than its “industry segments,” as previously required.

Form S-8

Form S-8 is the Securities Act registration statement form used for offerings of securities to employees. The disclosure requirements for the form are abbreviated because of the compensatory nature of these offerings and employees' familiarity with their employer's business.

Some companies, including microcap companies, have used Form S-8 improperly to compensate consultants whose primary service to the company is promotion of its securities. Others have used Form S-8 to distribute securities to public investors through so-called “consultants” whose service to the issuer is selling those securities into the market.

In February 1999, we adopted amendments to Form S-8 and related rules designed to deter these abuses.[107] The amendments also provide more flexibility in the legitimate use of Form S-8 by allowing use for exercise of stock options by family members of employees. On the same day, we proposed additional amendments designed to further deter abuse of Form S-8.[108]

Financial Statements and Periodic Reports for Related Issuers and Guarantors

In February 1999, we proposed rules concerning the financial statement and Exchange Act reporting requirements for subsidiary guarantors and subsidiary issuers of guaranteed securities.[109] New rule 12h-5 would exempt a subsidiary issuer or subsidiary guarantor from Exchange Act reporting if it were otherwise not required by existing rules to file detailed financial statements.

Delivery of Disclosure Documents to Households

In November 1999, the Commission issued two releases concerning the delivery of a single disclosure document to two or more investors sharing the same address (householding). The first release adopts rules regarding the householding of prospectuses, annual reports and, in the case of investment companies, semiannual reports.[110] New rule 154 permits issuers and broker-dealers to satisfy the Securities Act's prospectus delivery requirements by sending a single

prospectus to two or more investors residing at the same address if the investors have consented in writing or by implication. The second release proposes similar changes to the proxy rules to permit householding of proxy and information statements, but not proxy cards.[111]

Staff Legal Bulletins

We publish Staff Legal Bulletins to advise the public on frequently recurring issues. In June 1999, the Division published an updated version of Staff Legal Bulletin No. 7 (CF)—Plain English. The bulletin provides helpful information about how to apply the plain English rules to improve the readability of prospectuses and examples of the comments most often cited by the staff on compliance with the plain English rules.

Conferences

Small Business Town Meetings

Since 1996, several informal town meetings between our staff and small businesses have been conducted throughout the U.S. These town meetings tell small businesses about the basic requirements for raising capital through the public sale of securities. They also provide us with information on the concerns and problems facing small businesses. During 1999, we held small business town meetings in Kansas City, Missouri; Albuquerque, New Mexico; and Anchorage, Alaska.

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

The 16th Annual Federal/State Uniformity Conference was held in April 1999. Approximately 60 Commission officials and 60

representatives of the North American Securities Administrators Association, Inc. met to discuss methods of achieving greater uniformity in federal and state securities matters. After the conference, a report summarizing the discussions was prepared and distributed to interested persons and participants.

SEC Government-Business Forum on Small Business Capital Formation

The 18th Annual Government-Business Forum on Small Business Capital Formation was held in Washington, D.C. in September 1999. This platform for small business is the only government-sponsored national gathering for small business, which offers annually the opportunity for small businesses to let government officials know how the laws, rules, and regulations are affecting their ability to raise capital. Next year's Government-Business Forum will be in the San Antonio, Texas area.

Accounting and Auditing Matters

The Chief Accountant is the Commission's principal advisor on accounting and auditing matters. Activities designed to achieve compliance with the accounting, financial disclosure, and auditor independence requirements of the federal securities laws include:

- *rulemaking and interpretation initiatives that supplement private sector accounting standards and implement financial disclosure requirements;*

- *resolving issues arising from the review of documents filed with the Commission to improve disclosure, identify emerging accounting issues (that may result in rulemaking or private-sector standard setting), and identify problems that may warrant enforcement actions;*

- *concurring in Commission enforcement actions to deter improper financial reporting by enhancing the care with which registrants and their accountants analyze accounting issues; and*

- *overseeing private sector efforts, principally by the Financial Accounting Standards Board (FASB), the American Institute of Certified Public Accountants (AICPA), the Independence Standards Board (ISB), and various international accounting bodies, that establish accounting, auditing, and independence standards designed to improve financial accounting and reporting and the quality of audit practice.*

What We Did

- Worked on staff accounting bulletins and a rule proposal to address financial reporting problems attributable to abusive “earnings management”.

- Continued initiatives to ensure public company auditor independence.

Accounting-Related Rules and Interpretations

The agency's accounting rules and interpretations supplement private sector accounting standards and implement financial disclosure requirements. The agency's principal accounting requirements, contained in Regulation S-X, govern the form and content of financial statements filed with the SEC.

Earnings Management

During 1999, we focused on financial reporting problems attributable to abusive “earnings management” by public companies. Abusive “earnings management” involves the use of various forms of gimmickry to distort a company's true financial performance in order to achieve a desired result. Staff Accounting Bulletin No. 99 reemphasized that the exclusive reliance on any percentage or numerical threshold in assessing materiality for financial reporting has no basis in the accounting literature or in law.[112] Two other bulletins provide guidance on the criteria necessary to recognize restructuring liabilities and asset impairments[113] and the conditions prerequisite to recognizing revenue.[114]

Allowance for Loan Losses

The SEC worked with the federal banking agencies (Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision) on loan loss allowance issues. This effort resulted in the issuance of three joint statements that outline important areas of consensus and set forth ongoing efforts to provide guidance. Specifically, the SEC and the banking agencies formed a Joint Working Group to:

- gain a better understanding of the procedures and processes, including “sound practices,” used by banking organizations to determine the allowance for credit losses;

- develop additional guidance related to appropriate methodologies, supporting documentation, and enhanced disclosures for loan loss allowances;

- encourage and support the FASB's process of providing additional guidance regarding accounting for allowances for loan losses; and

- support and encourage the AICPA task force that is developing more specific guidance on the accounting for allowances for credit losses and the techniques of measuring the credit loss inherent in a portfolio at a particular date.

The staffs of the SEC and the banking agencies, through their Joint Working Group, met frequently during 1999 to advance the initiative of issuing guidance on appropriate methodologies, supporting documentation, and enhanced disclosures for allowances for loan losses. Also during 1999, the staff participated as an observer in the meetings of the AICPA task force that is addressing accounting issues related to loan loss allowances.

Also during 1999, the Commission's staff observed the AICPA task force meetings that addressed accounting issues related to loan loss allowances.

Oversight of Private Sector Standard Setting

Financial Accounting Standards Board (FASB)

The SEC monitors the structure, activity, and decisions of the private sector standard-setting organizations, including the FASB. The Commission and its staff work with the FASB in an ongoing effort to improve the standard-setting process and to respond to various regulatory, legal, and business changes in a timely and appropriate manner. Commission staff participate as an observer on all FASB task forces formed to consider major FASB projects. A description of FASB activities overseen by the staff is provided below.

As a key element in a long-term project to address financial instruments and off-balance sheet financing issues, the FASB established an accounting standard for derivative instruments and hedging activities.[115] Due to the complexities associated with derivative instruments, the FASB formed a Derivatives Implementation Group to identify issues related to implementation of the standard, and develop recommendations for their resolution. In response to its constituents' requests for more time to study, understand, and implement the provisions of the new standard, the FASB deferred the standard's effective date until fiscal years beginning after June 15, 2000.[116] As another key element of the project, the FASB decided that fair value is the most relevant attribute for measuring financial instruments. A preliminary views document was issued to solicit public comment on various issues relating to the determination and use of fair value.[117]

The FASB continued its deliberations on a project to reconsider the accounting for business combinations encompassed by Accounting Principles Board Opinion Nos. (APB) 16, *Business Combinations,* and 17, *Intangible Assets.* An exposure draft of a proposed new standard was issued that, among other things, would prohibit the use of the pooling-of-interests method to account for business combinations, consistent with actions taken in Australia and those proposed by Canada. The International Accounting Standards Committee (IASC) also has a project on accounting for business combinations. The IASC's existing standards are much more restrictive than U.S. standards regarding the ability to use pooling. The FASB's proposed action would result in a greater international comparability of accounting for business combinations.[118]

The proposed statement also would establish new accounting standards for identifiable and unidentifiable intangible assets, including goodwill acquired in a business combination. Under the proposed statement, goodwill would continue to be recognized as an asset and would be amortized over its estimated useful economic life, not to exceed 20 years.[119]

The FASB resumed work on a project to specify when entities should be included within consolidated financial statements. An exposure draft of a proposed standard was issued that would require a controlling entity or “parent” to consolidate all entities that it controls unless such control is temporary.[120] For this purpose, control is deemed to involve the nonshared decisionmaking ability of one entity to direct ongoing activities of another entity to increase the benefits and limit the losses from the other group's activities.

Because the determination of control requires judgment, the FASB commissioned a test group to evaluate a number of cases involving complex relationships between entities for purposes of determining

whether similar conclusions are reached when applying the definition of control and implementation guidance set forth in the exposure draft.

The FASB also worked on a project to address certain implementation issues involving the application of APB 25, *Accounting for Stock Issued to Employees.* An exposure draft of a proposed standard was issued to provide accounting guidance on practice issues identified over a number of years in implementing APB 25.[121] This project will not effect the more recent FASB Statement 123 on accounting for stock-based compensation.

The FASB also continued work on a research project on business reporting that evolved from previous recommendations made by the AICPA Special Committee on Financial Reporting and the Association for Investment Management and Research through its study, *Financial Reporting in the 1990s and Beyond.* Its objectives are to:

- develop recommendations for the voluntary and broad disclosure of certain types of nonfinancial information for all or for selected industries that users of business reporting find helpful in making their investment decisions;

- develop recommendations for ways to coordinate generally accepted accounting principles and SEC disclosure requirements and to reduce redundancies; and

- study present systems for the electronic delivery of business information and consider the implications of technology on future business reporting.

The FASB's Emerging Issues Task Force (EITF), in which the Commission's Chief Accountant participates, continued to identify and resolve accounting issues. During 1999, the EITF reached consensus on a number of significant issues, including those relating to application of the equity method of accounting, accounting for financial instruments, and the appropriate reporting of subsequent events caused by Year 2000.

American Institute of Certified Public Accountants (AICPA)

Our staff oversaw various processes and activities conducted through the AICPA. These included (1) the Auditing Standards Board (ASB), which establishes generally accepted auditing standards, (2) the Accounting Standards Executive Committee (AcSEC), which provides guidance through its issuance of statements of position and practice bulletins; and (3) the SEC Practice Section (SECPS), which seeks to improve the quality of audit practice by member accounting firms that audit public company financial statements.

Auditing Standards Board (ASB)

The staff continued to oversee efforts of the ASB to enhance the effectiveness of the audit process. The ASB issued a rule proposal relating to communications between the independent accountants, the audit committee, and management.[122] The proposal would require the auditors to discuss with the audit committee certain information relating to the auditor's judgment about the quality of its client's financial reporting. In connection with a review of interim financial information in accordance with the auditing literature, the auditors also would be required to determine whether any matters regarding the scope and results of the review should be communicated to the audit committee prior to the release of interim financial information. Final rules were adopted after year-end.

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 1999 year-end audits. To complement this overview, the SEC staff, as it has in the past, sent a December 1999 letter to the AlCPAs Director of Audit and Attest Standards that identifies certain timely and topical issues that preparers and auditors should consider in the preparation and audit of financial statements presented in SEC filings.[123]

Also in 1999, the AICPA issued a booklet, *Audit Issues in Revenue Recognition,* that summarizes the significant accounting and auditing guidance on revenue recognition. Finally, in response to the expanding requirements for financial instruments, the ASB issued a proposed standard to provide guidance to auditors in planning and performing auditing procedures for financial statement assertions about financial instruments.[124]

Accounting Standards Executive Committee (AcSEC)

The AcSEC issued a position statement to modify the criteria supporting revenue recognition in multiple-element computer software arrangements.[125] The AcSEC continued to address accounting issues involving specialized industries, including motion picture accounting, investment companies, and financial institutions.

SEC Practice Section (SECPS)

Two programs administered by the SECPS are intended to evaluate whether the financial statements of SEC registrants are audited by accounting firms that have adequate quality control systems. A peer review of member firms is required every three years, and the Quality Control Inquiry Committee (QCIC) reviews the quality control

implications of litigation against member firms that involves public company clients.

The Commission oversees the SECPS through frequent contacts with the staff of the Public Oversight Board (POB) and members of the Executive, SEC Regulations, Peer Review, and Quality Control Inquiry Committees. During 1999, our staff selected a random sample of peer reviews and evaluated selected working papers of the peer reviewers and the related POB oversight files. The staff also reviewed QCIC closed case summaries and related POB oversight files. The SEC staff provided the POB staff with comments on certain peer reviews.

The current accounting profession self-regulatory structure was established in 1977. The accounting profession has undergone fundamental changes since then, including a significant increase in the types and number of audit services offered, a significant decrease in the percentage of firm revenues generated by audits, a globalization of the network of affiliates practicing using a single firm name, and changes in audit methodologies. As a result, the POB has been requested to study audit effectiveness and assess the factors which can affect audit quality, such as the design and effectiveness of member firms' quality control systems and the current peer review process. The Panel on Audit Effectiveness, which was appointed by the POB to undertake this study, is expected to issue a report and recommendations in 2000.

During 1999, the staff identified significant issues regarding auditor independence matters which were highlighted in a letter from the SEC's Chief Accountant to the SECPS.[126] Shortly after year end, another letter was sent to the SECPS noting that “firms with public company audit clients practicing before the Commission may lack sufficient worldwide quality controls to assure their independence

under the applicable Commission and professional rules” and that there may be a “systematic failure by partners and other professionals within certain firms to adhere to their own firm's existing controls.”

A similar letter issued from the Chief Accountant to the POB states that “the peer review process relating to testing of controls over compliance with independence matters is inadequate or is not working properly.”[127] The letter requests the POB to oversee SECPS member firms' design and implementation of strengthened systems and to conduct a comprehensive special review of member firms' compliance with the independence requirements of the profession.

The staff also met with members of the AICPA's Professional Ethics Executive Committee (PEEC) to gain additional information on the accounting profession's disciplinary mechanism and actions. The PEEC's disciplinary actions, including theirtimeliness, are affected by a lack of subpoena powers and ability to maintain the confidentiality of its investigations. It also was noted that the PEEC did not take any action in several cases, when the SEC had taken disciplinary action.

Independence Standards Board (ISB)

The ISB is a private sector body formed in 1997 to promote investors confidence in the audit process and in the securities markets. The ISB adopted rules requiring auditors of public companies to disclose in writing to the company's audit committee all relationships with the company that could affect auditors' independence.[128]

International Accounting and Auditing Standards

Requirements for listing or offering securities vary from country to country. Issuers wishing to access capital markets in more than one

country may have to comply with requirements that differ in many respects, including accounting principles to be used in the preparation of financial statements. Some countries' accounting principles are more comprehensive and result in financial statements that provide greater transparency of underlying transactions and events than others. As a result, securities regulators have been working on several projects to enhance the quality of international reporting and disclosure requirements.

For the past several years, the IASC has been working to complete a core set of accounting standards for financial reporting in cross-border securities offerings. The International Organization of Securities Commissions (IOSCO) is assessing the completed set of standards to determine whether they should be endorsed for cross-border listings and securities offerings. Our staff is assessing the completed core standards to determine whether we should propose changing the current reconciliation requirements for foreign issuers that file financial statements prepared using IASC standards.

From 1997 to 1999, a strategy working party (SWP) of the IASC developed recommendations on how the IASC might improve its structure. The SWP recommendations, that included the establishment of a new board of trustees and independent accounting standard board, were issued and approved by the IASC.

The SEC staff also is directing parallel efforts to identify auditing and quality control issues that could affect the financial statements prepared in accordance with IASC standards. Potential issues include:

- whether the accounting profession and firms have adequate international auditing standards, training, and technical

resources to ensure high quality audits of financial statements prepared using international accounting standards; and

- the need for improved international quality controls to monitor the application of auditing standards for audits on non-U.S. GAAP financial statements (for example, a peer review function like that administered bytheSECPS).[129]

The SEC staff also has participated in discussions with the International Auditing Practices Committee (IAPC) of the International Federation of Accountants and has, through IOSCO, commented on some of the IAPC's recent proposed international standards on auditing.

Other Litigation and Legal Activity

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.

What We Did

- Played the lead role in developing disclosure rules relating to corporate audit committees.

- Testified regarding, and played a significant role in negotiations leading to, the enactment of the Glass-Steagall reform legislation, the Gramm-Leach-Bliley Act.

Significant Litigation Developments

Disciplinary Authority over Securities Professionals

In *Teicher v.* SEC,[130] the court of appeals upheld the Commission's authority under the Investment Advisers Act to bring a disciplinary proceeding against a person who was associated with an unregistered investment adviser at the time of the person's wrongdoing, and to bar such a person from future association with an unregistered adviser. As urged by the Commission, the court found that nothing in the language of the disciplinary provision of the statute "remotely suggested]" that its application was limited to persons associated with *registered* investment advisers. With respect to another respondent, however, the court of appeals held that the Commission lacked the authority under the Exchange Act to impose a

“collateral” bar. According to the court of appeals, the Commission cannot bar a person who is associated with a broker-dealer, but not with an investment adviser, from future association with an investment adviser. Instead, the Commission must wait until the person actually becomes or seeks to become associated with an investment adviser and then bring a proceeding under the Investment Advisers Act based on the earlier wrongdoing.

Excessive Markups

In *Press v. Chemical Investment Services* Corp.,[131] the court of appeals agreed with the views expressed in the Commission's friend of the court brief that there is no percentage safe harbor below which markups as a matter of law could not be excessive. Rather, each transaction must be considered individually and in light of all relevant circumstances. With respect to a separate alleged fraud, the court held, as urged by the Commission, that the “in connection with the purchase or sale of any security” element of the antifraud provisions of section 10(b) of the Exchange Act does not require that the misrepresentation concern the security itself or its value. The “in connection with” requirement is satisfied when the misrepresentation induces the purchase or sale of a security.

Duty to Disclose under Antifraud Provisions

In *SEC v. Cochran,*[132] the Commission appealed a decision dismissing in part its complaint against an officer of an underwriter of municipal bonds who did not disclose to the issuers that his firm received secret fees from persons he selected to invest bond proceeds. The Commission argued on appeal that the defendant owed the issuers a duty of disclosure because, in addition to managing the underwriting of bonds, he provided financial advice to the issuers about where to place the funds, wielded dominant

influence over selecting the institutions with which the funds would be placed, and represented an issuer in contract negotiations with one of the third parties.

Interests in Commodity Pools

In *SEC v. Unique Financial Concepts, /r?c.,*[133] the court of appeals held that interests in a commodity pool—in this case a pool of foreign currency options—are securities. The court also concluded that the Commodity Exchange Act's exclusivity provision did not divest the Commission of authority in this case, agreeing with the Commission that its authority over the capital-raising functions of a commodity pool is concurrent with the Commodity Futures Exchange Commission's jurisdiction over other aspects of a commodity pool's operations.

Primary Violator Liability

In *Howard v. Everex Systems, Inc.,*™ the Commission filed a friend of the court brief in the court of appeals taking the position that a corporate official who knowingly or recklessly signs a document filed with the Commission that contains material misrepresentations can be liable in a private action as a primary violator of section 10(b) notwithstanding his lack of involvement in the preparation of the filing. This question arose after the Supreme Court decided in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A*[135] that private actions cannot be brought against persons who aid and abet violations of the antifraud provisions, but only against primary violators. In taking the position that officials who, acting with scienter, sign corporate filings can be liable as primary violators, the Commission noted that full and honest reporting is crucial to the proper functioning of the securities markets and that corporate

officials play an important role in assuring that reports filed with the Commission are complete and accurate.

Private Right of Action under the Proxy Provisions

In *Koppel v. 4987* Corp.,[136] the Commission filed a friend of the court brief at the request of the court of appeals arguing that there is a private right of action under proxy rule 14a-4, which requires a separate vote on each matter that is submitted for shareholder approval. The court agreed with the Commission's analysis that a private right of action under rule 14a-4 is consistent with Supreme Court cases holding that there is a private right of action under section 14(a) of the Exchange Act to enforce Commission rules intended to assure fair corporate suffrage.

Private Actions under Section 11 of the Securities Act

In *Hertzberg v. Dignity Partners, Inc.,*[137] the Commission filed a friend of the court brief taking the position that a private action under section 11 of the Securities Act for misrepresentations in a registration statement is not limited to persons who bought their securities in the public offering or during the prospectus delivery period. The court of appeals agreed with the Commission and held that any person who purchased a security issued under the relevant registration statement may sue under section 11 so long as the case is brought within the time set by the statute of limitations.

Litigation under the Private Securities Litigation Reform Act

The Commission addressed the state of mind pleading standard under the Private Securities Litigation Reform Act of 1995 (Reform Act) in friend of the court briefs in the Courts of Appeals for the First, Second, Fifth, Ninth, and Eleventh Circuits.[138] The Commission took

the position that the Act's pleading standard does not eliminate recklessness as a basis for liability and that courts should rely upon the Second Circuit tests in interpreting the pleading standard. All courts of appeals to rule on the issue have held that some form of recklessness suffices for liability, and all but the Ninth Circuit have allowed use of the Second Circuit tests in at least some circumstances.

The Commission also addressed the Reform Act's provisions for the selection of lead plaintiff and lead counsel in friend of the court briefs in one court of appeals[139] and five district courts.[140] The Commission urged that district courts should limit a proposed lead plaintiff "group" to a small size so that it can actively oversee the conduct of the litigation and monitor the effectiveness of counsel for the protection of the class. The Commission also urged that district courts should actively exercise their traditional discretion to review proposals for multiple lead counsel. The courts that have ruled in these cases have largely agreed with the positions taken by the Commission.

In *P. Schoenfeld Asset Management LLC v. Cendant* Corp.,[141] the Commission filed a friend of the court brief taking the position that the defendant company's statements that it expected to restate its prior financial statements as a result of accounting irregularities and its estimates about the extent of the possible restatement were not "forward-looking" statements and therefore not protected by the Reform Act's safe harbor provision for forward looking statements or by the "bespeaks caution" doctrine.

In *Harris v. Ivax Corp.,*[142] the Commission filed a friend of the court brief taking the position that the safe harbor provision for forward-looking statements in the Reform Act does not protect a company that issues a projection with actual knowledge of hard facts that render its projection false or misleading. The Commission explained

that the safe harbor was not intended to allow issuers who make projections to conceal known hard facts that would, if disclosed, materially alter the projections. The objective of the safe harbor is to protect issuers who speak about contingent or uncertain events, and who adequately caution investors of the risks that they are in error.

Commerce Clause

In AS. *Goldmen & Co. v. N.J. Bureau of Securities,*[143] the court of appeals agreed with the position, urged by the Commission in a friend of the court brief, that New Jersey did not violate the Commerce Clause of the United States Constitution by applying its securities registration statute to sales made from the state exclusively to non-residents.

Challenges to Rule 102(e)

Two lawsuits were filed against the Commission challenging the Commission's authority to sanction accountants who practice before the Commission under rule 102(e) of the Commission's rules of Practice. In *Marrie v.* SEC,[144] the respondents in an administrative proceeding under rule 102(e) brought an action in district court to enjoin the administrative proceeding. The respondents allege that rule 102(e) is unconstitutional because application of amended rule 102(e) to pre-amendment conduct violates the Ex Post Facto clause, the rule is void for vagueness, and promulgation of the amendments to the rule exceeded the Commission's authority. In *SEC v. Walker,*[145] a Commission enforcement action in district court, a defendant filed a counterclaim contending that the Commission does not have

authority to use rule 102(e) to address professional misconduct unrelated to its adjudicative processes. The Commission has moved to dismiss the claims in both claims, and those motions are pending.

Actions to Enforce NASD Restitution Orders

The Commission brought its first action pursuant to section 21 (e)(1) of the Exchange Act to enforce a National Association of Securities Dealers (NASD) restitution award. In *SEC v. French,* ™[6] the Commission sought an order requiring the defendant, a former registered representative who had been permanently barred from association with any NASD member firm, to pay $50,000 as required by an NASD decision that was affirmed by the Commission in a July 8, 1996 order. The district court entered the order, and the customer who was to receive the restitution is pursuing a collection action against the defendant based on the court order.

Actions Seeking Relief from Commission Injunctions

Courts have denied relief in two actions in which persons sought relief from injunctions imposed in Commission enforcement actions. In *SEC v. Gellas*,[147] the Second Circuit affirmed a district court decision denying a motion to vacate an administrative order barring the respondent from association with any broker-dealer. The movant argued that the order was void because the Commission had agreed not to bring an administrative proceeding in a prior consent judgment. The court found the Commission had made no such agreement. In *SEC v. EDP of California,*[148] the district court refused to vacate an obey-the-law injunction entered in 1992 despite the defendant's argument that she did not intend to re-enter the securities field and the injunction placed a “shadow” over her life. The movant's appeal to the Ninth Circuit is pending. A third case seeking relief from an injunction is also pending. In that case, *Approved Mortgage Corp. v. SEC,* Civ. No. 98-764 (W.D. Pa.), the enjoined party contends the Commission tacitly approved the securities he issued and whose issuance was the basis for his injunction.

Application of the Work Product Doctrine to Work Product Shared with the Commission

The Commission filed an *amicus* brief in a private securities action in state court to explain that disclosure of attorney work product to the Commission pursuant to a confidentiality agreement does not waive work product protection. The Commission stated that the work product doctrine should not be waived because the Commission's ability to obtain work product pursuant to confidentiality agreements plays an important role in the Commission's enforcement of the securities laws. The court held that the corporate defendant had not waived work product protection by producing work product from an audit committee internal investigation.

Requests for Access to Commission Records

In 1999, the Commission received 112 subpoenas for documents and testimony. In some of these cases, the Commission declined to produce the requested documents or testimony because the information sought was privileged.

The Commission received 2,985 requests under the Freedom of Information Act (FOIA) for access to agency records and 8,765 confidential treatment requests from persons who had submitted information to the Commission. There were 41 appeals to the Office of General Counsel from initial denials by the FOIA Officer. One of these appeals resulted in district court litigation challenging a decision to withhold a draft letter from the NASD regarding NASD proposed rule 1150.[149] The court dismissed the complaint as moot because the Commission later produced the letter. The court, however, allowed the plaintiffs to file a motion requesting attorneys' fees. Plaintiffs have not yet filed such a motion.

Actions Under the Right to Financial Privacy Act

In 1999, 26 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. In one case, *Exchange Point LLC v.* SEC,[150] the court held that limited liability companies have no standing to challenge a subpoena for their financial records because they are not "customers" as that term is defined in the RFPA.

Significant Adjudication Developments

The staff submitted to the Commission 69 draft opinions and orders resolving substantive motions. The Commission issued 43 opinions and 28 orders, and the staff resolved by delegated authority an additional 67 motions. Appeals from decisions of Commission administrative law judges constituted 30 percent of the cases decided by the Commission in 1999, while three years ago (1996) that number was less than 10 percent. We anticipate that this percentage will continue to grow as the Commission continues to utilize more fully the administrative enforcement authority granted it by Congress in the Securities Enforcement Remedies and Penny Stock Reform Act of 1990. In addition, the enforcement activities of the NASD have been totally reorganized over the last three years, and, as a result, NASD is bringing more complex cases. For example, in the last year, the Commission has begun to see appeals in several complex fraud and manipulation cases brought by the NASD—in the past the NASD's enforcement efforts have focused on more technical rule violations. We anticipate that this trend will continue in 2000 and beyond, as the results of NASD's stepped-up enforcement program work their way through the appeals process.

Statutory Disqualification

In *Jacob Adoni*,[151] the Commission set aside NASD action denying a registered broker-dealer's application to employ Adoni as a registered representative. The NASD had denied the application after it determined that Adoni was subject to a statutory disqualification based on a federal court order enjoining him from violating rules that prohibit the falsification of books and records. The Commission held, however, that the injunction did not subject Adoni to a statutory disqualification because it did not enjoin a conduct or practice “in connection with” the purchase or sale of a security within the meaning of Exchange Act sections 3(a)(39) and 15(b)(4). The complaint in the injunctive action did not allege, and the record did not support a finding, that false or misleading information reached the public as a result of Adoni's conduct. Adoni had improperly booked sales of unshipped goods as revenue, but these inflated revenue figures were never incorporated into a public filing or otherwise disseminated to the public.

Amount of Disgorgement

The Commission in *Joseph J. Barbato* [152] found that Barbato, a former salesperson with a now defunct registered broker-dealer, committed fraud. The Commission barred Barbato from associating with any broker or dealer, but reduced the disgorgement amount imposed by an administrative law judge from $623,020, an amount that reflected the commissions Barbato earned from all of his customers during his entire tenure at the broker-dealer, to $45,142.20, the amount of commissions Barbato earned from the seven customers he defrauded.

Due Process

In *Scattered Corporation,*[153] the Commission dismissed the Chicago Stock Exchange, Inc.'s (CHX) action against respondents because there was not adequate separation of prosecutorial and adjudicatory legal functions during the disciplinary proceeding. CHX had hired an outside private law firm to perform all its legal functions, and one of the law firm's partners was appointed General Counsel of CHX. The law firm represented CHX in numerous lawsuits to which CHX and respondents were parties, sometimes in adverse positions. The law firm initiated the investigation that resulted in this disciplinary action, and a partner from the law firm was appointed as counsel to the CHX Hearing Examiner. (While the law firm hired a second law firm to prosecute the disciplinary proceeding, it reviewed all of the bills of the second firm prior to their submission to CHX.) The Commission held that procedural fairness requires appropriate separation between an exchange's adjudicatory function and other functions that conflict with the adjudicatory role. The Commission found that CHX had not taken adequate measures to preserve separation among those persons within the law firm working on the various functions and thus deprived the applicants of a fair proceeding before a fair tribunal.

Fraud

The Commission in *Valicenti Advisory Services, Inc*.[154] found that respondents, an investment adviser firm and its president, distributed two pieces of misleading sales literature to prospective clients. The Commission stated that the literature presented a false portrayal of the firm's past performance and a misleading comparison of that performance with the performance of other money managers. The Commission noted that the sales literature purported to show the rates of return realized by a composite of [the firm's] discretionary accounts with a balanced objective" over a five-year period. However, only a portion of the firm's accounts were actually reflected. The

Commission stated that, where an adviser's sales literature states that the rates of return it is advertising are based on the combined performance of certain specified accounts, the plain meaning of that statement is that the rates reflect the performance of aji accounts falling within the stated criteria, not merely a few chosen by the adviser. Respondents were censured, fined, ordered to cease and desist from further antifraud violations, and required to send a copy of the Commission's opinion and order to all existing clients and, for one year, to all prospective clients.

Legal Policy

The General Counsel's responsibilities include providing legal and policy advice on SEC enforcement and regulatory initiatives before they are presented to the Commission for a vote. The General Counsel also advises the Commission on administrative law matters, and has substantial responsibility for carrying out the Commission's legislative program, including drafting testimony, developing the Commission's position on pending bills in Congress, and providing technical assistance to Congress on legislative matters.

On the regulatory front, the General Counsel played a significant role in drafting rules to require disclosure from audit committees. In the administrative area, the General Counsel took a lead role in coordinating the preparation of reports to Congress on the year 2000 readiness of the securities industry. In the legislative area, the General Counsel played a significant role in the enactment of the Gramm-Leach-Bliley Act.

Significant Legislative Developments

In 1999, Congress passed four bills affecting the work of the SEC.

Glass-Steagall Act Reform: Gramm-Leach-Bliley Act

The most significant enactment for the Commission and securities firms was S. 900, the Gramm-Leach-Bliley Act, which was largely considered and negotiated during fiscal 1999, but enacted early in fiscal 2000 when President Clinton signed the Act into law on November 12, 1999 (Pub. L No. 106-102, 113Stat. 1338 (1999)). This historic financial services reform legislation has substantial impact on the Commission and securities firms. The act permits financial services companies to own banks, securities firms, and insurance companies effective 120 days from enactment.

The act repeals, effective 18 months from enactment, the blanket “bank” exemptions from broker and dealer regulation under the Exchange Act. The act also repeals, effective in 18 months, the blanket “bank” exemption from regulation under the Investment Advisers Act when they advise investment companies. The act provides for SEC umbrella regulation of investment bank holding companies, such as broker-dealers that own financial institutions other than banks. Financial privacy provisions represent another significant aspect of this comprehensive legislation. The act requires financial institutions to provide customers with the opportunity to opt out of sharing certain nonpublic customer information with third parties. The act also strengthens investor protections in the bank mutual funds area.

Y2K Computer Errors: Y2K Litigation Legislation

The second piece of legislation passed in 1999 of significance to the SEC was H.R. 775, the Y2K Act, which seeks to limit the impact of lawsuits filed against companies due to complications that might arise from a computer glitch associated with the century date change. The act provides companies 90 days to address Y2K problems before

lawsuits can be filed against them and limits the damages companies may be required to pay due to complications arising from Y2K associated computer problems. President Clinton signed this act into law on July 20, 1999 (Pub. L. No. 106-37, 113 Stat. 185 (1999)). This legislation does not, however, affect the Commission's regulatory and enforcement actions and largely preserves private securities claims.

Emergency Steel and Emergency Oil and Gas Loan Guarantee Boards

The third piece of legislation passed in 1999 affecting the SEC was H.R. 1664 (Pub. L. No. 106-51, 113 Stat. 252 (1999)), establishing the Emergency Steel Loan Guarantee Board and the Emergency Oil and Gas Loan Guarantee Board. The Boards are comprised of the Chairman of the Federal Reserve Board, or another member of the Federal Reserve Board that he designates, the Chairman of the SEC, or another member of the Commission that he designates, and the Secretary of Commerce. Congress authorized the Emergency Steel Loan Guarantee Board to guarantee up to $1 billion in loans extended to qualified steel companies that have experienced layoffs, production losses, or financial losses since January 1998. Congress authorized the Emergency Oil and Gas Loan Guarantee Board to guarantee up to $500 million in loans extended to qualified oil and gas companies that have experienced layoffs, production losses, or financial losses since January 1, 1997. President Clinton signed the legislation establishing the Boards on August 17, 1999.

SEC Appropriation

The fourth piece of legislation passed in 1999 affecting the SEC was the Consolidated Appropriations Act (Pub. L. No. 106-113 (1999)), which established the Commission's fiscal year 2000 appropriation. The legislation provides the Commission with $367.8 million in

funding authority for 1999. From the beginning of fiscal 2000 (October 1, 1999) until final signing of the Consolidated Appropriations Act, the Commission and other parts of government for which appropriations had not been enacted were allowed to continue operations under seven continuing resolutions signed by the President that provided interim funding.[155]

Commission Congressional Testimony

The Commission testified on 25 occasions in 1999.[156]

The Commission testified concerning the Glass-Steagall reform legislation (S. 900, enacted as the Gramm-Leach-Bliley Act) and issues of financial privacy and bank accounting for loan loss reserves addressed in that legislation.

In addition, in 1999, the 106th Congress held hearings regarding issues related to technology and the impact of technology on the structure of the United States capital markets. Hearings explored the impact of on-line trading and day trading, as well as the introduction of electronic markets and the possibility of “demutualizing” registered exchanges.

The Commission also testified at congressional hearings on the following matters:

- market data misappropriation and dissemination;
- bond market transparency legislation;
- securities transaction fee legislation;

- proposals to repeal the Public Utility Holding Company Act of 1935;

- disclosure of tax consequences of mutual fund investments and charitable contributions;

- day trading and internet fraud issues;

- providing information to small businesses concerning the process of “going public;”

- bankruptcy reform legislation;

- reauthorization of the CFTC; and

- Report of the President's Working Group on Financial Markets on hedge funds, leverage and the lessons of Long-Term Capital Management.

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 in companies undergoing bankruptcy reorganizations are protected. During the past year, the Commission entered a formal appearance in 56

Chapter 11 cases with significant public investor interest. The Commission formally supported motions for the appointment of a stockholders' committee in two cases.

The bankruptcy staff commented on 116 of 154 disclosure statements it reviewed during 1999. 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 staffs comments were adopted; formal Commission objections were filed in 12 cases.

The Commission was unable to eliminate provisions in 15 plans that improperly attempted to release officers, directors, and other related persons from liability—including possible liability under the securities laws. In six cases, the Commission was able to block plan provisions that would have resulted in an assetless public shell company that could have been used for stock manipulation purposes. The Commission was also able in 20 cases to prevent the improper use of the Bankruptcy Code exemptions from Securities Act registration.

Municipal Securities Initiatives

The Office of Municipal Securities coordinates the Commission's municipal securities activities. The staff 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 in legislative matters and works directly with the municipal finance community on issues relating to municipal securities.

What We Did

- Coordinated the First Annual Municipal Market Roundtable.

- Continued to coordinate the

Commission's efforts to end pay-to-play practices in the municipal securities markets.

- Provided technical assistance in municipal securities investigations and enforcement proceedings.

- Continued to educate municipal market participants in the implementation of and compliance
-

with amendments to rule 15c2-12, which requires secondary market disclosure.

Municipal Market Roundtable

In October 1999, the Office of Municipal Securities (QMS) coordinated the First Annual Municipal Market Roundtable. During the roundtable, a series of panels composed of issuers, underwriters, lawyers, financial advisers, investors, and SEC staff discussed current issues in the municipal securities market. This dialog with the municipal securities market will continue on an annual basis through such roundtables.

Municipal Securities Disclosure and Outreach

The municipal securities staff continued to educate municipal market participants in the implementation of, and compliance with, amendments to rule 15c2-12, which requires secondary market disclosure. The staff also provided guidance to market participants regarding recent SEC enforcement decisions that apply the antifraud provisions of the federal securities laws to municipal securities.

QMS staff assisted state and local government groups in preparing materials to educate municipal market participants, coordinating educational efforts targeting small issuers together with the National League of Cities, Government Finance Officers Association, and The Bond Market Association.

QMS met periodically with numerous organizations representing participants involved in the municipal finance industry. Such organizations included the Government Finance Officers Association, National League of Cities, National Association of Counties, U.S. Conference of Mayors, Council of Infrastructure Financing Authorities, Bond Market Association, the National Association of Bond Lawyers and a variety of regional and local municipal government educational groups. These meetings focused on methods of improving compliance with existing regulations. QMS

acted as a point of contact for municipal bond issuers and provided them access to the Commission.

Technical Assistance

Pay-to-PI ay Practices

QMS continued to coordinate the Commission's efforts to end pay-to-play practices in the municipal securities markets, promoting education and compliance with related Municipal Securities Rulemaking Board (MSRB) rules and encouraging voluntary action by national and local bar associations to end the practice. In March 1999, leading independent financial advisers signed a voluntary ban similar to that signed by municipal securities dealers in 1993. In August, the American Bar Association (ABA) House of Delegates voted down a recommended new ethics rule barring pay-to-play by attorneys. The measure was resubmitted to the House at the ABA winter meeting.

Other Municipal Securities Issues

The QMS staff worked with various SEC divisions and offices and municipal market participants on numerous issues, some of which follow:

- various issues surrounding the implementation of amendments to rule 15c2-12;

- interpretation and implementation of MSRB rules G-36, G-37, and G-38;

- recent SEC enforcement decisions that apply the antifraud provisions of the federal securities laws to municipal securities;

- municipal bankruptcy and other municipal securities matters;
- oversight concerning municipal securities regulations;
- various compliance inspections and examinations training programs;
- issues pertaining to individual investors municipal securities price transparency; and
- enforcement cases involving municipal securities and the municipal securities markets.

Economic Research and Analysis

The economic analysis program provides the technical and analytical support necessary to understand and evaluate the economic effects of Commission regulatory policy, including the costs and benefits of rulemaking initiatives. The staff reviews all rule proposals to assess their potential effects on small businesses; competition within the securities industry and competing securities markets; efficiency, competition, and capital formation; and costs, prices, investment, innovation and the economy.

What We Did

- Analyzed recent developments in the options market focusing on issues associated with the expansion of multiple trading.

- Provided extensive economic advice, empirical data, and analytical support in connection with important policy initiatives designed to modernize and streamline securities regulation.

Economic Analysis and Technical Assistance

Our economic analysis staff provided substantial quantitative economic evidence on several rulemaking projects.

Securities Offerings and Capital Formation

- Provided extensive empirical analysis and economic advice on issues related to the impact of the aircraft carrier, and cost of fraud and the impact of rule 144A market/ Exxon Capital transactions. The economic staff, in cooperation with the

Divisions of Corporation Finance and Enforcement, analyzed thousands of documents pertaining to companies which filed fraudulent financial or registration statements.

- Provided economic advice and analysis on the proposed amendments relating to communications requirements for mergers and acquisition activity.

- Provided economic advice, technical support, and analysis of earnings quality and independence of audit committees in connection with proposed rules to promote greater independence and higher quality audit standards. The economics staff analyzed write-offs involving research and development expenditures, discretionary writeoffs, and pooling accounting choices.

Mutual Funds

- Provided analytical support and technical assistance on proposed disclosure requirements that would require mutual funds to calculate and present after-tax returns. Analyzed how the assumed tax rate impacts the relevancy of after-tax returns for various categories of mutual fund investors based on their tax bracket.

- Provided advice and technical assistance on the pay-to-play restrictions on investment advisers, the householding rules, and amendments to rules that simplify the registration process for investment companies.

Market Structure and Trading Practices

- Provided extensive empirical data and analyses in connection with recent developments in the options markets, including the impact of increased competition in multiple-listings on quoted spreads, market share, and quality of quote information and customer executions.

- Provided economic advice and assistance in implementing Regulation ATS and evaluating the costs and benefits. Regulation ATS updates the regulatory framework for exchange and alternative trading systems allowing the market to more fully benefit from advances in electronic trading systems.

- Provided analyses and economic advice to help the Division of Market Regulation craft the Short Sale Concept Release. The release addresses the need to review the operation and effectiveness of current short sale rules.

- Examined the practice of “flipping” whereby recipients of shares in an initial public offering sell immediately in the aftermarket. The examination focused on the extent to which flipping occurs, how often penalty bids are assessed, and the types of issues where penalty bids are used.

- Analyzed the impact of the New York Stock Exchange's (NYSE) reduction in the minimum tick size.

Enforcement Issues

Our economic analysis staff provided assistance in investigations and enforcement actions involving the Nasdaq market, insider trading, mutual fund trade allocation, market manipulation, fraudulent financial reporting, and other violations of securities laws. The staff applied financial economics and statistical techniques to determine whether

the elements of fraud were present and to estimate the amount of disgorgement to be sought. They also assisted in evaluating the testimony of experts hired by opposing parties.

Inspections and Examinations

Our economic analysis staff worked closely with the SEC's Office of Inspections and Examinations to:

- assist in developing a leverage based criteria to identify problem broker-dealers;

- analyze best execution issues on the options exchanges, including a comparison of trading costs of single and multiple-listed options; and

- evaluate compliance with the short-sale rules by day traders.

Special Projects

The economic analysis staff:

- developed the Mutual Fund Calculator for the SEC's website that enables investors to calculate the impact of a mutual fund's fees on investment returns;

- examined municipal bond trading; and

- provided analytical support and advice for a variety of ongoing investigations.

Policy Management and Administrative Support

Our policy management and administrative support staff provide the Commission and operating divisions with the necessary services to accomplish the agency's mission. The responsibilities and activities 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 services include information technology, financial, space and facilities, and human resources management.

What We Did

- Held 52 Commission meetings, during which 248 matters were considered.
- Acted on 1,104 staff recommendations by seriatim vote.
- Achieved Year 2000 compliance.

Policy Management

Commission Activities

During the 52 Commission meetings held in 1999, the Commission considered 248 matters, including the proposal and adoption of Commission rules, enforcement actions, and other items that affect the nation's capital markets and the economy. The Commission also acted on 1,104 staff recommendations by seriatim vote.

Significant Regulatory Actions

- Adopted measures intended to assure Year 2000 compliance by broker-dealers, investment advisers, and transfer agents.

- Adopted rules on alternative trading systems, clarifying their ability to register as an exchange or broker-dealer.

- Proposed rules to modernize regulation of securities offerings, tender offers, and mergers.

- Proposed rules addressing political contributions by certain investment advisers (pay-to-play).

- Adopted rules concerning the personal investment activities of investment company personnel.

Management Activities

Our staff continued to promote management controls and financial integrity and to manage the agency's audit follow-up system. In addition, we analyzed the efficiency and effectiveness of operating divisions and support offices and coordinated and implemented the agency's compliance with and response to actions under the Government Performance and Results Act of 1993. Working closely with other senior officials, the office formulated the agency's budget submissions to the Office of Management and Budget and the Congress.

Public Affairs

Our Public Affairs, Policy Evaluation and Research staff:

- informed those interested in or affected by Commission actions of SEC activities;

- published the SEC *News Digest,* 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;

- provided support for the Chairman's investor education initiatives, the SEC's Internet website, and the SEC International Institute for Securities Market Development; and

- responded to over 50,000 requests for specific information on the SEC or its activities and coordinated programs for 598 foreign visitors.

Equal Employment Opportunity

Our Equal Employment Opportunity (EEO) Office staff monitored the SEC's compliance with EEO laws and regulations. We trained supervisors to fulfill their EEO responsibilities and non-supervisory employees to understand their right to a discrimination-free workplace. All employees were informed of their responsibility for complying with SEC's zero-tolerance policy regarding all forms of discriminatory harassment. The staff provided EEO counseling to employees and applicants, mediated EEO disputes, and investigated EEO complaints. The EEO Office sponsored special emphasis employment program activities, organized recruitment events, and supported community outreach efforts.

Freedom of Information Act and Privacy Act

Our Freedom of Information Act (FOIA) and Privacy Act staff 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. In 1999, we received 3,020 FOIA requests and appeals, 15 Privacy Act requests and appeals, 6 Government in the Sunshine Act requests, 14 government referrals, and 8,770 requests and appeals for confidential treatment.

Administrative Support

Financial Operations

The SEC deposited $1.76 billion in fees in the U.S. Treasury in fiscal 1999, of which $214 million was used to directly fund the agency in 1999. Of the $1.76 billion in total fees collected, 54% were from securities registrations; 38% were from securities transactions; and 8% were from tender offer, merger, and other filings.

The fee rate for securities registrations was established in the Securities Act at 1/50 of 1 percent. The Commission began to collect additional fee revenue in 1990, when on a yearly basis Congress passed appropriations laws that increased the registration fee rate to partially offset the costs of funding the agency. In October 1996, an agreement to reduce fees was enacted in Title IV of the National Securities Markets Improvement Act of 1996 (NSMIA), and the fee rate for fiscal 1997 was reduced to 1/33 of 1 percent. The rate for fiscal 1999 was 1/36 of 1 percent. When the scheduled NSMIA reductions are fully implemented in 2007, the fee rate on securities registrations will be 1/150 of 1 percent.

The transaction fee rate on exchange-based securities was established in the Exchange Act at 1/300 of 1 percent. To equalize the costs of trading across markets, NSMIA included provisions extending transaction fees to the over-the-counter market at the existing rate of 1/300 of 1 percent. This rate will be reduced to 1/800 of 1 percent in 2007.

Revenue from other filings and reports includes fees for tender offers and merger filings under Section 13 of the 1934 Act.

Year 2000

Achieving Year 2000 compliance of our internal systems remained our highest management priority in 1999. The SEC completed an assessment of over 780 software applications, 4,500 equipment components, and numerous sources of data exchanged with other government agencies and securities industry companies. We renovated, tested, and implemented compliant software. We also worked with external agencies to test the receipt and transmission of compliant data. The SEC achieved Year 2000 compliance by August 31, 1999.

Additionally, the SEC actively worked with the securities industry to collect information and report on the Year 2000 compliance of broker dealers, registered transfer agents, investment advisers, and mutual funds. Data submitted in calendar years 1998 and 1999 was posted to the SEC's website for public access.

The SEC also worked with the securities industry to develop and test contingency plans. During the Year 2000 transition, the SEC monitored and reported on the securities industry from our data collection center.

EDGAR

In 1998, the SEC awarded to TRW a three-year contract for the modernization and ongoing maintenance of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The new system is expected to reduce costs and efforts of preparing and submitting electronic filings, as well as permit more attractive and readable documents. In June 1999, the second major modernization release provided the capability for filers to submit filings in hypertext markup language (HTML) and portable document (PDF) formats. In August, EDGAR filers were provided with opportunities to perform Year 2000 testing, and in October, filers began receiving messages and filing notices using the new public data network.

www.sec.gov

The agency's website provides the public with electronic access to the EDGAR database and other information of interest to the investing public. The website continues to be a very popular source of information and averaged over 800,000 hits and over 30 gigabytes of data downloaded each day. In addition, the SEC Mutual Fund Cost Calculator, a tool that lets investors compare the cost of mutual funds, was released on the website.

Administrative and Personnel Management This year, our staff:

- transitioned from our in-house personnel and payroll systems to the Department of the Interior's consolidated personnel / payroll system;

- hired a recruitment coordinator to improve the agency's recruitment efforts; and

- finalized plans for the renovations of the SEC Operations Center and Annex.

Endnotes

[1] SEC *v. The Future Superstock, et al.,* Litigation Release No. 15958 (Oct. 27, 1998).

[2] SEC *v. Stockstowatch.com Inc., et al.,* Litigation Release No. 15956 (Oct. 27, 1998).

[3] SEC *v. Lawrence J. Penna, et al.,* Litigation Release No. 16270 (Sept. 2, 1999).

[4] *SEC v. Gilbert A. Zwetsch, et al.,* Litigation Release No. 16131A (May 4, 1999).

[5] SEC *v. Hartley T. Bernstein,* Litigation Release No. 16163 (May 27, 1999).

[6] *In the Matter of PricewaterhouseCoopers, LLP,* Release No. 34-40945, AAER No. 1098 (Jan. 14, 1999).

[7] SEC *v. Garth H. Drabinsky, et al.,* Litigation Release No. 16022 (Jan. 13, 1999).

[8] *Livent Inc.,* Release No. 34-40937, AAER No. 1095 (Jan. 13, 1999).

[9] *In the Matter of W. R. Grace & Co.,* Release No. 34- 41578. AAER No. 1140 (June 30, 1999).

[10] SEC *v. Brett S. Henderson, et al.,* Litigation Release No. 16243 (Aug. 4, 1999).

[11] SEC v. *Cassano, et al.,* Litigation Release No. 16161 (May 26, 1999).

[12] SEC *v. Samson Hui, et al.,* Litigation Release No. 16220 (July 26, 1999).

[13] *In the Matter of Kidder, Peabody & Co. Incorporated,* Release No. 34-41224 (Mar. 30, 1999).

[14] *In the Matter of the City of Miami, Florida, et al.,* Release No. 34-41896 (Sept. 22, 1999).

[15] *In the Matter of the New York Stock Exchange, Inc.,* Release No. 34-41574 (June 29, 1999).

[16] *In the Matter of A.S. Goldmen & Co., Inc., et al.,* Release No. 34-41601 (July 7, 1999).

[17] *In the Matter of Certain Market Making Activities on Nasdaq,* Release No. 34-40900 (Jan. 11, 1999).

[18] *In the Matter of Bear, Stearns Securities Corp.,* Release No. 34-41707 (Aug. 5, 1999).

[19] *In the Matter of Fleet Investment Advisors Inc.,* Release No. IA-1821 (Sept. 9, 1999).

[20] In the Matter of Van Kampen Investment Advisory Corp., et al., Release No. IA-1819 (Sept. 8, 1999).

[21] Release No. 34-40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[22] Release No. 34- 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[23] Letters regarding Instinet Real-Time Trading Service (Nov. 17, 1999), the Island ECN (Nov. 17, 1999), Bloomberg Tradebook (Jan. 17, 1999), Archipelago (Nov. 17, 1999), the Routing and Execution DOT Interface Electronic Communications Network (Nov. 17, 1999), the ATTAIN System (Nov. 17, 1999), the BRUT (Nov. 17, 1999), the Strike System (Nov. 17, 1999), and NEXTrade (Nov. 17, 1999).

[24] Release No. 34- 41377 (May 7, 1999), 64 FR 92 (May 13, 1999).

[25] Release No. 34- 41786 (Aug. 24, 1999), 64 FR 47882 (Sept. 1, 1999), 34-41800 (Aug. 27, 1999), 64 FR 48694 (Sept. 7, 1999).

[26] Release No. 34- 40162 (July 2, 1998), 63 FR 37668 (July 13, 1998).

[27] Release No. 34- 40163 (July 2, 1998), 63 FR 37688 (July 13, 1998).

[28] Release No. 34- 40608 (Oct. 28, 1998), 63 FR 59208 (Nov.3, 1999) (regarding broker-dealers); 34-40587 (Oct.22, 1998), 63 FR 58630 (Nov. 2, 1998) (regarding transfer agents).

[29] Release No. 34- 41661 (July 27, 1999), 64 FR 42012 (Aug. 3, 1999).

[30] Release No. 34-41439 (May 24, 1999), 64 FR 9367 (June 1, 1999).

[31] Release No. 34-42042 (Oct. 20, 1999), 64 FR 57668 (Oct. 26, 1999).

[32] Release No. 34-41875 (Sept. 14, 1999), 64 FR 51165 (Sept. 21, 1999).

[33] Release No. 34-41776 (Aug. 20, 1999), 64 FR 47214 (Aug. 30, 1999).

[34] Release No. 34-41881 (Sept. 17, 1999), 64 FR 51822 (Sept. 24, 1999).

[35] Release No. 34-42003 (Oct. 13, 1999), 64 FR 56554 (Oct. 20, 1999).

[36] Release No. 34-42004 (Oct. 13, 1999), 64 FR 56548 (Oct. 20, 1999).

[37] Release No. 34-41843 (Sept. 8, 1999), 64 FR 50126 (Sept. 15, 1999).

[38] Release No. 34-41116 (Feb. 26, 1999), 64 FR 10565 (Mar. 1, 1999).

[39] Release No. 34-41453 (June 2, 1999), 64 FR 2950 (June 11, 1999).

[40] Release No. 34-41644 (July 23, 1999), 64 FR 41056 (June 15, 1999).

[41] Release No. 34-42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999).

[42] Release No. 34-41634 (July 21, 1999), 64 FR 40633 (July 27, 1999).

[43] Release No. 34-41560 (June 25, 1999), 64 FR 36059 (July 2, 1999).

[44] Release No. 34-41594 (July 2, 1999), 64 FR 37586-1 (July 12, 1999); Release No. 34-41356 (Apr. 30, 1999), 64 FR 25143 (May 10, 1999).

[45] Release No. 34-41967 (Sept. 30, 1999), 64 FR 54704 (Oct. 7, 1999).

[46] Release Nos. 334-42055, 33-760 (Oct. 19, 1999), 64 FR 61408 (Nov. 10, 1999).

[47] Release No. 34-42054 (Oct. 19, 1999), 64 FR 61382 (Nov. 10, 1999).

[48] Release No. 34-42037 (Oct. 5, 1999), 64 FR 57996 (Oct. 28, 1999).

[49] Letter regarding VWAP Trading System (Mar. 24, 1999).

[50] Release No. 34-41905 (Sept. 23, 1999), 64 FR 52428 (Sept. 29, 1999).

[51] Release No. 34-41110 (Feb. 25, 1999), 64 FR 11124 (Mar. 8, 1999).

[52] Letter regarding Manufacturers Life Insurance Company (Sept. 29, 1999).

[53] Letter regarding Nasdaq 100 (Mar. 3, 1999).

[54] Letter regarding General Exemption for Japanese Stabilization Transactions (Nov. 8, 1999).

[55] Letter authorizing Goldman Sachs Financial Markets, L.P. to compute its market and credit risk capital charges under Appendix F of Rule 15c3-1 (July 20, 1999).

[56] Letter regarding John R. Wirthlin (Jan. 19, 1999).

[57] See, e.g., Letters regarding The Manufacturers Life Insurance Co. (May 18, 1999), The Canada Life Assurance Company (July 29, 1999), The MONY Group, Inc. (Aug. 2, 1999), Sun Life Assurance Company of Canada (Aug. 19, 1999) (pub. avail. Nov. 19, 1999), John Hancock Mutual Life Insurance Co. (Sept. 16, 1999).

[58] Letter regarding Interests in Local Government Pools and Higher Education Trusts (Feb. 26, 1999).

[59] Letter regarding Maine College Savings Program Fund (Aug. 2, 1999).

[60] Letter regarding Wrap Fee Program of Everen Securities (Feb. 24, 1999).

[61] See, e.g., Letter regarding Sky City Limited (Feb. 26, 1999) (pub. avail. June 28, 1999).

[62] Letter regarding Buys-MacGregor, MacNaughton-Greenawalt & Company (Feb. 1, 1980).

[63] Letter regarding SK International Securities Corporation (Feb. 2, 1999).

[64] Letters regarding MMI and SIA Request for Exemption from Rule 10b-10(a) for Wrap Fee Programs (Aug. 23, 1999), and Advest, Inc. (July 19, 1999).

[65] Letter regarding MMI and SIA Request for Exemption from Rule 10b-10(a) for Wrap Fee Programs (Aug. 23, 1999).

[66] Letter regarding Goldman Sachs Mortgage Company and Affiliates (Feb. 24, 1999).

[67] Release No. 34-41833 (Sept. 2, 1999), 64 FR 49256 (Sept. 10, 1999).

[68] Letter regarding Net Capital Treatment of Single-Rated Investment Grade Asset-Backed Debt Securities (Aug. 6, 1999).

[69] Letter regarding Short Futures Options Value Charge (Feb. 25, 1999).

[70] Letter regarding NRSO Status of Thomson BankWatch, Inc. (Jan. 25, 1999).

[71] Release Nos. 34-41217 (Mar. 26, 1999), 64 FR 15855 (regarding MSRB 97-16); 34-41170 (Mar. 15, 1999), 64 FR 13837 (Mar. 22, 1999) (regarding MSRB 99-01); 34-41338 (Apr. 28, 1999), 64 FR 23886 (regarding MSRB 99-02); 34- 41916 (Sept. 27, 1999), 64 FR 53759 (Oct. 4, 1999) (regarding MSRB 99-09); and 34-42019 (Oct. 15, 1999), 64 FR 57505 (Oct. 25, 1999) (regarding MSRB 99-07).

[72] Release No. 34-4119, International Series Release No. 1189 (Mar. 22, 1999), 64 FR 14953 (Mar. 29, 1999).

[73] Release No. IC-23958 (Aug. 20, 1999), 64 FR 46821 (Aug. 27, 1999).

[74] Release No. IC-23745 (Mar. 19, 1999), 64 FR 14648 (Mar. 26, 1999).

[75] Release No. IC-23815 (Apr. 29, 1999), 64 FR 24489 (May

6, 1999).

[76] Release No. IC-24050 (Sept. 23, 1999), 64 FR 52476 (Sept. 29, 1999).

[77] Release No. IC-23588 (Dec. 4, 1998), 63 FR 69236 (Dec. 16, 1998) (proposing release); Release No. IC-23786 (Apr. 15, 1999), 64 FR 19469 (Apr. 21, 1999) (adopting release).

[78] Schwab Capital Trust, et al., Release Nos. IC-24067 (Oct. 1, 1999), 64 FR 54939 (Oct. 8, 1999) (notice) and 24113 (Oct. 27, 1999) (order).

[79] Baker, Fentress & Company, Release Nos. IC-23571 (Nov. 24, 1998), 63 FR 66215 (Dec. 1, 1998) (notice) and 23619 (Dec. 22, 1998) (order).

[80] See, e.g., Global Telesystems Group, Inc., Release Nos. IC-23865 (June 9, 1999), 64 FR 32296 (June 16, 1999) (notice) and 23895 (July 7, 1999) (order); Internet Capital Group, Inc., Release Nos. IC-23923 (July 28, 1999), 64 FR 42421 (Aug. 4, 1999) (notice) and 23961 (Aug. 23, 1999) (order); Alliance Capital Management, L.P., Release Nos. IC-23920 (July 27, 1999), 64 FR 41978 (Aug. 2, 1999) (notice) and 23951 (Aug. 18, 1999) (order); Allegiance Telecom, Inc., Release Nos. IC-23837 (May 13, 1999), 64 FR 27608 (May 20, 1999)

(notice) and 23863 (June 8, 1999) (order); and BHF Finance (Delaware) Inc., Release Nos. IC- 23939 (Aug. 10, 1999), 64 FR 44559 (Aug. 16, 1999) (notice) and 24001 (Sept. 8, 1999) (order).

[81] Interpretive Matters Concerning Independent Directors of Investment Companies, Release No. IC-24083, (Oct. 14, 1999).

[82] American Bar Association (pub. avail. Apr. 22, 1999).

[83] HOLDRs (pub. avail. Sept. 3, 1999).

[84] Metropolitan Life Insurance Company (pub. avail. Nov. 23, 1999).

[85] Salomon Brothers Asset Management Inc. and Salomon Brothers Asset Management Asia Pacific Limited (pub. avail. July 23, 1999).

[86] The First Australia Fund, Inc. (pub. avail. July 29, 1999).

[87] Franklin Management, Inc. (pub. avail. Dec. 10, 1998).

[88] BISYS Fund Services, Inc. (pub. avail. Sept. 2, 1999).

[89] Goldman, Sachs & Company (pub. avail. Feb. 22, 1999).

[90] Investment Company Institute (pub. avail. June 15, 1999).

[91] While some funds were not required to comply with the changes to Form N-1A until December 1, 1999, most funds did so in 1999.

[92] Release No. IC-23640 (Jan. 12, 1999), 64 FR 2883 (Jan. 19, 1999).

[93] Release No. IA-1812 (Aug. 4, 1999), 64 FR 43556 (Aug. 10, 1999).

[94] Release No. IA-1794 (Mar. 25, 1999), 64 FR 15680 (Apr. 1, 1999).

[95] Release No. IA-1804 (June 22, 1999), 64 FR 34539 (June 28, 1999).

[96] NIPSCO Industries, Inc., Release No. 35-26975 (Feb. 10, 1999).

[97] AES Corporation, Release No. 35-27063 (Aug. 20, 1999).

[98] Sempra Energy, Release No. 35-26971 (Feb. 1, 1999).

[99] Entergy Corporation, Release No. 35-27040 (June 22, 1999).

[100] Release No. 33-7760 (Oct. 22, 1999), 70 SEC Docket 19.

[101] Release No. 33-7759 (Oct. 22, 1999), 70 SEC Docket 19.

[102] Release No. 33-7745 (Sep. 28, 1999), 70 SEC Docket 15.

[103] Release No. 33-7644 (Mar. 23, 1999), 69 SEC Docket 4.

[104] Release No. 33-7645 (Mar. 23, 1999), 69 SEC Docket 4. See also Release No. 33-7645A (Nov. 5, 1999), 71 SEC Docket 1.

[105] Release No. 33-7 684 (Mar. 23, 1999), 69 SEC Docket 16.

[106] Release No. 33-7620 (Mar. 23, 1999), 68 SEC Docket 17.

[107] Release No. 33-7646 (Mar. 23, 1999), 69 SEC Docket 4.

[108] Release No. 33-7647 (Mar. 23, 1999), 69 SEC Docket 4.

[109] Release No. 33-7649 (Mar. 23, 1999), 69 SEC Docket 5.

[110] Release No. 33-7766 (Nov. 4, 1999), 70 SEC Docket 20.

[111] Release No. 33-7767 (Nov. 4, 1999), 70 SEC Docket 20.

[112] Staff Accounting Bulletin No. 99 (Aug. 12, 1999), 70 SEC Docket 1043.

[113] Staff Accounting Bulletin No. 100 (Nov. 24, 1999), 71 SEC Docket 473.

[114] Staff Accounting Bulletin No. 101 (Dec. 3, 1999), 71 SEC Docket 667.

[115] Statement of Financial Accounting Standards No. 133, Accounting for Derivative and Similar Financial Instruments and for Hedging Activities (Jun. 1998).

[116] Statement of Financial Accounting Standards No. 137, Accounting for Derivative Instruments and Hedging Activities—Deferral of the Effective Date of FASB Statement No. 133 (Jun. 1999).

[117] FASB Preliminary Views, Reporting Financial Instruments and Certain Related Assets and Liabilities at Fair Value (Dec. 14, 1999).

[118] The exposure draft is based on responses to an Invitation to Comment, issued in December 1998 on the Recommendations of the G4+1 for Achieving Convergence in Accounting for Business Combinations. The G4+1 includes representatives from the Accounting Standards Boards of Australia, Canada, New Zealand, the United Kingdom, and the U.S.

[119] Proposed Statement of Financial Accounting Standards, Business Combinations and Intangible Assets (Sep. 7, 1999).

[120] Proposed Statement of Financial Accounting Standards, Consolidated Financial Statements: Purpose and Policy (Feb. 23, 1999).

[121] Proposed Interpretation, Accounting for Certain Transactions involving Stock Compensation, an Interpretation of APB Opinion No. 25 (Mar. 31, 1999).

[122] Proposed Statement on Auditing Standards: Amendments to Statement on Audit Standards No. 61, Communications with Audit Committees and Statement on Auditing Standards No. 71, Interim Financial Information.

[123] Letter to Mr. Thomas Ray, Director, Audit and Attest Standards, AICPA from Lynn E. Turner, Chief Accountant dated Dec. 22, 1999.

[124] Proposed Statement on Auditing Standards, Auditing Financial Instruments (Jun. 10, 1999).

[125] Statement of Position 98-9, Modification of SOP 97-2, Software Revenue Recognition, with Respect to Certain Transactions (Dec. 22, 1998).

[126] Letters dated November 30, 1998 and December 9, 1999 from Lynn E. Turner, Chief Accountant to Michael Conway, Chairman, SEC Practice Section Executive Committee.

[127] Letter dated December 9, 1999 from the Chief Accountant to Charles A. Bowsher, Chairman, Public Oversight Board.

[128] Independence Standard No. 1, Independence Discussions with Audit Committees (Jan. 1999).

[129] An assessment of the use of international accounting standards is provided by the Financial Times 1999 Survey of International Accounting Standards, authored by David Cairns.

[130]177 F.3d 1016 (D.C. Cir. 1999), *cert denied,* 68 U.S.L.W.

3327 (U.S. Mar. 6, 2000) (No. 99-785).

[131] 166 F.3d 529 (2d Cir. 1999).

[132] No. 99-6157 (10th Cir.) (Brief filed July 14, 1999).

[133] No. 99-4033, 1999 WL 1043692 (11th Cir. 1999).

[134] No. 98-17324 (9th Cir.) (Brief filed June 1999).

[135] 511 U.S. 164(1994).

[136]167 F.3d 125(2d Cir. 1999).

[137]191 F.3d 1076 (9th Cir. 1999).

[138] Greebel v. FTP Software, Inc., No. 98-2194 (1st Cir. Oct. 8, 1999); Novak v. Kasaks, No. 98-9641 (2d Cir.); Nathenson v. Zonagen, Inc., No. 99-20449 (5th Cir.); In re Silicon Graphics, Inc. Sec. Litig., 183 F.3d 970 (9th Cir. 1999); Bryant v. Avado Brands, Inc., 187 F.3d 1271 (11th Cir. 1999).

[139] *Parnes v. Digital Lightwave, Inc.*, No. 99-11293-FF (11th Cir.).

[140] LaPerriere v. Vesta Insurance Group, Inc., No. 98-AR-1407-S (N.D. Ala. October 19, 1998); In re Milestone Scientific Sec. Litig., 187F.R.D. 165(D.N.J. 1999); In re The Baan Company Sec. Litig., 186 F.R.D. 214 (D.D.C. 1999); Bragdon v. Telxon Corp., No. 5:98-CV-2876 (LBW) (N.D. Ohio Aug. 25, 1999); Switzenbaum v. Orbital Sciences Corp., 187 F.R.D. 246 (E.D. Va. 1999).

[141] Nos. 99-5356 and 99-5355 (3d Cir.) (Brief filed October 1, 1999).

[142] No. 98-4818 (11 th Cir.) (Brief filed August 26, 1999).

[143]163 F.3d 780 (3d Cir.), cert, denied, 120 S. Ct. 166 (1999).

[144] No. CIV 99-1565 PHX/EHC (D. Ariz. 1999).

[145] No. CIV 99-1737 PHX/ROS (D. Ariz. 1999).

[146] N. 99-0826 (E.D. La. May 5, 1999).

[147] No. 98-6092 (2d Cir. June 16, 1999).

[148] No. 91-1346 (R) (S.D. Cal. May 3, 1999), appealed sub nom *Coldicutt v. SEC*, No. 99-56169 (9th Cir.).

[149] Registered Representative Magazine v. SEC, Case No. 199 CV 01793 (D.D.C.).

[150] Case No. M-30, 1999 WL 386736 (S.D.N.Y. June 10, 1999).

[151] Release No. 34-41813 (Aug. 31, 1999), 70 SEC Docket 1496.

[152] Release No. 34-41034 (Feb. 10, 1999), 69 SEC Docket 178.

[153] Release No. 34-40646 (Nov. 9, 1998), 68 SEC Docket 1413.

[154] Release No. IA-1774 (Nov. 18, 1998), 68 SEC Docket 1570, aff'd __ F.3d __ (2d Cir. 1999).

[155] Pub. L. No. 106-62, 113 Stat. 505 (1999) (H.J. Res. 68), signed Sept. 30, continued funding at fiscal 1999 levels until Oct. 21, 1999; Pub. L. No. 106-75, 113 Stat. 1125(1999) (H.J. Res. 71), signed Oct. 21, 1999, which continued funding at fiscal 1999 levels until Oct. 29, 1999; Pub. L. No. 106-85, 113 Stat. 1297 (1999) (H.J. Res. 73), signed Oct. 29, 1999, which continued funding at fiscal 1999 levels until Nov. 5, 1999; Pub. L. No. 106-88, 113 Stat. 1304 (1999) (H.J. Res. 75), signed Nov. 5, 1999, which continued funding at fiscal 1999 levels until Nov. 10, 1999; Pub. L. No. 106-94, 113 Stat. 1311 (1999) (H.J. Res. 78), signed Nov. 10, 1999, which continued funding at fiscal 1999 levels until Nov. 17, 1999; Pub. L. No. 106-105, 113 Stat. 1484 (1999) (H.J. Res. 80), signed Nov. 18, 1999, which continued funding at fiscal 1999 levels until Nov. 18, 1999; and Pub. L. No. 106-106, 113 Stat. 1485 (1999) (H.J. Res. 83), signed Nov. 19, 1999, which continued funding at fiscal 1999 levels until Dec. 2, 1999.

[156] The Commission testified on 23 occasions in the 106th Congress and on two occasions in the 105th Congress.